

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

COMMONWEALTH OF PENNSYLVANIA  
HOUSE OF REPRESENTATIVES  
COMMITTEE ON JUDICIARY

In re: Alleged Abuses in the Domestic Relations  
Field

\* \* \* \* \*

Stenographic report of hearing held  
in Room 418, Minority Caucus Room,  
Main Capitol Building, Harrisburg, PA

Thursday,  
December 19, 1991  
10:00 a.m.

HON. THOMAS R. CALTAGIRONE, CHAIRMAN

MEMBERS OF COMMITTEE ON JUDICIARY

Hon. Gregory Fajl	Hon. Dennis O'Brien
Hon. James Gerlach	Hon. Robert Reber
Hon. David Mayernik	Hon. Michael Veon
Hon. Christopher McNally	

Also Present:

David Krantz, Executive Director  
Galina Milahov, Research Analyst  
Katherine Manucci, Committee Staff  
Mary Woolley, Republican Counsel  
Ken Suter, Republican Counsel  
Mary Beth Marschik, Republican Research Analyst  
Suzette Beemer, Republican Staff

Reported by:  
Ann-Marie P. Sweeney, Reporter

ANN-MARIE P. SWEENEY  
3606 Horsham Drive  
Mechanicsburg, PA 17055  
717-732-5316

1991-124

INDEX

		<u>PAGE</u>
1		
2		
3	Judith Yupcavage, Policy and Information	4
4	Coordinator, Pennsylvania Coalition	
	Against Domestic Violence	
5	Hon. Clarence C. Morrison, Judge, Dauphin	30
6	County	
7	Hon. Wayne G. Hummer, Jr., Judge, Lancaster	58
8	County	
9	Wanda Neuhaus, Esq., Divorce Master, York	72
10	Marilyn Zilli, Esq., Harrisburg	87
11	Sandra Meillon, Esq., Hepford, Swartz & Morgan	105
12	Maria Cognetti, Esq., Melle, Evans & Woodside	106
13	David Houseal, Case Management Supervisor,	147
14	Lutheran Social Services	
15	Gretta Aull, Esq., Appel & Yost	168
16	William Gold, Director, Union County Domestic	181
17	Relations	
18	Michael Goldberg, Esq., Central Pennsylvania	199
19	Legal Services	
20	John Howell, Esq., Harrisburg	238
21		
22		
23		
24		
25		

1                   CHAIRMAN CALTAGIRONE: I'd like to get  
2 the hearing started. The Judiciary Committee is  
3 holding this continuing series of hearings in Domestic  
4 Relations and the judicial system to hear out citizens  
5 who believe that the Pennsylvania legal system may have  
6 failed them in the legal dissolution of their marriage.  
7 Today's hearing is set aside for input from such  
8 professionals from the central Pennsylvania area.  
9 Another hearing tomorrow will also gather input from  
10 members of the judicial and legal communities from the  
11 eastern portion of the Commonwealth.

12                   At times the Judiciary Committee receives  
13 complaints from individuals who have gone through  
14 divorce procedures and these complaints usually center  
15 around child support, child custody, visitation,  
16 division of property, alleged preferential treatment of  
17 lawyers by judges. These hearings are intended to  
18 provide us with further insight into those complaints  
19 and if problems appear to be occurring, if solutions  
20 might be feasible through legislation. We are not  
21 passing judgment on anyone, simply to gather  
22 information.

23                   The committee greatly appreciates your  
24 attending today's session and welcomes your comments  
25 and suggestions regarding today's matter. I would like

1 the start off with Judy Yupcavage, who is the Policy  
2 and Information Coordinator with the Pennsylvania  
3 Coalition Against Rape.

4 MS. YUPCAVAGE: Good morning. It's  
5 Domestic Violence, Pennsylvania Coalition Against  
6 Domestic Violence. Good morning, Mr. Chairman, members  
7 of the Committee. I'm Judith Yupcavage, Policy and  
8 Information Coordinator of the Pennsylvania Coalition  
9 Against Domestic Violence, and I appreciate the  
10 opportunity to be here today to address the issues of  
11 domestic relations practice and law in Pennsylvania.

12 I speak to you on behalf of the victims of  
13 domestic violence and their dependent children in  
14 Pennsylvania, who number in the millions. We recognize  
15 that these are your constituents as well as ours and it  
16 is in their vital health and safety that we continue  
17 working cooperatively together.

18 This legislature was visionary in 1976 when it  
19 enacted the Protection From Abuse Act. Subsequent  
20 amendments in 1978 and 1988 enhanced the utility of the  
21 act immeasurably. This act has become the model for  
22 civil protection order statutes across the country.  
23 Your courage and wisdom in crafting these cutting edge  
24 protections must be publicly acknowledged and  
25 applauded.

1           Fortunately, the courts of this Commonwealth  
2 have clearly understood the legislative intent of the  
3 Protection From Abuse Act - to prevent future physical  
4 and sexual abuse of people at risk of domestic  
5 violence. The good news is that protection orders work  
6 in Pennsylvania. As many as 90 percent of the persons  
7 against whom protection orders are awarded comply, at  
8 least to the extent that they are not cited for  
9 violation by the police or the courts. This is a  
10 substantial compliance rate; however, compliance is  
11 only one measure of the effectiveness of protection  
12 orders. Battered women report the importance of  
13 protection orders which limit batterer access, permit  
14 victims to stay in their own homes, safeguard the lives  
15 of their children and provide the economic supports  
16 essential to households independent of the batterer.

17           The National Council of Juvenile and Family  
18 Court Judges recently investigated the efficacy of  
19 civil protection orders. It discovered that protection  
20 orders significantly contribute to safeguarding victims  
21 from future violence when these orders were  
22 comprehensive in scope, individually tailored, and  
23 vigorously enforced by law enforcement and the courts.

24           Another landmark study on civil protection  
25 orders, commissioned by the National Institute of

1 Justice, found that protection orders provide unique  
2 opportunities to help reduce violence between persons  
3 in intimate relationships. The study further found  
4 that police officers are more likely to arrest a  
5 perpetrator who violates an order than other batterers  
6 committing crimes against family members. Other  
7 inquiries found that the potential for arrest and the  
8 resultant stigma motivates men to desist from engaging  
9 in physical aggression against wives and partners.

10           Ironically, it is because of the effectiveness  
11 of these statutory safeguards that there is now an  
12 orchestrated attempt to undermine the work and  
13 leadership of this legislature which is renowned  
14 throughout the country. Any measure to weaken what  
15 Pennsylvania courts have identified as a vanguard legal  
16 strategy to stop domestic violence perpetrators and to  
17 protect victims must be categorically rejected.

18           In the September hearings, you heard  
19 allegations that plaintiffs are fabricating claims of  
20 domestic violence and that this statute affords  
21 plaintiffs unfair advantage in subsequent domestic  
22 relations litigation. You also heard that women's  
23 centers and private attorneys are encouraging and  
24 assisting plaintiffs in filing fraudulent Protection  
25 From Abuse petitions. All of these allegations are

1 patently false.

2           Where is the data? Where is the  
3 documentation? You have merely heard the strongly held  
4 beliefs of opponents of protection orders -- those who  
5 trivialize the violence and terror inflicted against  
6 women and children in the family. There is no data to  
7 support the proposals that the Protection From Abuse  
8 Act be eviscerated because of fraudulent, inappropriate  
9 use by plaintiffs. There is only speculation and  
10 political argument.

11           Contrariwise, the data that is available to  
12 this legislature about the grave dangers of domestic  
13 violence to women and children is massive. Every three  
14 days a woman or child is killed in this Commonwealth as  
15 a consequence of domestic violence.

16           Ninety percent of domestic violence incidents  
17 reported to police involve injuries as serious as those  
18 in the felonies of rape and aggravated assaults. The  
19 Centers for Disease Control and the U.S. Surgeon  
20 General have identified battering as the single major  
21 case of injury to women and as a national health  
22 problem of epidemic proportion. The data that we can  
23 give you to substantiate the critical need for  
24 continuation of powerful statutory protection could  
25 literally fill a room.

1           There is more limited data about the alleged  
2 fraudulent or inappropriate use of this statute. That  
3 data, however, is compelling.

4           According to the National Institute of  
5 Justice, in the study on civil protection orders,  
6 "documented instances of women abusing the process are  
7 rare." Rather, this study concludes that male  
8 perpetrators are the ones who inappropriately or  
9 fraudulently use protection order statutes.

10           In instances where women are represented by  
11 counsel and the allegation of fraudulent filing is  
12 made, one office where complaints can be registered  
13 about reprehensible and unethical conduct of attorneys  
14 is with the Disciplinary Board of the Supreme Court of  
15 Pennsylvania. Yet, the Disciplinary Counsel in charge  
16 of District 3, comprising 32 counties in central and  
17 northeastern Pennsylvania, has no recollection of any  
18 specific complaints in this area, despite the fact that  
19 subornation of perjury is an extremely serious  
20 violation of the Rules of Professional Conduct,  
21 subjecting counsel to possible suspension of license or  
22 disbarment.

23           In instances where domestic violence centers  
24 are alleged to assist victims with the fraudulent  
25 filing of petitions, the one place where complaints can



1 be registered is with the Department of Public Welfare,  
2 which provides funding to the network of domestic  
3 violence programs across the State. Yet again, not a  
4 single complaint has been lodged against domestic  
5 violence programs.

6 Furthermore, the courts have the opportunity  
7 to evaluate whether fraud is being perpetrated and to  
8 determine what relief should be awarded. Our system of  
9 justice relies on the judiciary to evaluate claims and  
10 litigants and to reach conclusions about the merits of  
11 any case and about the truth-telling of litigants.  
12 Unless we are to forsake the system of justice, we must  
13 rely upon the judiciary to scrutinize claims and  
14 litigants and to decide whether claims are fraudulently  
15 or inappropriately initiated. The data we have from  
16 courts across the Commonwealth reveal that judges  
17 overwhelmingly believe plaintiffs and deem them worthy  
18 of the relief available under the act. Those  
19 dissatisfied with the conclusions of trial courts may  
20 appeal. Yet a review of appellate decision belies the  
21 allegation of fraudulent or inappropriate claims.  
22 Defendants are not appealing based on inefficiency of  
23 the evidence of abuse. In fact, they rarely deny the  
24 abuse.

25 The legislature must not give credence to

1 these allegations of fraud or improprieties. To do so  
2 violates the integrity of those courageous women who  
3 have come forward to end the violence in their lives.  
4 The integrity of millions of women should not be  
5 impugned based on the specious speculations of a few  
6 disgruntled detractors. It is unconscionable that this  
7 legislature should proceed in any way to limit or  
8 weaken the Protection From Abuse Act, a law which each  
9 year provides life-saving relief to thousands of  
10 victims of domestic violence in Pennsylvania.

11 Turning your attention to other testimony  
12 offered by witnesses at the September hearings, the  
13 PCADV is concerned that this committee was misinformed  
14 about the status of custody outcomes. Witnesses  
15 claimed that courts are unfairly awarding custody to an  
16 overwhelming number of mothers. The fact is that when  
17 fathers seek custody, they prevail in 63 percent of  
18 those cases, even when the mother has been the primary  
19 caretaker prior to divorce and separation.

20 Of particular concern to this Coalition is the  
21 failure of the courts to consider a parent's history of  
22 domestic violence when awarding custody, partial  
23 custody, or visitation. Children of battered women are  
24 at serious risk of physical and emotional abuse. Men  
25 who batter their wives are likely to assault their

1 children, and the more severe the abuse of the mother,  
2 the worse the child abuse. Abuse of children from  
3 violent homes may be more likely when the marriage is  
4 dissolving or the couple has separated. Batterers  
5 abuse children in order to achieve dominance and  
6 control over their mothers. Virtually all children of  
7 battered women witness their fathers' assaults on their  
8 mothers. Children witnessing the violence inflicted on  
9 their mothers evidence behavioral and emotional  
10 problems similar to those experienced by abused  
11 children. Moreover, boys growing up in domestic  
12 violence situations are at a highly elevated risk of  
13 becoming batterers in adulthood.

14 The good news is that children can recover  
15 from the trauma of domestic violence and child abuse if  
16 they are protected from recurring violence and if they  
17 have limited contact with the battering father until  
18 such time as he has stopped his abuse and initiated  
19 respectful, accountable conduct in all dealings with  
20 the battered mother.

21 This legislature is to be commended for its  
22 recognition of the critical nexus between domestic  
23 violence and preferred, protected custodial  
24 arrangements. The amendments to the Protection From  
25 Abuse Act in 1988 and the amendments to the Custody

1 Statute in 1990 are a good starting place for  
2 legislative initiatives in this critical area. We  
3 trust that you will move forward to more fully protect  
4 children of battered women.

5 Another theme threaded throughout the  
6 testimony of witnesses at the September hearings is  
7 that both the law and the courts are biased against men  
8 in the domestic relations arena. Their testimony was  
9 anecdotal and is an insufficient basis on which to make  
10 public policy or to reform the Divorce Code or other  
11 domestic relations provisions. This legislature must  
12 rely on more valid data. Data produced by U.S. Bureau  
13 of Census, by judicial inquiry and by scientific  
14 methodology flies in the face of the allegation of bias  
15 against men. To the contrary, it reveals strong bias  
16 against women.

17 A recent report of the Bureau of Census states  
18 that of the 19.3 million ever divorced or currently  
19 separated women, only 16.8 percent were awarded alimony  
20 and that only 31.8 percent of these women received a  
21 properly settlement. Except for short-term  
22 rehabilitative or compensatory awards, studies show  
23 that courts have almost entirely stopped awarding  
24 alimony, even where the marriage has been of long  
25 duration and the wife unable to properly provide for

1 her own needs. Even when a husband has sufficient  
2 income and resources, women rarely receive any  
3 significant spousal alimony and receive a lesser share  
4 of family assets in divorce judgments than men.

5           Research demonstrates that divorced women with  
6 dependent children may experience as much as a  
7 73-percent decline in their standard of living during  
8 the first year after divorce. In sharp contrast,  
9 divorced men experience a 42-percent increase in their  
10 standard of living. In 1979, there were 7 million  
11 single-parent female-head-of-households, and 1.9  
12 million of those were below the poverty line. In 1988,  
13 there were 9.4 million single-parent female-  
14 head-of-households, and 3.1 million of those were below  
15 the poverty line. Thirty-three percent of those living  
16 with female-heads-of-households are living in poverty.  
17 Many battered women and their dependent children are  
18 reflected in this population.

19           While Pennsylvania has yet to undertake a  
20 study of gender bias in the courts, studies undertaken  
21 in other States point to compelling evidence of bias  
22 against women in the domestic relations arena. The New  
23 York Task Force on Women in the Courts found that  
24 courts should, but often fail to, view marriage as an  
25 "economic partnership in which the totality of the

1 non-wage earning spouse's contributions -- including  
2 lost employment opportunity and pension rights -- is...  
3 considered when dividing property and awarding  
4 maintenance."

5           Although the reform of the Divorce Code in  
6 1980 sought to create economic equity for divorcing  
7 couples, the promise of that reform has not been  
8 realized. Women do not achieve economic awards in  
9 divorce matters largely because they cannot afford the  
10 cost of the Master or arbitrator.

11           Citizens of the Commonwealth are not asked to  
12 pay for judicial resolution of other disputes.  
13 Litigants should not have to pay for, or at a minimum  
14 advance, the cost of resolving economic claims in  
15 divorce litigation. Economic justice in divorce  
16 matters must not be impeded by denying economically-  
17 dependent spouses access to the courts. The Coalition  
18 would strongly urge this body to squarely address the  
19 access problems that thrust many divorcing women and  
20 their dependent children into poverty. Divorcing men  
21 are economically abandoning children and their former  
22 spouses at alarming rates. The courts are abetting  
23 them in this injustice. This legislature must create  
24 access for resolution of economic claims in divorce.

25           Two legislative proposals are being advanced

1 by the Senate at this time. I believe one has already  
2 come over to the House. Without offering an opinion  
3 now on the merits of either, please note that the  
4 arbitration proposal, Senate Bill 1296, creates  
5 substantial economic barriers, and the mediation  
6 proposal is potentially without costs to participants.  
7 All options for the resolution of economic claims in  
8 divorce should be without cost to the parties, or at  
9 the very least, costs should be deferred and assigned  
10 to either or both parties at the conclusion of the  
11 proceeding and waived for poor people.

12 In conclusion, PCADV would encourage your  
13 further investigation into model domestic relations  
14 practice in this State and into statutory provisions in  
15 other States that protect the victims of domestic  
16 violence and enhance economic equity in divorce. The  
17 recommendations of many of the witnesses in September  
18 are regressive. Move forward; don't move back. Base  
19 your deliberations in truth and fact, not specious  
20 allegations.

21 We look forward to working with you to enhance  
22 justice for all people in the Commonwealth. Thank you.

23 CHAIRMAN CALTAGIRONE: I have some  
24 questions but I'll defer to some other members first.

25 Representative Reber.

1                   REPRESENTATIVE REBER: Thank you, Mr.  
2 Chairman.

3 BY REPRESENTATIVE REBER: (Of Ms. Yupcavage)

4                   Q. Judith, on page 4, the second paragraph  
5 of your testimony, the last sentence, and I'm quoting,  
6 "it is unconscionable that this Legislature should  
7 proceed in a way to limit or weaken the Protection From  
8 Abuse Act," et cetera, et cetera. From my knowledge as  
9 Subcommittee Minority Chairman on the Subcommittee on  
10 Courts, I don't know of anything pending that would in  
11 fact do that, or am I incorrect on that?

12                   A. No, you are correct.

13                   Q. Okay. I just wanted to make sure we  
14 didn't miss something and there is ground swell and a  
15 plethora of proposed legislation out there that I was  
16 unaware of. Okay, that dispels one major concern.

17                   Let me ask you this: In my opinion,  
18 there seems to be a disproportionate amount of ex parte  
19 petitions being heard by district justices when, in  
20 fact, it's my understanding the original intent of the  
21 act, as well as the intent of the amendments that  
22 followed, was that this was for only situations on  
23 weekends or where the Common Pleas Court was not in  
24 session, if you will. Do you find that to be a valid a  
25 statement?



1           A.    That is my understanding, the way the law  
2 was written, that district justices are to only issue  
3 these awards when the court is unavailable on weekends  
4 and overnight. I am not aware that they are doing it  
5 at times when the court is available.

6           Q.    Well, I've been advised by counsel and  
7 from my own personal experience. I know in Berks  
8 County, for instance, if I don't fall into the  
9 courtroom when motions court is being held, quote,  
10 "they are unavailable," and sometimes that's a  
11 45-minute segment of a day and sometimes is only once a  
12 week, and I think there's need for remediation in the  
13 statute to avoid that because let me tell you, I've had  
14 a tremendous amount of individuals extremely upset,  
15 one, of the caliber of the minor judiciary, the  
16 experience of the minor judiciary, and I've had members  
17 of the minor judiciary themselves saying we don't feel  
18 that we should have to do this, we don't have the  
19 staff, the expertise, it's something that we never went  
20 looking for, it found us, and I guess what I'm saying  
21 is, do you agree that if, in fact, this legislature  
22 should proceed in a way to look at that, that we would  
23 be unconscionably reacting to something that we  
24 shouldn't be reacting to?

25           A.    I would say that we agree with you

1 wholeheartedly that it should be the judges who are  
2 hearing these cases. We have worked very hard to make  
3 sure that judges are available and that it is actually  
4 judges who hear the cases. If it is, in fact, that  
5 because they are not available for 45 minutes that they  
6 are going to district justices, I think that should be  
7 corrected and this is the first I've heard of this.  
8 I'm not aware that that's been happening, but you say  
9 it's happening in your county, or -- did you say Bucks  
10 County?

11 Q. Berks County.

12 A. Berks County.

13 Q. Berks County I'm aware of the motions  
14 scenario. I'm also aware that that exists by the  
15 competent advice coming from some of our staff people  
16 in other areas as well, and I'm also aware from  
17 personal experience both practicing prior to the  
18 amendments to the act and back before I really came on  
19 board here in the legislature, some of the concerns as  
20 well as speaking with a number of district justices as  
21 recently as yesterday morning about this subject and  
22 other subjects.

23 REPRESENTATIVE REBER: I see we have a  
24 long list, Mr. Chairman, and I'll just forego some of  
25 my comments and maybe draw them out at a later date

1 with some other witnesses.

2 CHAIRMAN CALTAGIRONE: Thank you.

3 Ms. Woolley.

4 BY MS. WOOLLEY: (Of Ms. Yupcavage)

5 Q. Judy, one of allegations that's been  
6 made, not only at the first three days of hearings  
7 we've had but with other conversations we've had with  
8 family practitioners, is that there's the possibility  
9 that the Protection From Abuse Act is used  
10 inappropriately to gain leverage in divorce litigation,  
11 and I noticed, I think it was last year or the year  
12 before, at the Family Law Section annual meeting they  
13 even had a session on inappropriate manipulation of the  
14 Protection from Abuse Act to gain leverage in divorce  
15 proceedings, and I was wondering what your thoughts  
16 are?

17 A. We've been really concerned hearing these  
18 allegations because we don't want it used in any way  
19 inappropriately by any party, by a woman with her  
20 attorney or any plaintiff. As I said in the testimony,  
21 I did contact the Disciplinary Counsel of the Supreme  
22 Court to see actually how many complaints have been  
23 filed against attorneys who have been doing this and  
24 they have not received any complaints. If, in fact,  
25 that a woman who has been abused goes in to get a

1 protection order and that is considered an advantage in  
2 divorce litigation--

3 Q. No, that's not what I'm suggesting.

4 A. That they are fabricating?

5 Q. Yes, fabricating, and your centers or  
6 your legal advocates aren't experiencing--

7 A. I can tell you emphatically our programs  
8 do not and would not assist or cooperate in any way  
9 with anyone filing fraudulent petitions for Protection  
10 From Abuse. We are overwhelmed with real victims who  
11 are suffering extreme trauma and terror at home. We do  
12 not have time to turn our attention to anyone, and no  
13 one comes to us -- I mean, the women who come to us are  
14 seriously in danger or seeking to escape the violence.  
15 We would never -- we would not ever do that. Our  
16 programs simply don't do that. I can't speak for  
17 private attorneys but I can tell you that there have  
18 been no complaints lodged against any private  
19 attorneys, and if they are no names -- I mean, we take  
20 this allegation as seriously as you do because it  
21 threatens the credibility of everyone who works to  
22 advance the cause of domestic violence victims.

23 Q. Thank you.

24 CHAIRMAN CALTAGTRONE: Well, I guess I'm  
25 on.

1 MS. YUPCAVAGE: Okay.

2 BY CHAIRMAN CALTAGIRONE: (Of Ms. Yupcavage)

3 Q. Contrary to what you're saying, I've had  
4 the opportunity to speak to many judges around this  
5 Commonwealth at different times, this is one, charges  
6 that I think that this legislature is responsible for  
7 to find out what's really happening out there. I mean,  
8 we can create all the crafty legislation that we think  
9 is needed and sometimes do a disservice by passing too  
10 much legislation, and my conscience -- Representative  
11 Reber I think many times before warned us of problems  
12 and many times he has been right that we move too  
13 quickly in areas responding to groups, pressure groups.

14 It's interesting what you're saying, but  
15 you may be right that there are no complaints being  
16 lodged with the appropriate authorities or bodies, but  
17 I'm telling you, we have documentation from letters,  
18 from individuals, both men and women, privately from  
19 judges and attorneys that this in fact is being abused.  
20 Now, is there a problem or isn't there a problem? I  
21 think there's something wrong somewhere and everybody  
22 says, you don't have to fix this, it's not broken.  
23 Well, you know what? That's what you're saying. I  
24 don't know where your facts and the stats are coming  
25 from, but we certainly have been hearing in it in our

1 office from one end of the State to the other.  
2 District justices, female district justices have told  
3 me privately on numerous occasions from various areas  
4 of the State, and we've taken this committee around to  
5 visit youth detention facilities, State prisons, county  
6 prisons, the local bars, we've had meetings up here  
7 with the president judges around the State and we had  
8 conversations just last week with the President Judge  
9 of the Commonwealth Court and Superior Court. We try  
10 to get as involved with judiciary and the legal  
11 community and any other groups that are out there to  
12 have full access to the legislature. Because I think  
13 it is important. This is our form of government and  
14 everybody should have equal access. And we go to the  
15 field to meet with people and find out what's really  
16 going on. Female district justices have told me from  
17 various areas of the State, not just Berks County, that  
18 we would prefer not even to handle these things, that  
19 too often they are given out like candy. That was the  
20 one comment. They are given out like candy.

21 A. By them?

22 Q. By them, that requests are being made by  
23 different counsels and/or women that come in on various  
24 pretenses that certain abuses have taken place. There  
25 are abuses that are going on within the abuse order

1 where an offense supposedly was committed a week or two  
2 weeks ago, not current not like tonight or today, and  
3 they are giving them. It's wrong. The judges have  
4 told me that it's wrong, the attorneys have told me  
5 that it's wrong, the district justices, and I'm  
6 thinking to myself, well, people say there's nothing  
7 wrong, Tom, you don't need to fix it, it ain't broken.  
8 Now why are they saying that and you're saying nobody  
9 has reported? Nobody likes to get into that situation  
10 where they are reporting a fellow professional in an  
11 area. You know that as well as I. That just doesn't  
12 really happen.

13 A. But the recipient or a defendant who  
14 claims he was unfairly involved in a Protection From  
15 Abuse proceeding, I would think, would choose options  
16 of reporting if his wife's attorney was doing that. I  
17 mean, that's an option for that individual.

18 Q. Well, right away I know what you're  
19 saying. On the other hand, normally you say it's a man  
20 that will file an abuse against a woman if she files  
21 one just to counterplea at this time for that time or  
22 to get some kind of silly advantage. I think the  
23 intent of the order and the original legislation is  
24 well meaning and I do think that it's needed, but I do  
25 think that there's other protections that have to be

1 provided for people that are unjustly accused or that  
2 there has to be other checks and balances. We talk  
3 about the system of justice. There cannot be an  
4 advantage so weighted against one party or the other,  
5 and that's part of this total problem of Domestic  
6 Relations. It's not just this abuse area that we're  
7 talking about now. There's got to be an end to the  
8 divorce procedure. People have got to know that once  
9 it's started that the system is going to adjudicate  
10 their particular divorce as quickly and as fairly as  
11 humanly possible.

12 Now, I don't know, you know, how we do  
13 that just yet. We're hearing a lot of problems about  
14 that whole area, that some of these divorces have  
15 dragged on for years. I think that's intolerable. I  
16 think that has to stop. I think we've got to have a  
17 finality. So somebody knows that it begins here and it  
18 stops here and that's it, you know. And we know  
19 exactly when it's supposed to begin and when it's  
20 supposed to end and that there is a fair division of  
21 the property and that there is provisions for alimony  
22 and all of these other areas and that those orders  
23 should be upheld. And what we're attempting to do in  
24 gathering this type of information is just to have  
25 fair, equal access to the system for all parties



1 involved. And, you know, we've had men and women, men  
2 and women that have come into us continuously, not only  
3 at these hearings but especially at my office that have  
4 said, Tom, the system has failed us. We don't feel  
5 we're getting justice, and we've heard, I dare say,  
6 just as many women say it as we've heard men. Is that  
7 correct?

8 MR. KRANTZ: It's almost equal.

9 BY CHAIRMAN CALTAGIRONE: (Of Ms. Yupcavage)

10 Q. And to me, everybody keeps saying there's  
11 nothing wrong, there's nothing wrong. I'd like to have  
12 some of you people sit in my office for a week or two  
13 when we get involved in these type issues and listen to  
14 what we've listened to and say to yourself, well, if  
15 there's nothing wrong--

16 A. Well, I might also say you might want to  
17 sit in a shelter or receive a hotline and hear the  
18 calls. You know there's something wrong going on in  
19 the homes.

20 Q. I have sat in the shelter in my  
21 particular area. I have contributed money, I've raised  
22 money for them. I've even helped to get women in the  
23 shelter, so I know firsthand what you're talking about.

24 A. I guess the research and statistics  
25 indicate that, for the majority of people, the

1 Protection from Abuse Law it works and it works well.  
2 Because it doesn't work in a few, small percentage of  
3 cases doesn't necessarily mean you have to go and  
4 change. Maybe what you need is judicial training,  
5 training for the minor judiciary.

6 Q. No, your saying this is a few small  
7 areas. That's not what we're hearing. That's not what  
8 we're hearing from many people in the legal community,  
9 many people in the judicial community, you know. We're  
10 saying, yeah, there are problems. Now what we're  
11 saying is how do we address those problems fairly for  
12 all parties concerned? And you're saying there's  
13 nothing wrong?

14 A. I'm saying that it works in the  
15 percentage of times that for 90 percent, 90 percent  
16 it's effective and it works. So you're talking about a  
17 small percentage where it might not. This is a good  
18 law.

19 Q. I know that you're saying a small  
20 percentage, but when something is being, abused I don't  
21 care if it's 1 percent. If one person is being denied  
22 their rights in court, then it's wrong.

23 A. But they have appellate process to go  
24 through if they were denied their rights. They are not  
25 taking advantage of the process.

1 Q. There are cute ways that the system can  
2 work for an advantage or disadvantage to the parties  
3 that are involved and these are the problems in the  
4 totality of what we're talking about, these are the  
5 problems where people are finding loopholes or gaining  
6 leverage through one way or another to abuse the  
7 system, and that's what part of this problem is about,  
8 that we've got to try to look at it fairly to see if  
9 there some solution that we can grasp. I don't know if  
10 it's possible.

11 A. Well, I can only say that the Coalition  
12 would be happy to sit down and work with you and your  
13 committee in looking at some issues around the  
14 amendments.

15 Q. I would appreciate that.

16 A. In talking to other individuals and maybe  
17 we can work up some solutions that would be agreeable  
18 to all of us. We don't want to see the law abused any  
19 more than you do, and we also don't want to see it  
20 weakened because obviously a great many women need this  
21 law. So but we would be more than happy to work with  
22 you and we appreciated the work of the committee in  
23 looking at these issues.

24 Q. Okay. Thank you.

25 A. Thank you.

1 CHAIRMAN CALTAGIRONE: Yes, Chris.

2 BY REPRESENTATIVE McNALLY: (Of Ms. Yupcavage)

3 Q. I did have one question but it's somewhat  
4 of a change of subject. And I wanted to ask because  
5 it's something that we've heard, quite frequently, I  
6 think, and that is on page 4 of your testimony that you  
7 make the reference to the fact that when fathers seek  
8 custody, they prevail in 63 percent of those cases even  
9 when the mother has been the primary caretaker prior to  
10 divorce and separation. And the question I have for  
11 you is what percentage of all custody cases are  
12 contested?

13 A. You know, I don't know that number.

14 Q. You'd agree it's a very small percentage?

15 A. It's a small percentage, yes.

16 Q. Okay.

17 A. I think overall, in the statistics, I  
18 think over 90 percent of mothers do have custody, but  
19 that's because there was no contested custody, but when  
20 fathers do seek to get custody of their children, 63  
21 percent of the time they win.

22 Q. All right. Would you speculate as to the  
23 reason why, you know, there's such an extraordinary  
24 difference between an overall percentage of 90 percent  
25 custody for mothers and 63 percent where the custody is

1 contested?

2 A. I don't know that I'd care to speculate,  
3 actually. I'm not sure.

4 Q. Do you think that it might be because the  
5 fathers simply don't contest custody cases because of  
6 the likelihood that they'll lose unless they have a  
7 very strong case?

8 A. I would think it's likely that they  
9 simply don't want custody of the children. They are  
10 not losing. They are not losing.

11 Q. Well, I'll bet that in these 63 percent  
12 the fact is that they have extraordinarily strong cases  
13 and that's, you know, that the mother may have been the  
14 abuser or that there is some other kind of rather  
15 substantial evidence that would overcome a presumption,  
16 if not a legal presumption a practical presumption, to  
17 award custody to the mother, especially if she's been  
18 the primary caretaker. You would agree at least that  
19 as a matter of practice there's a presumption that  
20 custody should be awarded to the primary caretaker?

21 A. I think that has changed in recent years.  
22 At one time it was. I don't think that there's any, I  
23 don't think that that's the case anymore.

24 Q. As recently as 1988, when I was  
25 practicing law, I mean, it was, you know, it was

1       hearings -- that was the way it meant. I mean, in  
2       Allegheny County, and, you know, I think judges like  
3       Judge Wettig and Judge Strassburger have very excellent  
4       reputations, but the concept was to have as little  
5       disruption to the child as possible, especially if it  
6       was a younger child, and therefore, you know, absent  
7       some egregious behavior on the part of the primary  
8       caretaker, that custody would be awarded to that  
9       individual. Do you disagree with that?

10               A. I honestly don't know, so I think maybe  
11       some other witnesses here today could respond to that  
12       better than I could.

13               Q. Okay, thank you.

14               CHAIRMAN CALTAGIRONE: Thank you, Judy.

15               We will next hear from the Honorable  
16       Clarence C. Morrison, Family Law Judge, Dauphin County  
17       Courthouse.

18               JUDGE MORRISON: Ladies and gentlemen,  
19       let me express my appreciation for the privilege of  
20       being here with you. I will not bore you with some  
21       long dissertation. I think that some areas that you  
22       have gotten into are areas of concern and I'll go  
23       directly to those and I'll allot some time for  
24       questions if you have some questions, and I'm sure you  
25       do.

1 I, for the first time, have heard the  
2 comment with respect to district justices complaining  
3 about being involved in abuse cases. I don't know that  
4 in Dauphin County that's a problem because we have  
5 administrators who are involved in assigning cases and  
6 when the cases come in automatically they are assigned  
7 to a judge, and the only time a DJ gets involved is on  
8 a weekend when the court is not actually in session,  
9 and session doesn't mean being available during a  
10 specific hour of the day because the Prothonotary is  
11 available when the case is filed with the Prothonotary  
12 and given to the Court Administrator and assigned to a  
13 judge on an ongoing basis. In fact, we have a motion  
14 judge assigned each month and that judge hears all  
15 abuse cases during the time that he's serving so that  
16 there is no question that if a case is filed that the  
17 matter will be heard by a judge during the term and, of  
18 course, there's a ten-day hearing period.

19 With respect to the question of whether  
20 or not the system may be abused by women who are  
21 seeking advantage in a divorce proceeding, of course, a  
22 preliminary order may be issued with respect to  
23 whatever the affidavit is filed, but within ten days we  
24 have a hearing and we have an opportunity to hear from  
25 both sides with respect to whether or not there is or

1 isn't merit to the complaint made, and as in every case  
2 as factfinders, since these matters are not heard by  
3 juries, we have an opportunity to have the clients  
4 appear before us and we make a judgment with respect to  
5 whether we are satisfied that there is or isn't merit  
6 to the complaint. So that I don't see that that's a  
7 problem, at least in our jurisdiction, because we have  
8 a method of dealing with these kinds of problems so  
9 that we're sure that the judges are assigned and do  
10 hear these matters within the confines of the statute.  
11 That's not to suggest that we're perfect. The only man  
12 that was perfect was crucified. The rest of us have  
13 frailties, but at least the issues raised with respect  
14 to someone abusing the system could not last more than  
15 ten days because within a ten-day period we have an  
16 actual hearing and we determine, based on whatever  
17 evidence is presented to us, what the problem is and we  
18 try to deal with the problem in a manner that we deal  
19 with all problems, in a judicious manner.

20 I want to also comment with respect to  
21 the question of whether or not, and it seems to me the  
22 thrust of the hearings center around the question of  
23 whether or not there is some clandestine operation  
24 between lawyers and judges in the hearing of matters  
25 involving family concerns. Let me say as a person who



1 has served for ten years that probably the most  
2 egregious area that we are involved in involve family  
3 disputes, and we have no desire to proliferate those  
4 matters or to extend those matters into any indefinite  
5 period of time because once a case is assigned to you,  
6 it's your case and it doesn't go away and it doesn't go  
7 to anyone else, so that we are confronted with a  
8 situation where we have to deal with a problem that's  
9 presented to us.

10 I think that a part of the problem may be  
11 on the part of those who complain, two considerations.  
12 One, an unreasonable expectation of what the court can  
13 do with respect to these matters; and two, whether or  
14 not the person complaining is reasonable in their  
15 approach to the problem. I think those two assets are  
16 equally important in dealing with problems in this  
17 area. I think somehow over the years the concept has  
18 been developed that the courts are able to resolve all  
19 problems of any nature, whatever source the problem  
20 derived from. I think that's unfair to us and unfair  
21 to those who come and expect that we would be able to  
22 resolve those kinds of situations.

23 When we're talking about problems in the  
24 area of domestic relations, I don't think there's any  
25 question that this is the most volatile area in human

1 relations and parties interacting with each other and  
2 too often in contested matters that we are confronted  
3 with and those are the matters that we hear. We have,  
4 as most counties, a set-up where matters that are not  
5 able to -- that are able to be resolved are resolved by  
6 Masters, and they deal with parties with respect to  
7 problems that may arise that parties are able to work  
8 out.

9           The problems that they are not able to  
10 resolve are presented to the court. I don't think  
11 there's much question about the fact that more often  
12 than not, in disputed areas, parties have gone beyond  
13 the stage of being reasonable and we see a lot of  
14 vindictiveness on the part of parties and, of course,  
15 whatever we do they're not satisfied with because the  
16 only thing they want is what they want and if you don't  
17 give them exactly what they ask for then you're the bad  
18 party. And we have complaints, and again, I'm not  
19 suggesting that we're perfect. If we were, we wouldn't  
20 be here, but I'm suggesting that I think the court is  
21 confronted with a lot of problems that are not the kind  
22 of problems that we ought to be called on to resolve  
23 because they don't lend themselves to judicial  
24 solutions where parties are not willing to be  
25 reasonable and willing to give and involve themselves

1 in making some condescension and resolving the conflict  
2 that exists between them.

3 I had occasion to say to a lady in my  
4 courtroom last week who had been married for 15 years  
5 and had four children and she was accosting the court  
6 for not being able to resolve her problem in 15  
7 minutes. I said, Lady, you picked this man out of the  
8 whole world and made him your mate, had four children  
9 with him, you're married to him for 15 years and over  
10 the 15 years you developed, between the two of you, all  
11 kinds of problems and you expect us to bear the brunt  
12 of whatever is wrong. I said, of course we have an  
13 obligation to attempt to resolve the problem, but I  
14 think that some of the blame falls on you if you made a  
15 bad judgment in selecting a mate. And we can't make  
16 him perfect. The only thing we can do is deal with the  
17 problems that are presented, and to the extent that  
18 you're not willing to be reasonable in approaching the  
19 problem, we will never be able to satisfy you. And she  
20 looked at me kind of strange, but I think that is an  
21 approach that we have to take in situations where we're  
22 thrust into circumstances where people are not willing  
23 to be reasonable and they expect us to perform  
24 miracles. We don't have that ability and I think those  
25 who come expecting us to be able to perform miracles,

1 of course they're disappointed and they will never be  
2 satisfied because their expectations are not reasonable  
3 in what they want us to do.

4 As if we don't have enough problem  
5 dealing with the issues before us, you probably recall  
6 in newspapers the other day we had, we were confronted  
7 with a problem of mandatory examination of health care  
8 professionals and we were requested to make certain  
9 solutions to that problem. I think that's another  
10 perfect example of the situation that's legislative in  
11 nature and not judicial. I don't know why any judge in  
12 Dauphin County ought to decide whether a doctor ought  
13 to be examined for AIDS or any other problem. That's a  
14 problem that might be better handled by a committee  
15 such as this committee and the legislature on a  
16 statewide basis, but I think that we have gotten to a  
17 place where we expect the courts to be miracle workers,  
18 and as I said, I'm sure we're not without our faults,  
19 but I think people who come with unreasonable  
20 expectations are going to be disappointed and they are  
21 never going to be satisfied and they are not going to  
22 be satisfied with what you do as a legislature because  
23 they only want to do what they want to do, and when  
24 you're confronted with that, you do the best you can  
25 with what you have and let it go.

1 All right, I'd be willing to answer any  
2 questions that you may have.

3 CHAIRMAN CALTAGIRONE: Representative  
4 Reber.

5 REPRESENTATIVE REBER: Thank you.

6 BY REPRESENTATIVE REBER: (Of Judge Morrison)

7 Q. Your Honor, I thoroughly agree with your  
8 overview. As a practicing attorney, your overview has  
9 been the experience that I've experienced, if you will,  
10 in a number of counties. I haven't had the pleasure of  
11 appearing before the bench in Dauphin County ever--

12 A. Well, you may not consider that such a  
13 pleasure.

14 Q. You said it, Your Honor.

15 REPRESENTATIVE FAJT: On the record, no  
16 less.

17 BY REPRESENTATIVE REBER: (Of Judge Morrison)

18 Q. Let me just ask you one question though,  
19 and I can't emphasize that I think in the very short  
20 period of time you made your summary remarks I do  
21 thoroughly concur with that. In the cases on  
22 Protection From Abuse issue that come before you--

23 A. Yes, sir.

24 Q. If you could give a guesstimate, if you  
25 don't have the actual number, what percentage would you

1 say that are petitions that are filed that the relief  
2 requested is ultimately denied?

3 A. Denied?

4 Q. Denied, yes. How many would you say are  
5 denied?

6 A. I'd say 5 to maybe 10 percent.

7 Q. Okay. And what percentage would you  
8 suggest receive relief short of the total that is  
9 requested? Do you understand my question?

10 A. I'm not sure I understand.

11 Q. Okay. Totally placing the male spouse  
12 out of the household as opposed to putting some type of  
13 controls on the situation. You know, what kind of  
14 percentage could we have there? Where the relief is  
15 requested for total expulsion?

16 A. Let me say this. At least in my court,  
17 I'm very careful. If I'm satisfied that there's some  
18 abuse involved, not to expose the wife and mother to a  
19 set of circumstances where if the situation got out of  
20 hand she would not be able to get any relief. And by  
21 that I mean the police departments are not very anxious  
22 to get involved in domestic matters and if a husband  
23 has a right to be at the house for any reason, if  
24 there's a problem, police are very hesitant to get  
25 themselves involved, so that what I attempt to do is to

1 make it clear that if there is a real threat and if  
2 there is a problem, that he doesn't even pick the  
3 children up at the house. Because in the ten years  
4 that I've been on the bench I've seen too many  
5 instances where fathers use any excuse to get to the  
6 house and when he's there, all kinds of problems are  
7 created and when the police come, he has the excuse,  
8 well, I'm here to get the children, or I have clothing  
9 here, I have something else here. If I'm not satisfied  
10 that there's a real problem, I won't grant the order.  
11 We dismiss the preliminary order.

12           If there is a problem, then I don't want  
13 to have any situation where he can use this as an  
14 excuse and then be able to avoid the protection that  
15 the act intended to provide by giving an officer some  
16 reasonable explanations for his presence and put the  
17 officer in a position of having to make a judgment is  
18 he legitimately here or isn't he here? So, at least I  
19 don't go -- if I'm satisfied that there is no problem,  
20 I would dismiss the order without any hesitation, and  
21 I'm not so naive to believe that there aren't  
22 situations where parties, because they may be  
23 vindictive one to the other may be using the system as  
24 a whipping board to accomplish whatever their purpose  
25 is, but if I'm satisfied that there is some legitimate

1 problem, I try to arrange the order so that he has no  
2 reason to be there so that if she has a problem, it is  
3 clear to the police department that he is there without  
4 cause and he ought to be taken away because, you know,  
5 I've seen very serious consequences flow from these  
6 kinds of situations where parties are not able to get  
7 along. And one party I had last week, a fellow who  
8 asked for a few days before he was asked to leave the  
9 house, I was reluctant to do it but he said he had some  
10 things that he had to remove and his job caused him not  
11 to be able to do these items right away, he traveled  
12 and he was on the road, and we permitted him five days.  
13 In five days he took the water heater out, he took the  
14 other utilities out of the house and he destroyed a lot  
15 of the property, and just yesterday we had a hearing  
16 because we directed him to return the items that he had  
17 removed and replace the items that he had damaged. It  
18 was \$3,400 worth of damage, he only had \$1,600. We  
19 were in the process of trying to get him to make  
20 arrangements to get these items returned.

21                   These are very volatile kinds of  
22 situations. We are very concerned that if a person  
23 shows a sign of being physically violent that we don't  
24 give him an opportunity to get back at the situation.  
25 And that's a perfect example that we're not always



1 right. Sometimes we make mistakes, but at least we try  
2 not to cause a mix that would cause a problem with the  
3 police department because they are not anxious to get  
4 involved. And even with an order, if he has a  
5 legitimate reason to be there, they will not take him  
6 away.

7 Q. Your Honor, have you ever had occasion in  
8 the course of taking testimony in one of these cases  
9 where a question may have been asked of a petitioning  
10 party why did you file this and a response of some  
11 sort, well, my counsel told me to file it? Have you  
12 ever had that type of response in your courtroom or in  
13 your presence in chambers during any type of  
14 proceeding?

15 A. I haven't had that specific response that  
16 counsel told them to file it, but I've had responses  
17 that indicate something less than a sincere problem.

18 Q. Would that be categorized in that 5 to 10  
19 percent as a basis for their dismissal?

20 A. Yes. Yes.

21 Q. Okay. Do you, in your opinion, feel that  
22 there is an abuse out there of arbitrary, capricious  
23 filings taking place? And I don't necessarily suggest  
24 that one or two or three or four or five a year that  
25 you come to that conclusion that that would be an

1 abuse?

2 A. Well, I can only said that with respect  
3 to the first ten days, you know, that might be a  
4 problem, but after we have a hearing we look very  
5 closely at the situation and we are not hesitant to  
6 deny the petition where we are not satisfied that there  
7 is a legitimate problem.

8 Q. I guess a summarization of what you're  
9 saying is if there is an abuse, that abuse does not  
10 continue to manifest itself past the ten-day period in  
11 your mind?

12 A. Well, either that or there may not have  
13 been a legitimate abuse when the statement was made by  
14 affidavit under oath, and once we have an opportunity  
15 to examine it, we're satisfied that it doesn't warrant  
16 causing a person to be disrupted by being moved away  
17 from his home. This is a very serious problem and we  
18 realize sometimes that precipitates another problem.  
19 If you direct a guy to leave his house and be gone for  
20 a year and there isn't sufficient basis for that kind  
21 of order, you have made a bad situation worse and he  
22 may go back and kill her if he feels that that's a way  
23 to deal with the problem. So it's a very volatile  
24 thing. It's a very serious problem.

25 Q. Thank you, Judge

1                   REPRESENTATIVE REBER: Thank you, Mr.  
2 Chairman.

3                   CHAIRMAN CALTAGIRONE: Ms. Woolley.

4 BY MS. WOOLLEY: (Of Judge Morrison)

5                   Q. Judge, we've heard testimony from a  
6 number of people who have been involved in divorce  
7 litigation and we consistently hear the complaints that  
8 Masters take far too long to write their reports,  
9 resulting in the parties lingering without final  
10 resolution or without the capacity to get to the next  
11 step if they want to appeal the judgment. We've also  
12 heard complaints, with all due respect, that judges,  
13 not you, Judge, but some judges in Pennsylvania take  
14 much too long to issue their decisions, that rather  
15 than a reasonable period of, I don't know, 60 days,  
16 some judges take 100 days or 200 days or more to render  
17 decisions in matters of equitable distribution, which  
18 admittedly can be very complex when you get into  
19 valuation fights, but still, we heard consistently from  
20 three days of testimony from litigants that Masters  
21 take much too long and that judges take much too long  
22 and that's where the conspiracy theory of, well, it's  
23 the network, it's the lawyer/judge network and they are  
24 protecting each other and my lawyer says to me, well, I  
25 can't complain to the Master because it will be

1 detrimental to your case, or I can't complain to the  
2 judge because it will be detrimental to your case.

3 A. Well, let me say this, we're not such a  
4 large county that we are not aware of what's going on  
5 in Philadelphia or Pittsburgh that may be a problem but  
6 we only have a few people who work for us in that  
7 capacity and we think we keep a pretty close rein on  
8 what goes on, and very often what we hear, of course we  
9 realize that we may be getting something short of a  
10 completely accurate statement, but more often than not  
11 what we hear are that the parties are recalcitrant in  
12 getting evaluation and getting information to the  
13 Master in order to get the Master to move. If we have  
14 some indication that there is a problem with respect to  
15 the Master, of course we call him and ask him what is  
16 the problem with getting a particular divorce  
17 concluded.

18 Q. Do you have any standard or local rule,  
19 Judge, with regard to how long a Master can take?

20 A. I think there's a 60-day requirement that  
21 if the report is filed and parties very often complain  
22 to the administrator that they have a problem, then we  
23 look into it. I mean, it's not a situation where a  
24 person goes six months and no one indicated to him one  
25 way or the other what the problem is. Usually when we

1 get a complaint we cause the matter to be investigated  
2 and we discover whatever the problem is and we correct  
3 it.

4 Q. You were speaking earlier to legislative  
5 remedies, and my advice as counsel to the committee has  
6 been that that's a procedural area where we cannot  
7 amend the Divorce Code to address timeframes, and if we  
8 do, it will certainly be suspended by the Supreme Court  
9 as our amendments regarding venue and discovery were,  
10 but it's one area we're concerned with.

11 A. Well, my reference to legislative  
12 problems didn't relate to Masters, it related to  
13 matters involving, for instance--

14 Q. No, I understand that. I was just  
15 putting it in the context of a procedural issue rather  
16 than a substantive issue.

17 A. Insofar as that's concerned, we would  
18 rather control it on a local basis because it's easier  
19 for us to deal with the people that we deal with. As I  
20 said, if we were in Philadelphia maybe we would have a  
21 different problem, but we are not in Philadelphia and  
22 we appoint the Masters and if they don't perform in an  
23 efficient fashion, we relieve them. So that we do have  
24 some control and we are able to keep track of what's  
25 going on.

1                   In the larger counties they are at a  
2 disadvantage because they are not as familiar with each  
3 other, but in our county we don't feel that's a problem  
4 because if we get a complaint, we look into it. And as  
5 a practicing lawyer, you know, it would not be unusual  
6 to get a call from the Master indicating that I'm  
7 overdue on this and so and if I didn't get it filed  
8 within certain period of time, they were going to get a  
9 -- file a petition with the court. So they are not  
10 bashful about pressing to get done what they have to  
11 get done.

12                   Q.     Thank you, Judge.

13                   CHAIRMAN CALTAGIRONE:   Representative  
14 McNally.

15                   BY REPRESENTATIVE MCNALLY:   (Of Judge Morrison)

16                   Q.     Your Honor, I, like Mr. Reber, I am in  
17 strong agreement with the views you've expressed today.  
18 I think that there is a great deal that's expected of  
19 the judicial system. The very nature of family  
20 disputes, I think, makes it impossible to render  
21 perfect justice to all of the litigants that come  
22 through the system. So it's sort of, it may be a  
23 cynical attitude, but I'm not sure that there's  
24 anything that we as legislators or you as judges can do  
25 that's going to make, that's really going to mend

1 broken families.

2           A. You know, I think a part of the problem  
3 is we have gotten to a place where we expect instant  
4 gratification and instant satisfaction to problems, and  
5 I think by the number of pro se plaintiffs that we've  
6 seen, people believe that they can do better handling  
7 the problem themselves in spite of the fact that they  
8 have no familiarity with the system. And I think that  
9 really creates more problems than it solves because  
10 their expectation then is that somehow in a week we are  
11 going to get this straightened out and settled.  
12 Sometimes that's impractical. Sometimes the problem is  
13 really the person complaining because they don't want  
14 to make any concessions. And very often those are the  
15 kind of people who want to represent themselves because  
16 they think somehow they are going to be able to drive a  
17 bargain through that no one else will be able to drive,  
18 and sometimes they are their own worst enemies and it's  
19 very difficult to explain to a person that a settlement  
20 might be in your best interest. They think that there  
21 is something clandestine about that and you're fussing  
22 about pots and pans and whatever it is and it's tough  
23 to get them to understand that if you waste \$1,000 of  
24 your time arguing about a \$10 item, you've wasted  
25 everybody's time and nobody is ahead. And, as I said,

1 some people just like to be contentious about things  
2 and there's no way of dealing with that except to take  
3 your licks, and very often they do.

4 Q. That reminds me so much of when I was  
5 practicing, you know, clients would say, you know, it's  
6 the principle of the thing. And I would tell them,  
7 well, your principles are going to cost you a lot of  
8 money.

9 A. Then the principles change.

10 Q. That's right.

11 A. A \$1,000 fee changes a lot of principles  
12 and they are not so anxious to be contentious.

13 CHAIRMAN CALTAGIRONE: Judge, I want to  
14 let you know that yesterday we did tour the Dauphin  
15 County Courthouse and the court administrator took us  
16 into the president judge's courtroom for motions court  
17 that he was having at the time. We also went down to  
18 the Clerk of Courts, and then District Justice Magaro  
19 we went over to city hall to review the operations of  
20 night court.

21 JUDGE MORRISON: And they complain a lot  
22 about that assignment.

23 CHAIRMAN CALTAGIRONE: Oh, very much so.

24 BY CHAIRMAN CALTAGIRONE: (Of Judge Morrison)

25 Q. One of the things that I was curious



1 about and I'd like your comments on this, the law now,  
2 which was my legislation which set up the court  
3 computerization, sets aside \$80 million to hook in the  
4 entire judicial system from the district justices right  
5 through the appellate courts. We were reviewing that  
6 yesterday as to how well it's going, how far we've come  
7 and whether or not, once it's totally on line, it can  
8 start to address some of the problems that have come to  
9 the fore in many of these areas, especially providing  
10 access for attorneys when the courthouses are closed  
11 down for, of course, a service fee to help offset the  
12 expenses. And to start to cover the cost of that  
13 operations so that we can have some finality to some of  
14 the lingering cases that people continue to complain  
15 about. I know that the Common Pleas Court would be the  
16 next, and I served on the committee with the ADC  
17 dealing with that system that's being set up.

18 Do you see that that will help to  
19 expedite some of these matters that we're dealing with,  
20 to have it computerized, to have -- I realize that  
21 cases are still going to be there, that the litigants  
22 are going to continue to come in, there will be  
23 protracted struggles until we come up with mediation  
24 services. I talked to the Paul Devanaugh from Maine  
25 who has a system up there and I'm intrigued by their

1 system. We checked with California and one or two  
2 other States where they at least in Maine they cut  
3 their backlog by over 50 percent and it's been on line  
4 for ten years. So they do involve the legal community,  
5 the attorneys do serve as the mediators, but it's  
6 working and for some reason they are not going into the  
7 courtroom once these divorces are mediated and it's  
8 helping the system. It may not be perfect, it may not  
9 be good for Pennsylvania. I don't know. We're looking  
10 for options and other things, but I'm curious about  
11 what your thoughts are on computerization and whether  
12 or not that will help to track and get some of these  
13 problems resolved a little sooner.

14 A. We have already been receiving  
15 notification of cases that where opinions should be  
16 written and we have really a dual kind of approach to  
17 the problem. We think it's going to be a Big Brother  
18 kind of looking over your shoulder process, but we're  
19 satisfied that in the long run it's going to make the  
20 system more efficient. We, as I said, like to think  
21 that we keep pretty current, but I think it was last  
22 week I got a computer sheet on the cases that I had not  
23 finished. Some of them were in the process of being  
24 typed, some of them were in the process of being worked  
25 on, but I can foresee that that's going to be a

1 constant reminder and will probably cause the system to  
2 be more efficient. Being in the position we are at the  
3 bottom of the round, we know who's going to bear the  
4 brunt of it, but we think that it's going to serve the  
5 interest of society by having it done, so we'll grin  
6 and bear it.

7 Q. The collection, and I read your comments  
8 here about the collection rates on support. I have had  
9 instances, some women as a matter of fact, it's not  
10 always men that have to pay support, and in most  
11 instances it's men, and because of financial burdens  
12 that they have, and one of the things in our tour of  
13 many of the local county jails we found that a lot of  
14 the non-support people are in there, and I keep  
15 thinking that there's got to be a better way. I  
16 realize that they've got to be penalized if they don't  
17 pay support, but in many instances they are with  
18 another family. You're pulling them out of a job which  
19 jeopardizes that job and that family that they are  
20 supporting in addition to the non-support that, you  
21 know, I'm thinking, you know, is there another method  
22 or another way that something can be worked because,  
23 first of all, prison overcrowding is a real problem.

24 A. Yes.

25 Q. And with the scarce amount of space that

1 we have for the really violent or criminal-type  
2 offenders, and I'm not dismissing the point that, you  
3 know, they have violated the law, but that space is so  
4 precious, do we really need to put people in prison?  
5 Is there other alternatives that we could utilize,  
6 penalizing them in some way but also making sure that  
7 the laws are upheld?

8 A. Defendants are so aware of the conditions  
9 at the prison that they tell you during the hearings  
10 that, well, Your Honor, the jailhouse is crowded and  
11 there's no point in sending me out there. The  
12 alternative to that is, though, that, and I very often  
13 tell them that I've never seen the "no vacancy" sign  
14 and I'm going to continue to send them until they get  
15 themselves together, but what we try to do is, well,  
16 two things. We would give a person a first miss order  
17 when he is in arrears, we find him in contempt,  
18 sentence him to 60 days, say, and suspend that until  
19 the first time he misses a payment. Now if he misses  
20 payment, there's no hearing, he's picked up and taken  
21 to jail, and if he is picked up and taken to jail, he  
22 is allowed to participate in the work release program  
23 so he doesn't lose his job, he is able to work and keep  
24 his current bills in line and he has to pay to stay at  
25 the prison because now he's working and they won't let

1 him stay there free. I tell you we don't have a lot of  
2 people who stay a long time. They get in and out  
3 quickly.

4 Q. That's good.

5 A. You have one or two situations. One, a  
6 person doesn't want to work and therefore he's not  
7 bothered by his stay in the prison. Two, if he thinks  
8 that he can get away with working and not paying he  
9 tries to sell you on the song that if he's  
10 incarcerated, he won't be able to keep his job and  
11 therefore everything is going to get worse. In fact, I  
12 had one fellow who had not had a job in five years tell  
13 me that he doesn't know how I expect him to find a job  
14 if he's in jail, and I reminded him he's been on the  
15 streets for five years and hasn't had a job so  
16 evidently that's not the answer to the problem. Two  
17 days in Dauphin County Prison he called and said he had  
18 a job at Kramer's Oldsmobile, and he had not worked in  
19 five years, his wife had two jobs. So it does make an  
20 impression.

21 We are mindful of the fact that there are  
22 some people who may be a little more dangerous who  
23 ought to be out there, but we reserve a section in the  
24 Dauphin County Prison and it's pretty transient, they  
25 are in and out all the time, but they don't know that.

1 They think if we say 60 days, they've got 60 days, so  
2 they lay on their couches and get serious about finding  
3 jobs and making arrangements, and lo and behold, in a  
4 week they may be out, but they stay for a week thinking  
5 that they've got 60 days to serve, and it makes a  
6 difference how serious he is about finding work.

7 Q. That's a commitment that has to be kept  
8 as far as money has to flow and, well, we've just seen  
9 in some of the counties how it varies from county to  
10 county.

11 A. I've had three years and I'm about to  
12 give it up. My last session is the 31st of this month  
13 and I'm delighted to be relieved of that.

14 CHAIRMAN CALTAGIRONE: Thank you.

15 Counsel Suter.

16 BY MR. SUTER: (Of Judge Morrison)

17 Q. Judge, last month we had a hearing in  
18 Pittsburgh and we heard some testimony from family law  
19 practitioners and judges that judges should have the  
20 authority to direct appropriate divorce cases to  
21 binding arbitration which would be performed by trained  
22 and experienced arbitrators. Do you have any thoughts  
23 on that?

24 A. Off the top of my head I think I would be  
25 inclined not to favor that. The one thing they

1 complain about in a divorce proceeding is the fact that  
2 they have to pay costs. I think this is as prohibitive  
3 as anything else to cause people to move towards a  
4 solution of the problem. I'm not so sure that binding  
5 arbitration would do anything for the solution to the  
6 problem where you have people who are recalcitrant, who  
7 don't really want to resolve the problem because the  
8 thing that they would do then is to, unless that's a  
9 final step and there is no appeal. If he is able to  
10 appeal, then you just have added another layer, well,  
11 they will go through that and as soon as he gets an  
12 order from the arbitrator, he'll take that up and you  
13 haven't really cured any of the problem.

14 I think the bearing the brunt of the cost  
15 of your proceeding may be as effective as anything else  
16 to make you realize if you want to talk for ten hours  
17 about a problem, fine, it's \$1.00 a page and half of it  
18 is your expense. Now, if you don't want to talk ten  
19 hours on the record, then maybe you'll talk two hours  
20 on the sidebar kind of arrangement and get the problem  
21 solved. But I think the finality of binding  
22 arbitration is effective if you have parties who are  
23 willing to abide by that, but where you get into that  
24 small percentage of people who just want to go on at  
25 all costs, that will be just another layer they will go

1 through that unless it's final, as the inks dries, he  
2 will be filing the next appeal.

3 Q. What if the person that appealed had to  
4 bear the cost of the appeal unless he won the appeal?

5 A. Well, that's another way of dealing with  
6 the same problem. He has the costs of whatever he's  
7 doing as he goes along and -- I don't know, it might  
8 have some merits. I would be inclined to think,  
9 though, that the average person who just wants to be  
10 obstreperous about a problem, if he realizes as he goes  
11 along that it's costing him money one way or the other,  
12 that is apt to be as effective as anything else to deal  
13 with the problem. I don't know that saying it's  
14 arbitration makes that much difference to him. He'll  
15 probably continue to be obstreperous if that's the way  
16 he wants to be until he realizes that it serves no  
17 purpose to be that way, then maybe he'll change.

18 Q. Another thing that we heard is that  
19 judges are not very aggressive in using the remedies  
20 that are presently available to them to prevent delay  
21 in divorce cases. Do you find that's the case?

22 A. Well, I can only say that in our county  
23 that's not a problem. We may be advantaged because we  
24 are a small county and we appoint the Masters and we  
25 keep pretty good reins on what they are doing and we



1 hear complaints about what they are not doing. So  
2 that, you know, in Philadelphia that may be a problem  
3 if you are dealing with 50, 60 people. We are dealing  
4 with 2 or 3 people and they know they're appointed on a  
5 one-year basis. Next year, in fact by the end of this  
6 year, there have been some Masterships that have not  
7 been reappointed for the very reason that we don't  
8 think they were as diligent as they should have been.

9 Q. One other thing we heard testimony going  
10 both ways on this issue on whether or not we should  
11 reduce the time period for living separate and apart  
12 from two years to one year. Do you have any thoughts  
13 on that?

14 A. I think I would be inclined to the  
15 one-year reduction because I don't think that after a  
16 year, within a period of a year I think a person has  
17 really had sufficient time to deal with the problems if  
18 they are going to deal with it on some kind of basis of  
19 reconciliation or doing something else. I remember the  
20 old days when you were sort of held hostage in a  
21 divorce proceeding because if you didn't agree to  
22 certain terms, the parties would oppose the proceeding.  
23 I think we started with three and then two. I think  
24 one year would be a good progression because it gives a  
25 person who might be in doubt a chance to think about it

1 and yet it doesn't give the other side an opportunity  
2 to extend the problem unduly because if he hasn't made  
3 his mind up in a year, he will probably never make up  
4 his mind, so it's just as well to terminate it in that  
5 period of time.

6 Q. Thank you.

7 CHAIRMAN CALTAGIRONE: Thank you, Judge.  
8 Appreciate your testimony.

9 JUDGE MORRISON: Thank you. Thank you  
10 all.

11 CHAIRMAN CALTAGIRONE: We will next hear  
12 from the Honorable Wayne G. Hummer, Jr., Family Law  
13 Judge, Lancaster County Courthouse.

14 JUDGE HUMMER: I have my prepared  
15 statement. I need my cheaters, so to speak.

16 Members of the committee and support  
17 staff, my name is Judge Wayne G. Hummer, Jr. I am a  
18 Judge of -- a Family Court Judge of the Second Judicial  
19 District, Lancaster County, Pennsylvania. And I will  
20 read my statement. I don't think it's very lengthy, so  
21 if you'll bear with me.

22 I thank you for the opportunity to  
23 present my views on issues concerning Pennsylvania  
24 Family Law. As a Judge of the Court of Common Pleas, I  
25 have been presiding as the Family Court Judge for

1 nearly 12 years. On January 6, 1992, Lancaster County  
2 will have two judges designated as full-time Family  
3 Court judges.

4                   Coincidentally, my 12 years in Family  
5 Court have spanned the existence of the Divorce Code of  
6 1980. This legislation made profound and dramatic  
7 changes in Pennsylvania jurisprudence. Ten years ago  
8 Judge Wilson Bucher of Lancaster County decided not to  
9 seek retention election to another term on the bench.  
10 When questioned as to his reasons, he replied, "I may  
11 have to live through a revolution in the law, but I do  
12 not have to be a part of it." Indeed, the removal of  
13 the fault concept; the definition of marital property,  
14 which ignores common law real property title concepts;  
15 and, equitable division of marital property in the  
16 pursuit of economic justice can be described as  
17 revolutionary.

18                   The statutory provisions for divorce,  
19 support, custody and Protection From Abuse have now  
20 been consolidated into the Domestic Relations Code in  
21 Purdon's Title 23.

22                   The impact of this legislation upon the  
23 court has been tremendous. The statistics are  
24 staggering. I will not take up your time with a litany  
25 of numbers. However, I must share with you statistics

1 from our Domestic Relations Office concerning support.  
2 In 1979, there were approximately 3,000 support cases  
3 in effect; 10 employees; and total collections of about  
4 \$6 million. In 1990, there were over 17,000 cases  
5 being administered; 69 full-time employees; and total  
6 collections of over \$26 million. New filings in 1990  
7 totaled 4,246, in addition to 2,570 filings for changes  
8 or modifications of existing orders. Every one of  
9 these filings or cases has the potential of coming  
10 before a judge for disposition, and I am that judge.  
11 Similar statistics are available for custody, divorce,  
12 and Protection From Abuse cases, and I will share them  
13 with the committee, if you are interested.

14 If I might depart from my prepared  
15 remarks, yesterday I had occasion to speak with the  
16 director of our Domestic Relations Office. She  
17 informed me that currently we have over 20,000 cases  
18 being administered. The receipts this year will be  
19 over \$30 million. And then we ensued into a discussion  
20 of how many people would be affected in support court  
21 in Lancaster County as a result of these actions.  
22 Simple arithmetic would tell you that in every support  
23 case you must have a mother, a father, and at least one  
24 child and in most cases more, so you're talking about  
25 70,000 to 80,000 people in a county with the total

1 population of 422,000, or roughly 15 percent of the  
2 total population being involved in domestic relations  
3 or support cases. That is why I submit the numbers are  
4 staggering.

5           Rather, I invite the members of the  
6 committee, or a member of the committee, or a  
7 representative of the committee to visit my court and  
8 observe for a week, a few days, or even one day, what  
9 is happening in Family Court. I strongly urge you to  
10 accept my invitation before you make any findings and  
11 contemplate any action on perceived inequities in the  
12 system.

13           The above statutes were enacted after  
14 careful consideration by the legislature and have been  
15 revised, amended, and updated or fine-tuned within  
16 recent years. The Divorce Code was most recently  
17 revised in 1988. However, other than Senior Judge  
18 Bucher, I submit that the explosion of family  
19 litigation and the impact upon the court systems was  
20 largely unforeseen or grossly underestimated. This  
21 witness, quite honestly, never anticipated the enormous  
22 growth in family law.

23           The legislation did not cause the  
24 problems that we face today. The efforts of the  
25 legislature, the judiciary, and all branches of the

1 government are an attempt to deal with a very complex  
2 and emotional problem of society; to wit, the  
3 fragmentation of the family.

4           These observations are shared with you by  
5 illustration of the one recommendation I will make this  
6 morning. Be cautious, go slow, stop and step back and  
7 reflect before you take any further action in the  
8 family law area. There is a statutory framework in  
9 place, but it has been in existence for such a short  
10 period of time -- 10 or 11 years. Give the system an  
11 opportunity to work before you change it in any  
12 respect.

13           There is purpose in this very short  
14 statement that I read to the committee. This will be  
15 preserved and you may well reflect upon this. That is  
16 the one message that I present this morning: Go slow,  
17 take your time, reflect on what you do.

18           I have the statistics that I mentioned  
19 previously and I've had the opportunity to hear two of  
20 the prior witnesses as I arrived a bit early. And I've  
21 also had the opportunity to review some of the  
22 testimony given at other hearings you've had and  
23 reflect upon that testimony. And at this time perhaps  
24 I should respond to the questions that have been  
25 presented to the other witnesses, and I would be glad

1 to address those questions

2 CHAIRMAN CALTAGIRONE: Counsel Suter.

3 BY MR. SUTER: (Of Judge Hummer)

4 Q. Well, it sounds like you're reiterating a  
5 theme that we have heard over and over again in that  
6 the resources devoted to family law are just simply not  
7 sufficient, that we don't have enough judges in family  
8 law and that we don't have enough support staff and  
9 that if we could address this, that it would go a long  
10 way in solving some of the problems that we're hearing  
11 about in family law?

12 A. That is true, but in this day and age of  
13 budget restraints--

14 Q. We know.

15 A. --I hesitate to even suggest that as a  
16 remedy. I think perhaps we should look to the  
17 individual situations involved and go into depth as to  
18 what that complaint is, and, of course, avoid the  
19 expectations, and I've heard this again and again and  
20 it is so true, nobody wants to be in Family Court. And  
21 if you start with that very premise, it's difficult to  
22 see that you're going to have a pleasant or a happy  
23 resolution of that appearance in Family Court. It  
24 touches the psyche of an individual's being, the very  
25 closest relationships that he has in life, his loved

1 ones, his family. These are society's ills. So I urge  
2 caution in any attempted solution.

3 I overheard, or I said previously I had  
4 had an opportunity to hear complaints or a reiteration  
5 of the complaints that you must have heard about abuse  
6 cases. They are growing at an alarming rate in  
7 Lancaster County. Just on Tuesday I looked at my court  
8 list, we had 19 petitions for -- this was in the  
9 morning, 19 petitions for the establishment of an  
10 order. Hearings scheduled at 9:00 o'clock. In the  
11 afternoon, we had 5, I think my recollection is, 5 more  
12 hearings on initial requests for an order, and 6  
13 contempt cases. I believe I am fair, and this has been  
14 disheartening to the court when I say that less than 5  
15 percent of the cases are unsubstantiated. I receive  
16 the individual petitions requesting the temporary  
17 order. We have a procedure in Lancaster County where  
18 if you request exclusion of the other partner, you must  
19 appear personally with your petition before the court.  
20 We have very short sessions in chambers, we fit them in  
21 during the lunch hour, whenever we have some time. And  
22 they are reviewed, they are lectured on -- I hate that  
23 word -- advised as to what the implications are, the  
24 volatility of these situations. I know personally and  
25 I remember each and every one, I've had three murders



1 that have occurred after exclusions from property. And  
2 that's all done, of course, before that order is  
3 issued. That's the most extreme ex parte relief that  
4 you can have in a domestic relations or Protection From  
5 Abuse Act proceeding is the exclusion of the other  
6 spouse from that residence. That will only exist, even  
7 if you get by the initial stage, for the ten days, as  
8 Judge Morrison pointed out, wherein which you have a  
9 proceeding in court.

10 Now, I mentioned disheartening. Of those  
11 19 cases, 18 were settled by agreement wherein the  
12 perpetrator of the abuse admitted the abuse and agreed  
13 to the entry of an order. In the hearing, it was  
14 strictly justified. The only excuse is an excuse I  
15 hear again and again, she made me do it or she deserved  
16 it. And we entered an order, of course. I don't  
17 think, and I think I'm fair in relating to you that it  
18 has been my experience in Lancaster County that the  
19 abuse statute was a very good piece of legislation. It  
20 addressed a need in society. And I'll be frank with  
21 you, I didn't realize what was going on. Even though I  
22 had the Domestic Violence League, the Central Penn  
23 Legal Services, and representatives of the Women's  
24 Shelter tell me prior thereto that it was happening.  
25 It's happening. It's happening.

1 I think at this time that I'll wait for  
2 your questions.

3 BY CHAIRMAN CALTAGIRONE: (Of Judge Hummer)

4 Q. Your Honor, we had legislation that was  
5 put out of this committee that became law that provided  
6 additional judges. Lancaster County was one of the  
7 beneficiaries, I think. You increased two?

8 A. Two. From seven to nine.

9 Q. From seven to nine. We saw fil, I know,  
10 in the Appropriations Committee, on which I have also  
11 served for some time as a member, to continue to  
12 increase the budget of the judiciary. Even with all of  
13 that, the growing amount of cases that continue to pour  
14 in, particularly in this area, of course, the criminal  
15 it's another area that you get to address, is there  
16 anything that you can think of that can start to stem  
17 the flow here?

18 A. The bleeding, so to speak.

19 Q. You know, with your statistics here, and  
20 I'm sure that we're going to hear that from the other  
21 judges and the stats that we'll get at the end of the  
22 year. I'm sure the voluminous litigation that  
23 continues to flood the courts is creating a nightmare  
24 for a lot of the people involved because it's burdening  
25 them down, that the dockets just can't handle it. I

1 mean, we thought that by adding additional judges, by  
2 hopefully getting on with the computerization and many  
3 other things that we're attempting to do, still  
4 probably is not going to address the backlog of all the  
5 cases and all the areas that have to be dealt with, and  
6 I'm wondering what more do we have to do to try to  
7 speed up justice and can we do it and at what expense?

8 A. Mr. Chairman, pardon me for interrupting  
9 you. There are certain areas where there is a definite  
10 need for speed and reasonable dispatch of the case.  
11 First and foremost, I submit that's support. Support.  
12 It's a pocketbook issue, and pocketbook issues are  
13 first and foremost when you have separated families.  
14 Or separated parents probably would be a better way to  
15 put that. We've worked very diligently to speed that  
16 process. And with the new rules of procedure, wherein  
17 you can, once you get to your conference or hearing  
18 before the hearing officer, you can have a recommended  
19 order which takes effect practically immediately. Then  
20 you can go through the legal shenanigans as to whether  
21 or not you differ with that, you can file your  
22 exceptions and have your de novo proceedings in court.  
23 There may be a bit of a delay there, but I'm not too  
24 much concerned with that. And what I just mentioned,  
25 of course, is procedural matters dealing with the rules

1 and the legislation, I would hesitate.

2           The legislation, of course, changes the  
3 law and it is very difficult to change or to remedy  
4 problems caused by the legislation. You know the  
5 legislative process a lot better than I do. From an  
6 outside standpoint it seems to be a very slow and  
7 difficult situation, fraught with all of those  
8 pressures of society, and fortunately or unfortunately,  
9 that are involved in the judicial, political process,  
10 political process. That's why I don't make any  
11 recommendations other than to stop, and reflect. If  
12 you have the complaints, look at the complaints  
13 individually. And I again renew my invitation that a  
14 representative of this committee or the committee  
15 members just follow me on one day, I would suggest a  
16 Wednesday when we start at 9:00 o'clock, start at 9:00  
17 o'clock with the Family Business Court -- Mr. Suter,  
18 you keep smiling and I know you have a lot of  
19 familiarity with Lancaster County court process.

20           MR. SUTER: I know what it's like.

21           CHAIRMAN CALTAGIRONE: I'm going to take  
22 him down with me. I'm going to take you up on your  
23 offer, as a matter of fact, and the first chance we get  
24 in January, we'll be down to your court.

25           MR. SUTER: I clerked in Lancaster

1 County.

2 CHAIRMAN CALTAGTRONE: Oh, okay.

3 JUDGE HUMMER: He served as a clerk in  
4 Judge Perezous' chambers. Almost in mine. He just  
5 missed mine. On Monday, Wednesday, and Friday we have  
6 Family Business Court wherein the court sits and hears  
7 whatever is to be addressed immediately. The most  
8 important issue that comes before the court at that  
9 time are the issue of where are the children going to  
10 sleep tonight because Pop left Sunday, if this is a  
11 Monday, or something that has to be adjudged  
12 immediately. I think the court should be open and  
13 receptive and available for that situation. And yet  
14 the Family Bar has raised some criticisms and concerns  
15 about that in that that determination very often  
16 becomes the custody arrangement that will exist from  
17 that point on. So I try to make it as short a process  
18 and to try to continue as much as in the way of  
19 continuity or the least disruption as possible in the  
20 children's lives in whatever that order is until we  
21 have our first custody mediation session not before the  
22 court.

23 You asked about suggestions, I'm  
24 constantly making suggestion to my Bar during Monday,  
25 Wednesday, and Friday morning business sessions. These

1 sessions go on and on. Yesterday's session was a short  
2 session, 45 minutes. An hour and a half could be  
3 expected. Yesterday on Wednesday, we then had support  
4 contempt cases. I'm not the only judge that hears  
5 those. We have at least two full days, but yesterday  
6 we had a rather short list. Oh no, I'm sorry, I'm  
7 talking about a week ago. A short list of perhaps 40,  
8 but two weeks ago the morning session we had 56 custody  
9 contempt cases plus 4 bench warrants where the  
10 individual was arrested for not appearing at a prior  
11 session and needs to be as fast as prompt, as promptly  
12 before the court.

13 In the afternoon session I thought we  
14 might have a break, we somehow finished, I sat down  
15 again for the afternoon session, we had about 50 more.  
16 That was a record day. That's Wednesday. All during  
17 the day you have these emergencies as perceived by the  
18 parties' petitions. Abuse petitions, pro se and from  
19 the Domestic Violence Clinic, and they are handling  
20 practically all of the abuse cases at this point.  
21 Periodically, you will have private counsel bringing in  
22 an abuse petition, but very seldom. And then, of  
23 course, around this and during the day these  
24 recommended orders are coming from Support Court. We  
25 don't even have the time to count them. They have to

1 use a cart to haul the files over. They make two or  
2 three trips a day with these recommended orders. The  
3 judge must act on each recommendation or that  
4 recommended order becomes the order within five days.  
5 When I return today, there will be a huge stack of  
6 those recommendations because I'm not there. In  
7 between I say we work on that sort of thing. Then on  
8 Fridays we have another day which is, I call it support  
9 day where we establish or modify existing orders.

10 Judge Blahovec from Westmoreland County  
11 likened this procedure to Wapnerizing the support  
12 cases, but it's what we have to do. We have the  
13 information, we have the files, we try to make the  
14 record as complete as possible and we keep them moving.  
15 This morning I had four cases scheduled, two of them  
16 settled, another one was continued, and the fourth case  
17 is waiting until 1:30 when I return to hear the  
18 afternoon list of five more. Tomorrow we have a  
19 similar, we have eight in the morning and six, I  
20 believe, in the afternoon. Hopefully, some of them  
21 will settle. Then on certain days we still have  
22 custody cases to hear.

23 The Supreme Court and the Superior Court  
24 have decreed that we are to develop the record if at  
25 all possible in custody cases, and we do. So those

1 take time. Then we get with whatever we have left by  
2 free time to all of those divorce cases that are on the  
3 shelf for resolution. In Lancaster County we don't  
4 have a backlog. Somehow, we're staying current. And  
5 yet, I note that some of the people who have testified  
6 before you have come from Lancaster County. I suggest  
7 you look into their individual cases before you give a  
8 great deal of credence to what they may have said  
9 before you as a committee.

10 Are there any other questions?

11 CHAIRMAN CALTAGIRONE: Any other  
12 questions?

13 (No response.)

14 CHAIRMAN CALTAGIRONE: Thank you, Your  
15 Honor. We want to make sure that you are able to  
16 return promptly to court to administer to that backlog  
17 you spoke of earlier.

18 JUDGE HUMMER: Thank you. This is a  
19 break.

20 CHAIRMAN CALTAGIRONE: The next witness  
21 is Wanda Neuhaus. You can proceed.

22 MS. NEUHAUS: Good morning. I am Wanda  
23 Neuhaus, a member of the York County Bar, and have been  
24 practicing law for approximately 12 years. For the  
25 past 2 1/2 years, I have been a Divorce Master for the



1 York County Court of Common Pleas. That is a part-time  
2 position and a five-person staff, consisting of one  
3 full-time Divorce Master, who is the director of our  
4 unit, two part-time Divorce Masters, and two support  
5 staff. Prior to my appointment as a Divorce Master, I  
6 was a practitioner in family law. Through both of  
7 these I have had an opportunity to work with the  
8 present family law system and its statutes. However,  
9 because of my present position as Divorce Master, I am  
10 going to concentrate on the divorce area because I  
11 don't get into the other areas very often anymore.

12           Firstly, I would like to say that I agree  
13 with the general perspective received by my  
14 counterparts in the Pittsburgh area, as well as the  
15 previous speakers, that there are indeed workable and  
16 beneficial areas of the present law. As compared with  
17 the pre-1980 laws, the present system is clearly moving  
18 in the correct direction.

19           Although I had limited experience with  
20 the pre-1980 statutes and laws, having been admitted to  
21 practice only in 1979, I did have the opportunity to be  
22 appointed as a Master or arbitrator, from a rotating  
23 list that we operated in York County, mostly involving  
24 the uncontested fault divorces. And from that  
25 experience, I found two glaring weaknesses in the old

1 laws. First, the failure to recognize the no-fault,  
2 consensual divorce; and the failure to provide for any  
3 real economic settlement between the parties.

4 The first weakness created a fiction in  
5 many cases, in which both parties really consented to  
6 the divorce. However, because of the requirement that  
7 one party had to prove fault of the other, we would  
8 have one party appear with one corroborating witness,  
9 the other party not appear and obviously the divorce  
10 could be granted based upon the fault found with no  
11 controverting testimony. I think, clearly, the present  
12 system is a great improvement by allowing for that  
13 mutual consent of the divorce.

14 Further, the failure to address, in the  
15 pre-1980 laws, the economic issues of equitable  
16 distribution and alimony especially previously allowed  
17 a dominant, "breadwinning" spouse to maintain separate  
18 property which could not be touched by the other  
19 spouse. Unfortunately, this often produced an extreme  
20 hardship, usually for the wife or the mother, who had  
21 stayed at home to raise the children and would be  
22 substantially out of the work force for a significant  
23 period of time. Often, that meant that she would not  
24 be able to maintain the standard of living established  
25 for that family prior to the separation.

1                   Therefore, I believe that the current  
2 system is a significant improvement and does, in fact,  
3 provide a good starting point to deal with the family  
4 law system. However, like all aspects, I think, there  
5 may be some areas for improvement. I think that really  
6 these are relatively minor areas. I think the basic  
7 framework is very sound.

8                   I think the first area for discussion  
9 would be the system used to implement the Divorce Code.  
10 It appears, from my limited contact with other counties  
11 since my appointment as Divorce Master, that there  
12 really is a lack of uniformity in the method of  
13 handling divorce and its related economic claims from  
14 county to county.

15                   I guess it's natural to believe that your  
16 own system is the best, but I would like to take an  
17 opportunity to discuss a little bit how our system  
18 operates in York County. I believe that it does have  
19 some benefits; however, there are also some weaknesses  
20 which I would also like to discuss.

21                   In York County there is an established  
22 Divorce Master's office. We are a separate entity of  
23 the Court and are, in fact, supported by the county  
24 government. The staff is employed and compensated by  
25 the county government. And we are provided with

1 separate facilities in which we can hold our  
2 conferences and our divorce hearings. In fact, we have  
3 just had the luxury of moving into more spacious  
4 quarters so that we do, in fact, have two hearing  
5 rooms, one conference room and an office for each of  
6 the Masters. I believe this is a distinct advantage of  
7 our program because it does provide the appearance for  
8 the litigants of a legitimate factfinding and  
9 decisionmaking body, versus our old system where you  
10 tried to find the nearest broom closet where you can  
11 put three people in and try to take testimony. This  
12 offers the opportunity to provide the appearance that I  
13 think is very important for the litigants. In  
14 addition, it also provides a better atmosphere in which  
15 the Master can examine the issues, provide the legal  
16 research that is necessary and reach a conclusion for  
17 recommendation to the court.

18 As I previously stated, we do have a regular  
19 staff. There are three Divorce Masters to hold  
20 hearings and make reports and recommendations. One of  
21 those Masters operates on a full-time basis and the  
22 remaining two, including myself, operate on a part-time  
23 basis, which means we put approximately 15 to 20 hours  
24 each week into the office. Usually, that translates  
25 into 10 to 15 hours of hearing conference times and

1 then, hopefully, the remaining time is to write reports  
2 and recommendations. Unfortunately, much of that is  
3 done at home and not necessarily in the office. I  
4 believe that also is an advantage because it does give  
5 us a specific area and a specific time where we will  
6 hold hearings. It does give us some opportunity to  
7 schedule on a regular basis, for example, each of us  
8 have regular days we will hold hearings and hold  
9 conferences.

10           Hopefully, the system also provides for  
11 more experienced and informed Masters who are able to  
12 keep up with the changing law in the area. We also, in  
13 York County, had the luxury of having a very good  
14 relationship for our judge of family law. We meet on,  
15 at least, a semiannual basis so that we can review,  
16 number one, the changing law; number two, the judge's  
17 opinions and how he's relating to our reports and  
18 recommendations, and then we can also get a preview of  
19 any questions that we have on different areas. I think  
20 that it would be much more difficult to have that same  
21 type of working relationship with the judiciary if we  
22 were not three specific persons who were going to be  
23 able, be handling that situation. For example, if it  
24 was a large rotating list and you had one Master  
25 appointed for one case maybe every two or three months,

1 we do have the luxury of being the only three and,  
2 therefore, we can work very closely with the judge.

3           However, there are also some negatives.  
4 Because there is no statewide procedure and thus no  
5 funding, which everybody has the same problem with  
6 funding, this means that our office has to be self-  
7 sustaining for it to be an ongoing, viable project for  
8 the county government. The office, its salaries,  
9 supplies, and even the very physical surroundings must  
10 be paid from income generated by fees for the services  
11 from the office. This, obviously, creates some  
12 limitations. For example, right now we really could  
13 use another Master on a part-time or full-time basis.  
14 Right before I came, I checked to determine what our  
15 count was so far and we have had approximately 190  
16 cases on which a Master was appointed in York County to  
17 date. Now, we don't divide those totally equally  
18 because we do have one full-time versus two part-time,  
19 but that usually means that the part-timers are dealing  
20 with at least 45 to 50 cases a year and the full-timer  
21 is dealing with 80 to 90 cases per year. And if you  
22 figure that normally takes one hearing per week at the  
23 very minimum, there are obviously some cases that take  
24 much longer than that, that takes a long time just to  
25 get the hearings in, let alone the reports and

1 recommendations. This does, in fact, lead to delays  
2 and we certainly understand that that is a complaint.

3 We have dealt with that issue, we feel,  
4 in York County. We have a very strong Family Law  
5 Committee from our Bar Association and they make no  
6 qualms about telling us when we're not doing it as  
7 quickly as what they feel. They are also working on  
8 local rules to implement specific time limits for when  
9 the Master's reports must be implemented. We do  
10 disagree, they would like to see them done in 30 days  
11 and we feel at this point that's an impossibility, but  
12 we feel that we really are pretty current right now.  
13 We're working on a 60- to 90-day turnaround except for  
14 APL and divorce, which we try to do in 30 days because  
15 those, we feel, are more expedient issues.

16 Because we must be self-supporting, it also  
17 means that they must pay separate fees and that, of  
18 course, is another complaint that the litigants have.  
19 They have to pay for our services. However, I believe  
20 that it also, like our previous speaker said, may have  
21 some beneficial effect because they do have to pay  
22 those fees and as a result, we hopefully don't hear as  
23 many of those cases where the assets don't really merit  
24 three or four or five days of hearings. And we've been  
25 able, I think, to keep our fees within a reasonable

1 limitation. Right now we're charging a fee of \$200 for  
2 equitable distribution or a combination of equitable  
3 distribution and alimony. \$50 for counsel fees, costs  
4 and expenses, and \$50 for APL. Now, we do have the  
5 option for protracted hearings to increase those fees  
6 according to a schedule that we have established. For  
7 example, a hearing that would take over two days we  
8 would have the option to increase the fee per hearing  
9 time.

10 The final area I wish to discuss is the  
11 Divorce Code itself. There are a couple of areas which  
12 could be further enumerated to provide guidance.

13 For example, APL. The statute clearly  
14 provides for this remedy. However, unlike the  
15 statutory language for alimony and equitable  
16 distribution, it is merely a statement that when  
17 appropriate it should be ordered. I think that raises  
18 a couple of questions. Is this solely an extension of  
19 spousal support and, therefore, it's simply a  
20 mechanical calculation according to the support  
21 guidelines? Is it totally needs based calculation? Is  
22 it solely to help with the litigation? How do the  
23 factors for permanent alimony play into the issue of  
24 APL and must there be a finding that alimony is  
25 warranted before APL is warranted? Now those are



1 issues that we've tried to deal with in setting up some  
2 guidelines within our county but in some respects it  
3 would be helpful to have some legislative guidance in  
4 that area.

5                   Very similar to the issue of APL is the  
6 issue of counsel fees. Again, the statute basically  
7 provides they can be awarded when appropriate and I  
8 guess our question sometimes is what's "when  
9 appropriate"? And what was behind the legislative  
10 intent in that area to determine when counsel fees were  
11 appropriate?

12                   One other area that I often hear issues  
13 and complaints about is the issue of whether or not  
14 fault should be considered as a factor in equitable  
15 distribution. And I can honestly say that I think my  
16 position has changed since I've changed my position  
17 from practitioner to Divorce Master. When I was in  
18 private practice, I felt that there were some cases  
19 where fault should probably have an impact or at least  
20 should be able to be heard. For example, I had a  
21 husband who had worked very diligently through a  
22 20-year marriage, working 7 days a week, 8 to 10 hours  
23 a day to provide for his family. He had provided very  
24 comfortably for them. The wife left him for another  
25 man but because her income was maybe half of what his

1 was and she had custody of the one child, the Master  
2 recommend a 54-percent division to her and a 46-percent  
3 division to him, and at that point I felt that possibly  
4 fault should be at issue, that at least to be able to  
5 bring up why the assets needed to be divided.

6 As a Divorce Master, I think my impact is  
7 totally different. I don't necessarily want to get  
8 into the issues of fault and I think that is still an  
9 area where there is a lot of disagreement on whether or  
10 not that should be an issue for equitable distribution  
11 in addition to the alimony.

12 In summary, I feel that the present  
13 system under the Divorce Code is not broken. As we are  
14 all aware, the family law issues are extremely  
15 emotional and personal to the parties. It is very  
16 often difficult for the parties to objectively view the  
17 issues and see the outcome in a less emotional and  
18 personal perspective. Although some fine tuning may  
19 need to be accomplished, I do not see the need to scrap  
20 the present system and start again. The present system  
21 provides a firm foundation to deal with the issues in  
22 an appropriate and equitable manner.

23 CHAIRMAN CALTAGIRONE: Thank you. Any  
24 questions?

25 Counsel.

1 BY MR. SUTER: (Of Ms. Neuhaus)

2 Q. Actually, one comment and then one  
3 question. When you do develop your local rules with  
4 the time limits for your recommendations, I'd love to  
5 see a copy of that. So if you would mail me one I  
6 would appreciate that.

7 A. Certainly. No problem.

8 Q. I was wondering if you had any thoughts  
9 on reducing the time period for living separate and  
10 apart from two years to one year?

11 A. When you asked that question before, I  
12 was sitting back there trying to formulate an answer--

13 Q. So you had time to think.

14 A. And I'm not sure I did. I think I  
15 probably would agree with the reduction to one year.  
16 We haven't run into the problem as much as in York  
17 County because by our local rules we've sort of gotten  
18 around someone holding the other hostage for the period  
19 of two years to get the separation, et cetera. In  
20 determining that we can have a non-bifurcated  
21 proceeding where the divorce will be on hold until the  
22 economic issues are resolved, a lot of times people  
23 will be willing to take that route rather than hold the  
24 other hostage, but it certainly appears that one year  
25 would give enough time for the parties to determine

1 whether, in fact, it was irretrievably broken and  
2 whether they were going to reconcile.

3 Q. Thank you.

4 CHAIRMAN CALTAGIRONE: Galina.

5 BY MS. MILAHOV: (Of M.s Neuhaus)

6 Q. I had a question concerning bifurcated  
7 settlement of equitable distribution of property. Some  
8 of the complaints that we've received have been along  
9 the lines that when a divorce proceeding is bifurcated  
10 and the property settlement is not decided upon, that  
11 there is no reason for the main property holder or wage  
12 earner to, in a timely fashion, settle as far as, you  
13 know, equitable distribution is concerned, and this  
14 does, in effect, hold at least one party hostage, to  
15 use a phrase that you said, and how can we facilitate  
16 this, how can we make the property distribution not be  
17 part of the divorce if we want to facilitate the  
18 divorce but also bring this to a closure so that people  
19 can begin their lives again?

20 A. I think a method to do that would be to  
21 order, and I realize now we're getting into some  
22 procedural issues as well and there's that fine line,  
23 but I think once a divorce is granted in a bifurcated  
24 manner, to set up some time limits to timely move  
25 forward with the economic issues. For example, in our

1 county, not necessarily just on the bifurcation but we  
2 had a problem, for example, when filing the income and  
3 expense statements and the inventory and appraisal  
4 statements. One party who was dragging their feet just  
5 wouldn't file them and we felt that it was very  
6 inhibiting to hold a pre-hearing conference or a  
7 hearing before a Master if those documents weren't  
8 filed. So we played around with the thought of being  
9 able to require those documents be filed before we  
10 would even appoint a Master. And everybody's concern  
11 was that, well, then a Master would never be appointed.  
12 Exactly what you were talking about. The divorce is  
13 granted, I don't want to go forward with the economic  
14 issues. And our judge has taken the position under the  
15 sanctions provisions that he will, undoubtedly very  
16 firmly, provide sanctions if they do not indeed file  
17 those within a reasonable period of time. Normally  
18 like 15 to 30 days. And I think that same type of idea  
19 could be attached to the economic issues once the  
20 divorce was granted.

21 Q. Do you feel that that should be  
22 legislated?

23 A. I'm not sure it can be legislated because  
24 I think from county to county the issues may be  
25 different based upon their procedure. I haven't had a

1 lot of opportunity to go even beyond like Lancaster and  
2 Dauphin County, but just from the comments that I've  
3 heard and the few conferences I've been to, it appears  
4 that the procedures are very different, and in fact  
5 even in bifurcation how they handle the bifurcation  
6 issue, and I'm not sure it can be legislated. I'm not  
7 sure that's not a procedural rule that needs to be put  
8 in place and actually the sanctions portion made  
9 stronger.

10 Q. This is another question that you alluded  
11 to in your answer just now. I've noticed through the  
12 several days of testimony that we've had that each  
13 county has its own counsel in family matters, its own  
14 procedure for answering the requirements of the law,  
15 its own and individual assessment of how cases are  
16 going to be prioritized or dealt with, and I have had a  
17 lot of people that have reached me saying why can't  
18 every county deal with this issue the same way so we  
19 know what we're talking about? Can this be done?

20 A. That's a difficult one. I'd like to say  
21 yes. I'd like to say that I think the basic procedure  
22 could be very similar. I guess the problem would be  
23 if, for example, you would adopt a procedure such as in  
24 York County where we're really asking the county  
25 governments to take on additional financial burdens to

1 finance that type of program and I know the State's  
2 financial problem isn't going to give us the  
3 opportunity to be able to push some dollars towards the  
4 county level and as a result, I think that would be  
5 difficult.

6 Q. Thank you.

7 CHAIRMAN CALTAGIRONE: Thank you. Thank  
8 you very much for testimony.

9 CHAIRMAN CALTAGIRONE: Marilyn Zilli,  
10 Esquire, Harrisburg family law practitioner.

11 MS. ZILLI: Good morning, ladies and  
12 gentlemen. My name is Marilyn Zilli. I'm an attorney  
13 in private practice in a two-member law firm here in  
14 Harrisburg. Approximately one-half of my caseload is  
15 domestic work, primarily divorces, but I do not  
16 consider myself, and do not think that I am usually  
17 considered a member of what is called the "domestic  
18 bar." In fact, from 1976 until 1985, I was exclusively  
19 a criminal defense attorney and I still handle many  
20 such cases today. I mention this background to you  
21 because I feel that the practice of criminal law has  
22 much to recommend to domestic practitioners.

23 Because vindication of public wrongs is sought  
24 swiftly, the resolution of criminal cases is an  
25 inexorable process which waits for none of the parties

1 to it. Both the State and the defendant are subject to  
2 deadlines. Defendants must be arraigned and given bail  
3 promptly after arrest and must go to trial within six  
4 months or one year of the filing of the criminal  
5 complaint. To avoid waiver thereof, issues which  
6 impact trial must be raised and resolved pre-trial and  
7 appeals must be promptly filed post-trial. All aspects  
8 of a criminal case fit into a pre-determined schedule  
9 and clients must be protected both from the power of  
10 the State to tamper with some of these deadlines and  
11 from the loss of rights resulting from the defendant's  
12 own failure to honor others. Defense attorneys who  
13 miss deadlines or fail to insist on compliance with  
14 deadlines by the prosecution can be found ineffective  
15 and the defendant awarded a new trial or granted some  
16 other relief as a consequence. This is not, in other  
17 words, a system which either permits by rule or  
18 tolerates by practice unnecessary delay in resolving a  
19 case.

20           The practice of domestic law is a very  
21 different matter. Like most other areas of civil  
22 practice, it is a system where time has value as fees,  
23 as money in the pockets of attorneys, and where what  
24 some call the tradition of courtesy have long condoned  
25 the leisurely resolution of disputes and looked with



1       disfavor upon objections to alleged dilatoriness in  
2       one's colleagues. It is also a system where the  
3       parties, one or both, have a very specific emotional  
4       stake in prolonging litigation -- time can equalize the  
5       hurt and provide retribution; it can also satisfy  
6       interests of selfishness and secrecy -- is further a  
7       system where because lawyers are asked to fill the role  
8       as supporters, they often "provide," and I'm quoting  
9       from Sarah Grebe, "the first step in escalating a  
10      competitive struggle between two hurt and angry  
11      spouses." This is a system, in other words, which by  
12      its nature can and often does bring out the worst in  
13      all parties involved.

14                 I listened with dismay, but I must tell  
15      you, with complete understanding to the horror stories  
16      of the witnesses who testified at your last session  
17      here in Harrisburg. It has been my experience, just as  
18      it had been theirs, that many attorneys who practice  
19      domestic law act as if the goal is not to quickly and  
20      honestly reveal and assess the facts of the case and to  
21      resolve it to the client's best interest in  
22      consideration of these facts, but simply to harass,  
23      hurt, and financially eviscerate the other side, and to  
24      indulge these same aspirations in their clients. It  
25      has been my experience, just as it had been theirs,

1 that if left to their own devices, divorce litigants,  
2 or at least one of them in every case, will rarely, if  
3 ever, decide to resolve his or her own case honestly,  
4 fairly, and quickly. The primary weapon of these  
5 attorneys and of these litigants -- and I tell you it  
6 is often difficult to distinguish the real culprit --  
7 is delay; delay in acknowledging the breakdown of the  
8 marriage, delay in acknowledging the rights of the  
9 other party, delay in providing accurate information,  
10 delay in preparing the case for a hearing, delay in  
11 permitting final resolution of the case.

12 As written, neither the Divorce Code nor  
13 the Rules of Civil Procedure applicable to divorce  
14 practice can be found to have produced this unholy  
15 alliance of interests I have just described to you. In  
16 fact, the Divorce Code contains very precise language  
17 about the morality of divorce practice, so to speak --  
18 I refer to the objectives set forth in the first  
19 section of the Code, now numbered 3102 -- and the Rules  
20 of Civil Procedure actually specify time limits within  
21 which certain procedures must be accomplished. They  
22 further provide, at least generally, for the imposition  
23 of sanctions for the violation of these provisions.  
24 This language and these rules should constitute a  
25 sufficiently explicit code to guide the practice of

1 divorce law by attorneys and to control the conduct of  
2 obstreperous clients. Unfortunately, adherence to  
3 these policies and enforcement of these time limits is,  
4 to say the least, minimal.

5 I suggest to the committee that there are  
6 two solutions to the problem of delay in the resolution  
7 of divorce cases. Unfortunately, only one of these  
8 solutions can be accomplished legislatively. The other  
9 depends on the ability of the bench and bar to police  
10 themselves and to control clients and on the  
11 willingness of all persons involved in domestic  
12 practice to act in a manner which effectuates the  
13 objectives of the Divorce Code.

14 One way to control the use of delay in  
15 divorce cases is to include in the Rules of Civil  
16 Procedure applicable to divorce a specific time limit  
17 within which all divorce cases must be resolved and  
18 specific mandatory sanctions which must be imposed when  
19 either party, or his or her attorney, violates a  
20 provision imposing time limits on the completion of any  
21 procedure. And let me tell you before I go on I  
22 understand that this is an area which, unfortunately,  
23 cannot be accomplished legislatively. These amendments  
24 would be up to the Rules Committee of the Supreme  
25 Court. Nonetheless, I thought it was important that

1 you understand my feelings about this.

2 I would first signal the desire of the  
3 legislature that these changes be made by first  
4 amending the Divorce Code, and this I think could be  
5 done by the legislature, to include a statement of  
6 policy in Section 3102 that neither party hold the  
7 other hostage to any claim, economic or otherwise, in  
8 any divorce case. That objective is assumed in Section  
9 3323(c) of the code, which permits bifurcation of  
10 economic claims from the divorce itself but it is not  
11 specifically stated in Section 3102.

12 I would then, as I've indicated,  
13 encourage the Supreme Court to amend the Rules of Civil  
14 Procedure to include a number of new provisions.

15 For instance, in rule 1920.3 I would add  
16 the provisions that at filing, all divorce complaints  
17 be stamped by the Prothonotary with a hearing date  
18 which shall then occur no later than one year from the  
19 date of the filing of the complaint; that upon the  
20 filing of a complaint, all divorce cases shall be  
21 immediately assigned to a Master; and that all aspects  
22 of a divorce complaint shall either be resolved by  
23 agreement or mediation or be ready for hearing by a  
24 Master by the hearing date originally assigned. As I'm  
25 sure many of you are aware, it used to be the practice

1 here in Federal District Court that when a civil  
2 complaint was filed, the complaint was stamped with a  
3 trial date and immediately assigned to a judge. That  
4 judge was responsible for overseeing all aspects of the  
5 case. It was expected, and in fact required, that  
6 discovery would be completed by that date and that the  
7 case would be ready for trial by the date assigned.  
8 Extensions of time were rarely granted. I believe such  
9 procedure could be beneficially introduced into divorce  
10 practice in State court, although I acknowledge that to  
11 be effective, the amendment would have to be  
12 accompanied by a concomitant increase in the number of  
13 divorce Masters per county, and I understand the  
14 financial impact of that statement.

15 Second, I would amend rules 1920.51  
16 and/or 1920.52 to give Masters the authority to issue  
17 orders and impose sanctions for violation of time  
18 limits so that once a case is assigned to a Master, and  
19 whether or not the case actually goes hearing, the  
20 Master would have the authority to hear and resolve all  
21 procedural disputes between the parties. It would be  
22 recommended that Masters be accessible to resolve  
23 disputes promptly and thus to avoid exacerbating the  
24 problem of delay. My idea here is simply to try to  
25 speed things up to avoid having to file a petition, get

1 a hearing date, get the hearing date continued, finally  
2 appear in front of the judge, hold all kinds of formal  
3 testimony, then wait for a decision, in the meantime  
4 two or three months have passed.

5 Third, I would add to the divorce  
6 practice rules language similar to that found in  
7 Federal Rule of Civil Procedure number 11. This rule  
8 requires parties and attorneys to certify that their  
9 motions and pleadings are filed for legitimate purpose.  
10 I've given you the language of the rule on pages 7 and  
11 8 of my testimony. I believe the most important part  
12 of the language is in about the middle of the paragraph  
13 quoted on page 7 which requires that the attorney or  
14 the moving party acknowledge that the motion or  
15 pleading is well-grounded in fact, is warranted by  
16 existing law or some other good faith legal argument,  
17 and that it is not interposed for any improper purpose  
18 such as to harass or to cause unnecessary delay or  
19 needless increase in the cost of litigation which, of  
20 course, is precisely the problem that we often have in  
21 divorce practice. I would suggest that adoption of  
22 this rule be made in an effort to regulate the conduct  
23 of both attorneys and clients.

24 Fourth, I would amend the divorce  
25 practice rules to include more specific and mandatory

1 sanctions for the violation of both the above-cited  
2 certification language, that is the language from this  
3 Rule 11, and of any time limit. As presently written,  
4 sanctions for violation of discovery and production of  
5 document rules are stated in the same terms applicable  
6 to all civil actions. For example, divorce Rule  
7 1920.31 requires that within 30 days after service of a  
8 pleading or petition containing a claim for alimony or  
9 counsel fees, each party file an income and expense  
10 statement. The rule further provides that upon failure  
11 to timely file, the Court, and I quote, may make an  
12 appropriate order regarding sanctions in accordance  
13 with Rule 4019, which is found in the general civil  
14 practice rules section. In my experience, and although  
15 Rule 4019 includes a range of specific sanctions,  
16 because attorneys do not like to seek sanctions against  
17 other attorneys, and because judges apparently do not  
18 like to impose sanctions on former colleagues, the  
19 usual appropriate order is merely an extension of time  
20 within which to file the requested material. In these  
21 circumstances, the only party penalized is the party  
22 seeking compliance with the time limit. I have never  
23 seen any other sanction imposed except to extend the  
24 time for fulfillment of the obligation.

25 To guarantee that the bench and bar

1 police themselves, I would propose that the language of  
2 Rule 4019(c)(1), which permits a judge to order that a  
3 particular "fact be taken to be established in  
4 accordance with the claim of the party obtaining the  
5 order," and the language permitting the imposition of  
6 fines be included as mandatory penalties in the divorce  
7 rules themselves. In other words, a party who fails to  
8 timely produce required information would be precluded  
9 from doing so at any time and the court or Master would  
10 be permitted, indeed required, to rely on whatever data  
11 the party obtaining the order cared to present about  
12 the non-complying party's financial situation. At the  
13 same time, attorneys representing the non-complying  
14 party would be subject to mandatory fines for each day  
15 of the client's non-compliance. In this way, clients  
16 and attorneys would be forced to control the other to  
17 insure expeditious delivery of information and would be  
18 denied the luxury of blaming delay on the other, which  
19 in my experience is precisely what happens. You talk  
20 to another attorney and he or she says it's my client.  
21 I can't get my client to produce the information so I  
22 can't get it to you. Your own client, of course, is  
23 telling you that it's the other client, the other  
24 attorney's fault. The fact of the matter is that it's  
25 probably a combination of the two. The attorneys can't



1 control their clients and the clients don't want to be  
2 controlled, so it seems to me a rule which just says  
3 both of you are going to be responsible would be in  
4 order.

5 In addition, denying the bench a choice  
6 of remedy and therefore the choice of no remedy at all  
7 would ensure, just as do mandatory sentencing  
8 provisions, that all parties similarly situated are  
9 treated similarly, without discretion. I would make  
10 the same proposal about Rule 1920.33, which requires  
11 that inventory and appraisal forms be filed within  
12 60 days of the service of a pleading containing a claim  
13 for determination and distribution of assets, that is  
14 equitable distribution. Imposing mandatory sentences  
15 of the type I have described would also go some way, I  
16 believe, towards solving the problem of clients and  
17 attorneys who deliver inaccurate or incomplete  
18 information. The rule would be, if you don't present  
19 it, it doesn't exist, so if Mary says the business is  
20 worth \$10 million and you present no financial  
21 information to prove differently, or don't do so  
22 promptly, the case will be resolved anyway and on the  
23 basis of Mary's figures.

24 It would seem appropriate, if these  
25 revisions are made, and if a one-year time limit for

1 resolution of all divorce cases is adopted to lengthen  
2 the time periods within which information must be  
3 provided to the other side or to the court or Master.  
4 I would propose, for instance, a 90-day limit for the  
5 delivery of all forms that have to be filled out and  
6 any other discovery information, and I would hope that  
7 these rules would encourage parties to provide complete  
8 and accurate information but also to do so promptly. I  
9 have very little doubt that it would only take one case  
10 in one county decided on the basis of only one party's  
11 information at the same time that one attorney is fined  
12 for one day to have some impact, I'm not sure it would  
13 solve the problem, but to have some impact on all the  
14 other attorneys and divorce litigants in that county.  
15 It will never happen.

16 A second solution that I would propose to  
17 you to the problem of delay is to take the matter of  
18 divorce litigation out of the hands of the courts and  
19 to put it back or to put it into the hands of the  
20 parties themselves. This can be accomplished, it seems  
21 to me, by instituting a system of mediation or  
22 arbitration, an idea which I know is not new to this  
23 body. Most if not all of the legislation proposed just  
24 recently or within the past few months by both the  
25 House and Senate to amend the Divorce Code provides for

1 voluntary mediation or arbitration in divorce cases. I  
2 believe I have all the numbers, Senate Bills 273, 1295,  
3 1296, and House Bill 1260.

4 I would suggest to this committee,  
5 however, that to truly make mediation work, you must  
6 not legislate it at all. I would propose no fees,  
7 especially no prohibitive ones. \$500 which is included  
8 in one of the Senate bills, I believe, is ridiculous.  
9 If you have a \$500 filing fee, nobody is going to use  
10 the system of mediation in the same way that in  
11 Cumberland County, where there was a \$700 fee for using  
12 a Master, I had many clients who never went to a Master  
13 because they could never afford the \$700. I would,  
14 instead, reduce all of the legislation that's been  
15 proposed to one or two lines.

16 Litigated divorce is an adversarial  
17 process. Divorcing parties are opponents, competing  
18 against each other to divide everything, including the  
19 children. In these circumstances, the court system  
20 itself becomes a weapon where rules, time limits and  
21 procedures are used and abused in an effort to "win."  
22 Mediation, on the other hand, takes a cooperative  
23 approach to conflict resolution. Rather than being  
24 encouraged to destroy each other emotionally and  
25 financially, mediation requires that the parties work

1 together to preserve what they have for themselves and  
2 for their children. By its nature, and to truly work,  
3 mediation requires that the parties agree on their own  
4 rules. The more the court interferes, it seems to me,  
5 the more it tells them what to do, the more adversarial  
6 the process becomes and the greater the possibility  
7 that delay is used as a weapon.

8 Accordingly, I would suggest that  
9 legislation in this area be strictly limited to the  
10 following amendments: A provision announcing the  
11 availability of mediation to all divorcing parties,  
12 which procedure could be invoked immediately after the  
13 filing of the divorce complaints; secondly, a provision  
14 announcing the availability of mediators to all  
15 divorcing parties, by list to be maintained in the  
16 Prothonotary's office in all counties; and, third and  
17 finally, a provision that upon certification of one  
18 party that mediation has not been successful, the  
19 divorce case shall proceed to hearing by a Master. I  
20 would not attempt to structure the system of mediation  
21 beyond these provisions. I would leave it up to the  
22 parties to do so. That is precisely what mediation is  
23 supposed to accomplish.

24 All this is not to say that mediation is  
25 not subject to abuse or that it entirely eliminates the

1 possibility that delay will be used as a weapon. In  
2 fact, my fear is that one of the parties would use the  
3 possibility of mediation for just that purpose. By  
4 inserting yet another possible step in the already  
5 lengthy process of resolving issues involved in  
6 divorce, you give both attorneys and litigants yet  
7 another opportunity to put off resolution of the case,  
8 and the same way now some parties will insist on  
9 counseling, just for the purpose of delay. What is  
10 more, if one spouse requests mediation and the other is  
11 not committed to it, that spouse can delay filling out  
12 the financial statement and budget forms that mediators  
13 usually provide immediately. These forms can also be  
14 filled out incorrectly to hide or misrepresent assets.  
15 Mediation sessions can be canceled and not promptly  
16 rescheduled. In other words, the list of possible  
17 abuses is endless and reliance would have to be made on  
18 the qualifications and preparation of the mediators  
19 involved, which may, unfortunately, be as risky as  
20 relying on attorneys. Nonetheless, I believe that in  
21 proposing this alternative, mediation or arbitration,  
22 you have satisfied your duty to the citizens of  
23 Pennsylvania to impose some kind of reform on divorce  
24 practice in the Commonwealth.

25 I regret completing my testimony on a

1 melancholy note, but I must tell you that I have no  
2 illusion that amendments to the Rules of Civil  
3 Procedure of the nature I have proposed will ever be  
4 adopted by the Rules Committee of the Supreme Court. I  
5 also have little hope that you can make mediation the  
6 preferred method of resolving divorce cases in the  
7 Commonwealth. What is most discouraging, however, is  
8 that my experience teaches me that even if adopted,  
9 neither the rule changes I have outlined nor the  
10 mediation procedures you and your colleagues have  
11 proposed will substantially alter divorce practice in  
12 Pennsylvania. The problem is that for any system of  
13 laws and procedures to work, all parties involved in  
14 the application and interpretation thereof must act in  
15 good faith, and good faith cannot be legislated. You  
16 cannot mandate that Masters, mediators, judges,  
17 attorneys and parties treat each other fairly in an  
18 open and honest proceeding, and you cannot force either  
19 the bench and Bar or ordinary citizens to impose rules  
20 of conduct on themselves.

21           The possibility of abuse and therefore of  
22 delay exists in any system you might devise, no matter  
23 how rigid or loose. This is not an idea, I know, which  
24 has wide acceptance in either the legal community or  
25 elsewhere. As a consequence, I am sure that people

1 will continue to look to you to solve the problems they  
2 face in securing a divorce and in resolving all matters  
3 related thereto and that these will not be your last  
4 hearings. Your efforts in this area are to be  
5 applauded, but I for one will not fault you for failing  
6 to slay the real dragon. Thank you.

7 CHAIRMAN CALTAGIRONE: Thank you very  
8 much for your testimony.

9 MS. ZILLI: Thank you.

10 REPRESENTATIVE REBER: Mr. Chairman, just  
11 a couple comments.

12 CHAIRMAN CALTAGIRONE: Sure.

13 REPRESENTATIVE REBER: First of all, I  
14 deeply appreciate the in-depth analysis that you made  
15 to many of the practical problems that are there. I  
16 think more importantly for a number of our colleagues  
17 who are not present, if they do take the time to read  
18 the transcript and the testimony provided, I think it  
19 will give some practical insight to the problems that  
20 are inherent in the system, many of which, as I agree  
21 with you, will not, cannot nor will ever be able to be  
22 ultimately changed, because I have yet been able to  
23 meet an attorney that can totally control a client who  
24 desires not to allow the system to work for which it  
25 was intended to work. Again, I think this analysis is

1 unbelievably well-presented and I will certainly take  
2 the time to move those people that can be moved in the  
3 legislature that will take some consideration of the  
4 subject seriously, and your in-depth analysis of the  
5 perspectives that you put forward in a very, very, very  
6 admirable way. This is an unbelievable presentation  
7 for not being paid to do it, unless there's something  
8 out there that I don't know about.

9 MS. ZILLI: No, sir. I have to go back  
10 to my office.

11 REPRESENTATIVE REBER: Be that as it may,  
12 thank you very much.

13 Thank you, Mr. Chairman.

14 MS. ZILLI: Thank you.

15 CHAIRMAN CALTAGIRONE: Thank you.

16 We will next hear from Ronald Katzman,  
17 Esquire, Harrisburg family law practitioner,  
18 Pennsylvania Supreme Court, Civil Rules Committee.

19 REPRESENTATIVE REBER: Mr. Chairman, are  
20 we having a break or are you going to follow in the  
21 tradition of the Senator from Delaware and just keep  
22 grinding us out?

23 CHAIRMAN CALTAGIRONE: Ronald did have a  
24 hearing that he had to go to, evidently, and he may or  
25 may not be here, as the case may be, at 2:00 o'clock.





1 here in Dauphin County and Maria is the other, and I am  
2 a member of the Family Law Sections of the Pennsylvania  
3 Trial Lawyers, the Pennsylvania Bar Association, and  
4 the Dauphin County Bar, and also I write and lecture  
5 frequently for the Pennsylvania Bar Institute and the  
6 Pennsylvania Trial Lawyers. Also I'm a past member of  
7 the Board of Directors of the Pennsylvania Trial  
8 Lawyers Association.

9 We're going to kind of flip back and  
10 forth here and I am going to let Maria introduce  
11 herself and tell you how we would like to approach this  
12 question.

13 MS. COGNETTI: Good afternoon. My name  
14 is Maria Cognetti. I'm a partner in the Harrisburg law  
15 firm of Mett, Evans and Woodside. I also am a past  
16 member of the Board of Directors of the Pennsylvania  
17 Trial Lawyers. I am presently a member of the PRA  
18 Family Law Council; Vice-Chair of the Dauphin County  
19 Bar Association Family Law Section, and since the  
20 inception of our program many years ago I have been one  
21 of the two custody conciliators for Dauphin County, and  
22 I am a Fellow in the American Academy of Matrimonial  
23 Lawyers.

24 I have been practicing since 1978, and  
25 during that entire period of time my practice is solely

1 family law and domestic relations matters. Like Sandy,  
2 I also lecture fairly often for the Pennsylvania Bar  
3 Institute on family law matters, and I also write for  
4 "The Barrister," which is the Pennsylvania Trial  
5 Lawyers publication.

6 Sandy and I are basically testifying  
7 together today based on our membership in PaTIA and the  
8 fact that we are the two custody conciliators. We've  
9 been practicing in the same area for a long enough  
10 period of time that we share many of the same  
11 experiences. I feel like I'm rushing through this,  
12 but, like Sandy, I've heard so much this morning that  
13 I'm hopeful that you'll ask us some of the questions  
14 you've been asking this morning so that we can share  
15 our insights with you.

16 Basically, our testimony represents our  
17 joint views on most of what we will express and  
18 sometimes the same as what you have heard already and  
19 sometimes different from what you've heard. What we  
20 had planned to present, unless you want to cut us off  
21 and redirect us, would be an overview of the Divorce  
22 Code, which Sandy will present, a brief summary of the  
23 practices and procedures in Central Pennsylvania, and  
24 then our thoughts on some of your proposed legislature.

25 MS. MELTON: Okay, as I'm sure you are

1 aware or have been told in the course of these  
2 hearings, and as I tell my clients when they come in  
3 the office, getting a divorce in Pennsylvania, a  
4 divorce decree, is not too difficult. We've got one of  
5 three ways. You can go the simple, no-fault, 90-day  
6 divorce where both parties sign an affidavit of consent  
7 and you file that with the court after 90 days. Well,  
8 you sign it after 90 days, hopefully, you wait your  
9 period, you file it with the court and you never have  
10 to see the inside of a courtroom. Absent both parties'  
11 willingness, however, you still have two options. You  
12 can move forward with the old-fashioned fault divorce,  
13 or you can wait and live separate and apart for a  
14 period of two years. When legislation first came in,  
15 for a period of three years now reduced to two, and I  
16 understand from reading the proposed legislation a  
17 suggestion that we now reduce it to one year and we'll  
18 address that a little later in our presentation.

19           Getting the divorce is really not where,  
20 in my experience anyway, where the system slows down.  
21 Sure, you might get into bifurcation hearings, but  
22 absent that, your real slow down to the process comes  
23 when the court starts to address the economic  
24 distribution of property.

25           The legislature has told us that under

1 the Divorce Code you are supposed to equitably  
2 distribute property in a fashion to, and I wanted to  
3 quote this right, too, "to effectuate economic  
4 justice." Now, the appellate courts have told us that  
5 that doesn't mean you start with 50-50, folks. The  
6 50-50 is not even a starting point. You have to listen  
7 to the testimony and make a decision on how you are  
8 going to divide up the economic pie. And that is not a  
9 simple proposition. You have to identify marital  
10 property and then you have to divide that marital  
11 property. In addition to that, the courts have to  
12 address the issues of alimony, alimony pendente lite,  
13 counsel fees and costs.

14 As Judge Hummer pointed out earlier  
15 today, this is relatively new legislation, and I only  
16 started to practice family law in 1980. I never  
17 practiced under the old Code, and I have seen an  
18 evolution since 1980 of refining the statute which was  
19 given to us in 1980. And good refinement and  
20 definition through the appellate system. We have now  
21 gotten the statute to a point where we can advise  
22 clients on what is likely to happen in a lot of  
23 situations. I don't mean to represent to you that  
24 there aren't going to still be areas that have to be  
25 defined. For example, a personal injury settlement is

1 marital property under some circumstances, but that  
2 doesn't mean it's divided 50-50. I see that matter  
3 being litigated by the Supreme Court. And like any  
4 other piece of legislation, the only way we're going to  
5 get those answers is to let the process evolve. It's  
6 slow and it is, unfortunately, painful, but that's the  
7 way, that's the only way we're going to get definition  
8 to the statutes that's in front of us.

9 To keep in mind, and I'm not even going  
10 to talk about support and custody in any great extent,  
11 but those are just two ancillary issues that the courts  
12 have to deal with on a daily basis which compound the  
13 problems before you. I'm going to flip over to Maria  
14 and let her tell you how things are handled here in  
15 Dauphin County, and then we'll go from there.

16 MS. COGNETTI: As you all know, I'm sure,  
17 family law practice varies county to county. One of  
18 the best things that's happened to a family law  
19 practitioner in the State of Pennsylvania lately is the  
20 support guidelines which now let us not have 50 sets of  
21 support guidelines in our office. We can, in most  
22 cases, predict for our clients what will happen in the  
23 next county or four counties over. But practice still  
24 changes from county to county. Sandy basically limits  
25 most of her family law practice to Dauphin and

1 Cumberland. I'm primarily limited to Dauphin,  
2 Cumberland, York, Perry, a little of Lebanon and  
3 Lancaster, so when we're done, if there are any  
4 specific questions, we can probably answer them on  
5 those counties but not much more.

6           It's our understanding from our dealings  
7 with other practitioners and from the little bit of  
8 work that we do in the outlying counties that most of  
9 the practices are somewhat comparable to Cumberland and  
10 Dauphin, so we'll mainly speak on those. In Dauphin  
11 and Cumberland, support cases are first heard by  
12 hearing officers who have the power to recommend  
13 orders. I think you've already heard that today. And  
14 parties who are dissatisfied with the result of the  
15 hearing conference have the ability to request a  
16 hearing de novo before the court, and that's basically  
17 what Judge Morrison was telling us about this morning.  
18 I listened with a lot of attention to what he was  
19 saying because I think that we have in Dauphin County  
20 right now one of the most exceptional systems for  
21 getting and collecting especially support. Now, that  
22 doesn't mean that there aren't exceptions to the rule  
23 and that some people don't have problems or that some  
24 cases don't take a long time to get resolved, but right  
25 now with Judge Morrison's theory for the last few years

1 where at least we can tell our people non-supporters  
2 will go to jail, it gives us a lot bigger hammer to use  
3 on these people and it works. Whether he sends them or  
4 not, everybody in the county knows that Judge Morrison  
5 has an attitude that non-supporters won't go back out  
6 on the street.

7           And we have a collection enforcement  
8 office that right now is doing a wonderful job  
9 although, unfortunately, I'm going to kind of go off  
10 the materials a little bit, I sat here this morning and  
11 listened to things and made me realize that every time  
12 you come up with a solution to something, there's  
13 always going to be someone out there who has a problem  
14 with it. We have an enforcement office right now that  
15 is doing a wonderful job, an absolutely wonderful job  
16 and coming under attack now because they are too  
17 aggressive. Now you go one way, you get hammered, and  
18 you go the other way and get hammered. This, between  
19 Judge Morrison's office and the enforcement office,  
20 most of us think they are doing a great job, and yet  
21 the people that are doing that job are under attack, so  
22 that's somewhat unfortunate.

23           Custody issues in both counties, and in a  
24 lot of the surrounding counties, are first heard by a  
25 custody conciliator. We are kind of proud in Dauphin



1 County, we have gotten our system taken up in  
2 Cumberland just recently and in York, they've had a  
3 conciliation program for a while and they have, just  
4 kind of recently, adopted it to be a little bit more  
5 like ours, and this is with the hope that every case  
6 has to go to a custody conciliator. It cannot avoid  
7 the process. And we have no power to enter an order,  
8 but what we do have is the power to kind of twist arms  
9 and to try and get people to see, in the clear-cut  
10 cases, what's right and what's wrong. You know, a  
11 simple denial of visitation isn't something that should  
12 wait three months to go into court for a hearing. We  
13 do have what we think is a pretty exceptional  
14 settlement rate of close to 85 percent. That kind of  
15 system is good because it keeps that many more cases  
16 out of the court system and frees it up for, perhaps,  
17 the more important custody case that needs to get in  
18 quicker.

19 Many of the counties, as I've said,  
20 around here have the same system. If the case comes  
21 before us and we cannot settle it, we don't even make  
22 recommendations but we do do a report which then sends  
23 the case to the judge, gives the judge that's going to  
24 hear the case a little bit of an idea of what he is  
25 going to hear, how much time he may need to hear it and

1 who the witnesses may be. That is the only effect of  
2 our report, since we don't do recommendations. It does  
3 delay the process a little bit because there's an extra  
4 step, but it settles so many more of the cases that we  
5 think it's been very much worthwhile.

6 Now I'm sure that probably most of you  
7 know that Dauphin or Cumberland, or I believe most of  
8 the counties around here, do not have an actual Family  
9 Court Division. I think what Judge Hummer has is  
10 probably the closest to a Family Court Division because  
11 he has Family Court judges that are permanent. In  
12 Dauphin we have a rotating support judge, as Judge  
13 Morrison has been for a couple of years. We have a  
14 judge assigned to administer the custody conciliator  
15 program, but all of our judges hear custody cases. In  
16 Cumberland, all judges hear support, all judges hear  
17 custody, and all judges hear equitable distribution  
18 arguments, et cetera. In York, they have a pretty good  
19 system. They have a judge assigned to custody cases  
20 only, but it's a rotating position again, and a judge  
21 assigned to all other family law matters, but that's  
22 also rotating.

23 Now, those are, as Sandy said, the  
24 collateral issues. The main problem is generally in  
25 the real meat of the case, and that's the equitable

1 distribution, the property, the alimony issues, and the  
2 systems that are evolving, and I believe it may have  
3 been Judge Hummer this morning who said give it some  
4 more time, it's finally beginning to work itself out.  
5 In Dauphin, we have now evolved into a two divorce  
6 Master system. These two people are now getting lots  
7 of experience in doing this. They are both exceptional  
8 divorce attorneys. In Cumberland, starting January  
9 1992, they will have one divorce Master who will hear  
10 all cases. He has a lot of experience. That should  
11 help.

12           Prior to the new system in Cumberland  
13 County, I believe any attorney in the county was  
14 allowed to hear a divorce case. And I can tell you  
15 that there are exceptions to what we think a system  
16 that works because I have had cases down in Cumberland  
17 that have been large cases that have been far over the  
18 heads of the Masters down there that have waited a year  
19 for a Master's report, but that's the exception. But  
20 the system is starting to work now. Dauphin is down to  
21 two Masters that are specialists. Cumberland is down  
22 to one Master who is going to devote a full-time  
23 practice to it, and that's happening in the areas  
24 surrounding us, so I think that's a good step.

25           But one of the problems that I think you

1 all are realizing already is that the Master's hearing  
2 is the only time at which a divorce litigant gets to  
3 give testimony. And some people do feel slighted, they  
4 want their day in front of a judge, you know, who is  
5 this person, you know, the hearing might be held in  
6 some small conference room that does not give an air of  
7 formality. Maybe there are some ways to cure that. I  
8 think we're stuck with the Masters system so we've got  
9 to work to make it better, and I think we are working  
10 toward that end.

11 Now, these procedures are cumbersome and  
12 are somewhat duplicative, but as I've been saying, in  
13 most of the cases they work. You hear about the ones  
14 that don't work. I get letters from my clients who  
15 don't like me. I rarely get a letter from, I hope, the  
16 majority of my clients that think I've done a good job,  
17 and that's just, that's life. Custody issues are  
18 resolved. Support orders are entered. Support moneys  
19 are collected and it works without sometimes or most  
20 often the necessity of going to litigation. I always  
21 tell people, and Sandy can verify this, probably less  
22 than 5 percent of my cases go through a Master's  
23 hearing. I mean, that's the way to get more cases  
24 done. Once you let a case get into the system, I  
25 unfortunately can tell you that if a particular

1 litigant, not the attorney, the litigant, wants to keep  
2 a case going for years, he can do it.

3 I told Sandy I wanted to tell you that  
4 what I was sitting back there reading is one of my  
5 cases from about seven years ago and the husband has  
6 all the property so he appealed. And the Superior  
7 Court remanded, came back, another order, appealed  
8 again. Won on that one, went up to the Supreme Court,  
9 remanded. As soon as you have a remand, you've got  
10 another year, another two years. There is nothing we  
11 can do about that, and I don't see it as that being the  
12 attorneys, that is the litigants and it's the  
13 exception. Even where it's the litigants it's the  
14 exception. But I'm not sure that the legislation that  
15 you have proposed is really the answer, and we will  
16 talk about that a little bit.

17 MS. MELTON: Maria commented that less  
18 than 5 percent of her cases, or cases in general, I  
19 think, go to a Master. Most of them are settled out of  
20 court, and someone said to me early in my practice of  
21 law that the only good settlement is one where both  
22 sides are unhappy. And that's probably accurate, but  
23 the problem with that is that I've found that once the  
24 divorce is over, too frequently people then want to  
25 come back and rethink and they want to re-guess what

1 has happened already and why did you let me settle and  
2 why this and why that. And their questions are valid  
3 ones and they are ones that you have already explained  
4 to them a number of times, but I think that one of the  
5 reasons why a lot of people or a lot of attorneys end  
6 up saying to their clients, well, if you want to go to  
7 court, I can only advise you that the result may be  
8 thus and such and may not be as good, but if you want  
9 to go, then we have to go.

10           And this brings me, this attitude brings  
11 me to what I think is probably, in my opinion, the  
12 biggest flaw in our system, and that is our failure or  
13 the failure of lawyers, legislators, judges and  
14 everyone to recognize and effectively deal with the  
15 emotionally charged situation that we're handling. I  
16 have had guns pulled on me, I have been maced in the  
17 support office, I have had clients hit me, I have had  
18 clients on the other side of the table hit me. Why do  
19 I do this? I don't know. You really do start to  
20 question your sanity. But I think the reason you do it  
21 is because the majority of the cases don't resolve that  
22 way. I think that if we recognize upfront that divorce  
23 clients are angry, upset, and in a lot of cases they  
24 are frightened. They come to you, they don't know  
25 where to turn, they don't know where their money is.

1 going to come from for their next meal. They have a  
2 very major problem to deal with before they can even  
3 effectively think about economic distribution. The  
4 last thing that client has on his or her mind when he  
5 comes to your office or my office is how we're going to  
6 cut up the property. Usually they are worried about  
7 custody, they are worry about where are they going to  
8 live tomorrow. And as you work with clients, you start  
9 to see that they -- as a lawyer, I don't have the  
10 ability to deal with their emotional problems. And  
11 they expect you to be able to do that. They need  
12 counseling. Most of them -- now let me qualify that.  
13 Not every client who comes in my office needs  
14 counseling or wants counseling, but many of them want  
15 counseling and cannot afford it. Now, I don't know how  
16 we solve that problem. There's a limited amount of  
17 money and a limited amount of resources, but it's  
18 unfortunate that this highly emotional area of law  
19 doesn't afford litigants any opportunity to deal with  
20 that emotion.

21                   And that leads to one of the problems  
22 with the system, and that is until you can get your  
23 clients to focus on economics and focus on what you're  
24 there to help them with, it's very difficult to resolve  
25 any cases. Many clients just cannot deal with it at

1 that point. And I'm always amazed, and Judge Morrison  
2 mentioned this, someone will come to my office and we  
3 go through the initial process of intake and as you  
4 start the negotiation process, they become angry that  
5 their husband or wife is being so unreasonable or is  
6 being so dictatorial or is being so arbitrary in their  
7 position, and I frequently have to point out to them,  
8 hey, do you remember you're divorcing this man or this  
9 woman? If they were perfect, if they were easy to deal  
10 with, if they were reasonable, you wouldn't be  
11 divorcing them. But the only way they can work through  
12 that emotional difficulty is either with counseling or  
13 with time, unfortunately, and many people are not  
14 equipped to deal with a divorce within 90 days. They  
15 simply are not.

16 And as a custody conciliator, I  
17 especially see the problem with not having  
18 psychological counseling or some assistance in this  
19 area available. The courts want a psychological  
20 evaluation of the parties. They want a home study done  
21 and they should have, they should have those things.  
22 But they can't get them because there is no funding.  
23 People cannot afford to have this done in every case,  
24 and in custody cases it is absolutely essential.  
25 What's the answer? The answer would be if we had an



1 absolute unlimited amount of funding to help these  
2 people, to help them work through their problems, I  
3 think that that would take a lot of pressure off the  
4 individuals and help them to better deal with the  
5 economic issues. I don't know that that funding will  
6 ever be available, but I think that it's a problem that  
7 the legislature has to keep in mind. And keep in mind  
8 that all the amendments to legislation in the world  
9 won't change the situation.

10 Maria?

11 MS. COGNETTI: Okay. Basically, I want  
12 to end with just going over some of the proposed  
13 legislation that Sandy and I have seen. I understand  
14 that a lot of this legislation may be necessary for  
15 other purposes or may have a good purpose, but we're a  
16 little concerned that it may do the opposite of what it  
17 is intended to do. I'm not sure how serious these  
18 pieces of legislation are, so we're going to kind of  
19 quickly deal with all the ones that we've seen.

20 I guess one of the most recent ones I saw  
21 was the suggestion or proposed piece on a legal  
22 separation, and the reason that I saw for proffering  
23 that suggestion seems like a good one; however, if  
24 anybody sits and thinks about it for a minute and reads  
25 what was proposed about a legal separation, it calls

1 for a hearing. That's time. It calls for a decision  
2 by the court. You're talking about more time and more  
3 money. That's exactly the two things that we are  
4 trying to get rid of right now. You're just going to  
5 throw, you know, another wrench into the whole works  
6 here. So I can't say that from the point of view of  
7 the problems we're having now that that would be any  
8 help. And another filing fee, too, I would assume,  
9 because it proposes a whole separate complaint for  
10 separation. This is just going to overburden the  
11 courts even more than they are right now and I think  
12 would probably have a phenomenal effect.

13 Another proposal, and one which has  
14 gotten a lot of talk, I know, from the attorneys that  
15 are aware of it is the one with regard to an interim or  
16 a partial distribution. We want to put forth a whole  
17 new section of the law that would deal with that.  
18 Well, again, you're talking about throwing in more  
19 hearings in a system which already has too many  
20 hearings and is taking too long. Well, we can tell you  
21 that you can already get an interim or partial  
22 distribution by what's in the Code right now. If your  
23 case is an appropriate case and if you have half of an  
24 imagination, it's right there under special relief so  
25 it doesn't really need to be added because that will

1 just give somebody a whole lot more stuff to file that  
2 if they needed it now, they would be filing it. And I  
3 think that that probably should wait a little while to  
4 just see how the special relief works itself out.

5           This arbitration business is kind of neat  
6 in a sense, but the way I read it worded from the  
7 materials I got it said that the court would have the  
8 discretion to assign a case to either binding or  
9 non-binding arbitration. As I think I've heard  
10 expressed this morning, I don't think that's a good  
11 idea. You're throwing at our litigants, again, one  
12 more step which tells them they are not good enough to  
13 be in the real court system. Now, some things that  
14 I've heard of from some of my Philadelphia friends, if  
15 I've heard them correctly, is that they have the option  
16 of arbitration in some of those counties, they have the  
17 option for it to be binding or non-binding, but it's at  
18 the choice of the parties. I think that's a wonderful  
19 idea but I think the minute you make it at the  
20 discretion of the judge, you've kind of killed that  
21 great idea. I know that there are a lot of cases, I  
22 think it's some of the bigger cases out in those  
23 Philadelphia counties. They have got some wonderful  
24 arbitrators who are the more well-known divorce  
25 attorneys in the area, and other good divorce attorneys

1 are happy to hear another good divorce attorney hear  
2 their case because that other divorce attorney who is  
3 arbitrating probably may be a little more knowledgeable  
4 than the average judge who has to hear 58 different  
5 areas of law. So I think if it was an optional system  
6 that we ourselves in conjunction with our clients could  
7 choose, sure, but don't throw something else into the  
8 system that says to these people you are not good  
9 enough to get a real judge. I mean, I think they are  
10 already feeling that as it is.

11 One of the big things that's discussed is  
12 this two years to one year, and I think you're going to  
13 find that attorneys flip-flop on that. There are pros  
14 and cons. Sandy and I have discussed it at length and  
15 basically we see a con to it, if we can try and explain  
16 that to you. Right now, under the two years, which  
17 used to be three years, a lot of dependent spouses, and  
18 we'll just call them women for now, use that two-year,  
19 they can get support during that two-year period of  
20 time. It's easier to get support than it is to get  
21 alimony. In our county it's pretty grievous misconduct  
22 to not get support if you're the dependent spouse. So  
23 in most cases the dependent spouse can get spousal  
24 support and they know that they can get it for at least  
25 two years. Now, if they are smart and if they are the

1 good client, they will use those two years or you will  
2 encourage them to use those two years to get back on  
3 their feet. A lot of times I have to say to my people,  
4 you're going to get this two years' worth of support  
5 but I think your alimony case is awful. So let's be  
6 building, get a job, go back to school, take a course,  
7 you know, look for a better job. Figure out what  
8 you're going to do with your kids who are in grade  
9 school where the court isn't going to feel you have to  
10 stay home and take care of them. Use the two years  
11 wisely. Now at the end of those two years, that  
12 dependent spouse is more able to negotiate a settlement  
13 with her spouse. She is a little bit more on equal  
14 footing with him. She has had an opportunity, she has  
15 used that time, hopefully, productively.

16 Now, if you take those two years away  
17 from her, after a year she's probably nowhere. The  
18 first year is just emotional. She hasn't done anything  
19 at that point, just getting back up on her feet to  
20 begin with. So at the end of one year, we are a little  
21 afraid that the dependent spouse isn't going to be far  
22 enough along. You're going to force her to litigate as  
23 opposed to negotiate, and if you do, all that will have  
24 the result of is sending more cases into the system on  
25 an even earlier basis, clogging the system even more.

1 So that's one of the reasons Sandy and I at least  
2 believe that the one year may not be a good idea.  
3 There are obviously pros to it also.

4 REPRESENTATIVE REBER: Maria, can I  
5 interrupt you there?

6 MS. COGNETTI: Yeah.

7 REPRESENTATIVE REBER: Since I'm the  
8 only--

9 MS. WOOLLEY: I wasn't allowed to  
10 interrupt her.

11 REPRESENTATIVE REBER: Well, that's why  
12 you're staff and that's why I'm the elected public  
13 official and as the Acting Chairman.

14 Mary has worked with me on this.  
15 Frankly, when I came into the legislature in 1981 I  
16 immediately introduced legislation that would take it  
17 to the one year. In 1984 that legislation was  
18 successful in passing the House under the tutelage of  
19 then Chairman Rappaport from Philadelphia. It went to  
20 the Senate, there was extensive hearings, and at that  
21 point it died a very common death of other legislation.  
22 It has been introduced and is again currently pending.  
23 Long before it was articulated by many other so-called  
24 now proponents of divorce reform.

25 My problem though, and the reason why I

1 interrupted you, I don't necessarily disagree with what  
2 you're saying as a basis for keeping it two years as  
3 opposed to moving it to one, but the feeling that I  
4 have always had is that that argument does not lie with  
5 the earlier quotation that you, Sandy, did use to  
6 "effect economic justice." If that, in effect, is the  
7 overriding principle that is to be drawn from this  
8 particular no-fault concept as we know it, then it's  
9 inconsistent, in my mind, to advance that argument as a  
10 basis for perpetuating two years, because otherwise we  
11 are not effectuating economic justice to that so-called  
12 dependent spouse, and I guess my feeling is, my  
13 experience has been that it's very, very small  
14 minorities that fit into that pigeon hole that you've  
15 described as being a justifiable basis for keeping it  
16 two years and needing that, and I've always felt that  
17 there's an overriding group out there that is affected  
18 adversely, and my feeling is the other spouse, the  
19 children, the other members of the family, the parents,  
20 the grandparents, and in my opinion it's better to  
21 allow the economic justice provisions to take care of  
22 that so-called dependent spouse that you would  
23 otherwise look to get the advantages that you are  
24 talking about.

25 MS. COGNETTI: May I ask a question?

1 REPRESENTATIVE REBER: Certainly.

2 MS. COGNETTI: And I think I know the  
3 answer, but who are we trying to or what are we trying  
4 to accomplish with the one year?

5 REPRESENTATIVE REBER: With the one year,  
6 in my mind, when a marriage is down the tubes, I think  
7 it's in the best interests of all the parties in that  
8 family, immediate family and otherwise, to know where  
9 they stand, to in essence move in another direction,  
10 which is what is ultimately going to be accomplished.  
11 I think the best thing to do is to do it as quickly as  
12 possible. My experience has been that where children  
13 are involved, they are used as pawns, and when there  
14 still is that marriage relationship existing, they are  
15 used even more so. And I feel that they are the  
16 injured and innocent parties, not necessarily the  
17 injured and innocent spouse consents.

18 MS. MEILTON: Can I ask a question on  
19 that?

20 REPRESENTATIVE REBER: Sure.

21 MS. MEILTON: You're assuming in the  
22 proposed legislation that at the end of one year a  
23 divorce decree is going to be entered.

24 REPRESENTATIVE REBER: Sure.

25 MS. MEILTON: And that is not necessarily



1 going to happen under our system.

2 REPRESENTATIVE REBER: I understand that.

3 MS. MELTON: Because unless, you know,  
4 if the person opposing the divorce can show that they  
5 will be economically harmed by having that divorce  
6 decree entered before the property issues are resolved,  
7 then there is going to be no resolution until we get to  
8 that.

9 REPRESENTATIVE REBER: But I think the  
10 prior testifant, if you will, addressed some of those  
11 concerns, and I think that is a concern of this  
12 committee is to expedite that except in extraordinary  
13 circumstances where the economics and the valuations  
14 are so complex that there may be the need for  
15 additional time. But I think when it all comes  
16 together, my feeling is its a balancing approach and I  
17 don't at all disagree with what you said and the way  
18 that you presented it before I interrupted you, but I  
19 think in my mind from my experience practicing since  
20 1972, sitting up here since 1980, listening in hearings  
21 to people on both sides of the issue since 1980,  
22 religiously attending those hearings, my view has not  
23 changed. I have given more credence to the other side  
24 as you postulate, but I still think on the balance I  
25 still come out way, way ahead. And that's just my own

1 personal opinion.

2 MS. COGNETTI: One of the -- to support  
3 your position, I think one of the biggest reasons that  
4 I had been behind a one-year change and would again if  
5 it counterbalanced--

6 REPRESENTATIVE REBER: You're doing the  
7 flip-flop--

8 MS. COGNETTI: I do. I flip-flop a lot,  
9 because the problem is in two years, and was with three  
10 years, in those cases where the wage earner spouse also  
11 has the majority of the marital property, then to make  
12 the dependent spouse wait two to three years is very  
13 inequitable. So now we only have them wait two years,  
14 but let's be serious, the two years doesn't mean  
15 anything. I'm not sure, and here's where I flip-flop  
16 again, one year may not mean anything because when the  
17 year comes and goes it goes and nothing is done.

18 REPRESENTATIVE REBER: But let me just  
19 interrupt you, too, and I don't have the statistics.  
20 We have them available but we'll have them updated for  
21 the debate of debates when we get to it. But we are in  
22 such a minority, if I am not mistaken--

23 MS. MELTON: In wanting -- you're a  
24 minority in what?

25 REPRESENTATIVE REBER: On the one year

1 aspect, and I guess, again, that's another argument  
2 that I have used in the past that if, in fact, there is  
3 this problem that's being postulated, the vast amount  
4 of the United States is in the wrong in the manner in  
5 which they have been operating and moving for a lot  
6 longer than we have.

7 MS. METLTON: Statistically, have you  
8 seen when you went from three years to two years, and I  
9 would be interested in knowing if there are any  
10 statistics, did that expedite the system, because like  
11 what we've been saying, we flip-flop. Sometimes I  
12 think one year would be good, sometimes I don't think  
13 it would be good, sometimes I don't think it makes a  
14 difference.

15 REPRESENTATIVE REBER: I haven't heard  
16 from anybody, including the Catholic Conference, and  
17 there's been problems with changing--

18 MS. METLTON: But do we know if going to  
19 two has expedited the system? Because if that's what  
20 the proposed legislation is to do, that's why I  
21 questioned it.

22 MS. COGNETTI: And that kind of leads me  
23 to my bottom line position on the two years to one  
24 year. We see the problem as being twofold, and I think  
25 you've heard a lot of this. Right now we need it to be

1 less expensive for the litigant and we need it to be  
2 quicker, and I'm not sure that one year, two years, or  
3 three years is really going to help either of those two  
4 areas.

5 REPRESENTATIVE REBER: Well then, if  
6 that's the case, then it might as well be one--

7 MS. MEILTON: Well, that may be accurate

8 REPRESENTATIVE REBER: And in my mind  
9 resolve what I have long felt as being the problem is  
10 the one of immediate family situation that comes from  
11 the continuation of is using the children as a pawn in  
12 mediation.

13 MS. MEILTON: The problem is though, if  
14 you go to one year in most cases even in cases -- your  
15 average case, or at least what I see. I don't deal  
16 with big money cases. I have to be realistic. These  
17 guys can sit here and tell you about their million  
18 dollars cases.

19 REPRESENTATIVE REBER: We'll hear about  
20 those tomorrow.

21 MS. MEILTON: Okay, that's right. I see  
22 the family that has a house and State pension, and  
23 those State pensions are valuable. And you tell your  
24 client that his pension is worth \$300,000 and he looks  
25 at you like you're crazy, but if we allow the divorce

1 to proceed before there is economic, before the  
2 property is distributed -- let's assume you petition  
3 for bifurcation after one year. I'm going to have to  
4 oppose that bifurcation if I represent the non-  
5 pensioned spouse or the spouse who doesn't have the  
6 health insurance because I can't control the various  
7 pension plans, and once you are no longer a spouse  
8 under too many plans, you've lost your rights. So at a  
9 minimum after one year, I'm going to have to tell my  
10 client we'll oppose the bifurcation, and then we're  
11 going to have to litigate this. And I think that it's  
12 going to increase litigation on the bifurcation issue.

13 REPRESENTATIVE REBER: Well, that's  
14 floating around out there. Individually, I would vote  
15 "no."

16 MS. MELTON: You would vote "no" on  
17 what?

18 REPRESENTATIVE REBER: To abolish. I  
19 would vote to abolish. But I guess it comes back to  
20 the core philosophy behind effectuating economic  
21 justice, and if all your problems are true problems, I  
22 say then we have to effectuate that justice in some  
23 other and move on and we go forth.

24 MS. MELTON: And I don't think you're  
25 going to hear a real like you see.

1                   REPRESENTATIVE REBER: And now before I  
2 turn it back to the Chairman I'll allow you to go back  
3 from my objection and conclude your testimony.

4                   MS. COGNETTI: Basically, we were close  
5 to being done. I think we discussed most of your  
6 proposed legislation that we wanted to. Obviously, as  
7 you probably heard from everybody that's testified, the  
8 answer is more judges, more hearing officers, more  
9 Masters, and more money. And we can't help you there,  
10 but that's what the problem is.

11                   REPRESENTATIVE REBER: And less  
12 irrational clients.

13                   MS. COGNETTI: Yeah.

14                   I do have to comment on something in Ms.  
15 Zilli's paper that says something about penalizing  
16 attorneys, a proposal that would penalize attorneys  
17 when their clients' documents aren't filed on time, and  
18 I for one probably would quit practicing law because I  
19 have a wonderful tickler system and I get my stuff out  
20 on time and I tell my clients when I want it back and  
21 if I don't get it back after I've sent them ten  
22 letters, I don't want to have to pay for it. There are  
23 recalcitrant attorneys, obviously. There are in any  
24 profession. But they are not primarily to blame for  
25 what a lot of the litigants are seeing as problems with

1 the system.

2 MS. MELTON: And let me comment also on  
3 Marilyn's testimony and the thing I think that bothered  
4 me about it is that divorce litigants aren't criminals  
5 They're unfortunate individuals who have a mess on  
6 their hands, maybe due to no circumstances of their  
7 own, but to tell them that they are now in a system  
8 that will divorce them and resolve these problems  
9 within a set timeframe is really going to create more  
10 emotional upset than they're capable of dealing with at  
11 that point in time, and believe it or not, given time  
12 to cool off, many of these people do reconcile. There  
13 are a number of people who come into my office who want  
14 a divorce and when they -- I always ask them, I always  
15 ask them, are you sure? Think about it. And there is,  
16 there's a reason for that 90-day cooling off period.  
17 There may be a reason for the one or two years,  
18 although in deference to you, I don't think I really  
19 care if it's one or two years, but these people have,  
20 they really need the time. You cannot put them in a  
21 system like the criminal system. At least I don't  
22 think so. But I've never practiced criminal law, so I  
23 can't speak on how that system works.

24 CHAIRMAN CALTAGIRONE: Mary.

25 MS. WOOLLEY: I have questions covering a

1 couple of areas. One of the issues that you raise and  
2 Bob said, well, let's, we need to address the  
3 inequities of the act and let's do it. The testimony  
4 that we've heard throughout all of the hearings is that  
5 a woman is better off getting a support order than  
6 alimony. And do we need to re-examine the factors in  
7 the alimony chapter of the Code?

8 MS. COGNETTI: It's not the factors,  
9 Mary. When I said that we appreciate so much those  
10 support guidelines, that's because, and this is  
11 something that I've joked with Sandy about, someone  
12 comes in and wants to talk to you about support, you  
13 can say, okay, well, here's what it will be. Other  
14 than for the wage earner who's self-employed, it's a  
15 little more difficult, but in the majority of cases  
16 where you've got two salaried people or one salaried  
17 person you can tell them what it will be. You get  
18 someone in front of you who says, okay, how much  
19 alimony will I get and for how long? I'm kind of an  
20 honest attorney. I say, I don't know. Well, what do  
21 you mean you don't know? Well, there are guidelines.  
22 Well, they are wonderful guidelines and we haven't  
23 discussed this for today, so I'll have to say this is  
24 my feelings. I wish you could give me some kind of  
25 help that would help me or help the judges or the



1 Masters in determining alimony.

2                   Now we've heard a rumor that in  
3 Philadelphia the Masters have some guidelines. Now  
4 I've tried to press our local Masters to get those  
5 guidelines. I don't care if they are high or low, at  
6 least they would be guidelines. But we can't, I mean,  
7 that's one of the reasons my cases that don't settle  
8 don't settle, because the other side is offering 20  
9 years and you're looking at maybe 5 or it's the other  
10 way around. In one county a 25-year marriage might get  
11 you a decent alimony award of say 10 years, and yet in  
12 Cumberland, in the last 6 months or so, I had a case  
13 where the people were married 20-some years and one of  
14 the judges, in a kind of pre-trial of sorts, said that  
15 I should be happy that opposing counsel was offering me  
16 2 or 3 years of alimony. Now, you know, I'm compelled  
17 to want to get that case over to Dauphin County or do  
18 something with it, but, you know, it's not just that  
19 the one county is kind of miserly, it's just that  
20 there's really no conformity in the alimony. There are  
21 no guidelines that will let Sandy and I sit down as  
22 opposing counsel and say, it's a 10-year marriage, they  
23 make X dollars, you know, we ought to be working in a  
24 range of 3 to 5 years of alimony. So we don't really  
25 have help there.

1 MS. MELTON: I think that the new  
2 alimony from '88, the change in the alimony statute or  
3 provision has helped. It has helped give the dependent  
4 spouse more opportunity to obtain alimony. The problem  
5 is, as Maria says now, is the uncertainty of what  
6 you're going to get from county to county. The  
7 difficulty, though, in guidelines, though, is that you  
8 always have the property sitting out here that may  
9 generate income and therefore throw your guidelines  
10 off, but at least if you can tell people with a  
11 reasonable degree of certainty what's going to happen.  
12 Since we've had the support guidelines, most cases you  
13 don't even need a hearing on. I mean, you sit down  
14 with the other attorney and the four of you sit in a  
15 room and you say, well, look, here's your income,  
16 here's her income, and here's what it's going to be.  
17 We don't need to take it to court. Whether we can do  
18 that for alimony or not, I don't know, but I think  
19 there's been a big improvement in the amounts and the  
20 time limits on awards since the changes.

21 MS. COGNETTI: Sandy's right on the new  
22 support guidelines, there's absolutely no reason not to  
23 settle a case now. If you know what the incomes are,  
24 there's no justification for not settling it.

25 REPRESENTATIVE REBER: That was the one

1 good thing about pre-1980.

2 MS. MEILTON: That's right.

3 REPRESENTATIVE REBER: I always liked  
4 that. Alimony, what's that in this State? We don't  
5 talk about that. Which I always held was what we  
6 should have done post-1980, too. I was in a real  
7 minority there.

8 MS. WOOLLEY: Two other issues. Were you  
9 here for the York County Master's testimony?

10 MS. MEILTON: We missed her.

11 MS. WOOLLEY: She, we questioned her -- I  
12 guess she was responding to the prior testimony about  
13 complaints that we have heard about length of time for  
14 Masters to submit their reports. They're adopting a  
15 local rule and they are negotiating the timetable right  
16 now in the local rule. The Bar wants 30 days, she is  
17 responding with 60. What are your thoughts? We hear  
18 it from, statewide we hear that complaint.

19 REPRESENTATIVE REBER: Forty-five.

20 MS. COGNETTI: It doesn't really matter.  
21 I was kind of whispering with Sandy back there as I was  
22 hearing the various testimony. The 60-day rule that  
23 most counties have doesn't help much in those cases  
24 that are taking a while for the Master to decide. But  
25 again, I have to believe, and there are some of my

1 cases that are sitting for a while, and I gave you the  
2 example of the complicated case heard by one of the  
3 general Cumberland County Masters, and I knew it was  
4 going to take him a long time, and I think if you put a  
5 time limit on it, I think the rules generally give the  
6 Master the ability to file for an extension, so I'm not  
7 sure it will help. I think there has to be, maybe,  
8 somebody calling them to task on it, although I know  
9 our Masters if they are not getting their reports out  
10 on time is simply because they're overburdened, and  
11 what can you do about that?

12 MS. MFILTON: We have in Dauphin -- I  
13 think that in Dauphin and Cumberland County we're  
14 lucky. I don't think I would want to practice law in  
15 Philadelphia or Allegheny County. I wouldn't want to  
16 practice my workers' comp. law there either because of  
17 the same problems and here at least Judge Morrison  
18 said, you heard him say if our Masters aren't getting  
19 their reports out, we'll get on them about it and they  
20 do. I've waited as long as a year and a half for a  
21 decision. I've had a decision in two weeks. And it  
22 all really stems to the complexity of the case and the  
23 cooperation in providing information. And we don't sit  
24 here and say that there aren't lawyers who are at fault  
25 and there aren't judges who are at fault. You are

1 going to find that in any system, but basically I think  
2 that they turn them around pretty fast.

3 MS. COGNETTI: Mary, you can become a  
4 little overburdened sometimes with some of these local  
5 county rules. I practice a lot in York County and the  
6 two outgoing Family Court judges, Judge Uhler and Judge  
7 Dorney, I have an awful lot of respect for, I love them  
8 both, but they have some local rules down there that,  
9 you know, not only do they make it very difficult for  
10 me to practice down there but it makes it costly for my  
11 clients. Now, maybe they were put into effect to help  
12 the system, but you get to a point with some of these  
13 local rules where they catch you and they catch you,  
14 they send you back, they send you back again. You  
15 know, you have to go down on Tuesday morning at 8:00  
16 with any motion, even if it is a motion for a hearing.  
17 Instead of putting it in the mail you have to present  
18 it orally, you have to give 72 hours' notice. If you  
19 gave 71 1/2 hours' notice, you have to go back to and  
20 start again and, you know, you can become overburdened  
21 by too many rules.

22 MS. WOOLLEY: Now I would just like to  
23 move on to your expertise in terms of being Dauphin  
24 County's custody conciliators in two areas. The first  
25 is do you see manipulation of the Protection From Abuse

1 Act? We've had that allegation, specifically with  
2 regard to custody, that fathers are victimized because  
3 their wives file PFAs and use it as leverage in their  
4 custody fights.

5 MS. MEILTON: I'll speak from my  
6 perspective. I don't see it in custody conciliation as  
7 something that has been abused. In fact, I see many  
8 cases where I sit and wonder why there hasn't been a  
9 PFA filed or requested. One of the members of my law  
10 firm, Jim Morgan, who works with the district justices,  
11 said to me when he heard I was coming up here today,  
12 his comment was tell them to get the stuff away from  
13 the district justices because they are getting  
14 overburdened with it. That came as a surprise to me,  
15 and I hate to show my ignorance, but as a family  
16 practitioner I don't do PFAs because I've got Jim in my  
17 firm and if I need a PFA, I let him handle it. But I  
18 didn't know you could go to a DJ. I thought you had to  
19 go to the judge, and Jim's comment was we ought to get  
20 these back into court where they ought to be because  
21 the DJs don't want to hear them, they don't want this  
22 burden and responsibility because they don't have the  
23 opportunity to hear the whole thing.

24 I agree with Judge Morrison, at least in  
25 Dauphin County it is only a 10-day situation, but hey,

1 if you're unjustly out of your house for 10 days, I  
2 don't know. But that's my only comment. I don't see  
3 it as a custody conciliator. I think it should be, in  
4 the cases I see in custody conciliation, it should be  
5 used more.

6 MS. COGNETTI: Mary, if I may turn your  
7 question around a little bit and not really direct it  
8 specifically to PFAs but is the whole idea of physical  
9 abuse or sexual abuse used wrongly by some of the  
10 litigants? I have a bit different feeling on that than  
11 Sandy and I've, maybe because I've been in this  
12 conciliator program for so long, and Sandy's aware of  
13 one of my cases because it made the newspaper, but what  
14 I see a lot of abuse of, and I guess sometimes I don't  
15 blame them. We all read so much about child abuse by  
16 babysitters, by day care, by boyfriends, that it  
17 becomes first and foremost in our mind, but what I do  
18 see is a custodial parent coming in and wanting to deny  
19 what appears to me to be a reasonable request based  
20 upon abuse that if these people were together, probably  
21 wouldn't in any case be considered abuse. It's not  
22 even anything of a physical nature.

23 I guess the best thing for me to do is  
24 give you the example of what hit the newspaper, and  
25 that was a woman who said her husband could have

1 alternate weekends. That was okay. And he wanted  
2 Wednesday evenings also, and in our county that's  
3 pretty standard. That's normal. No Wednesday  
4 evenings. Well, you know, I mean, okay, but can you  
5 tell me why not? That's usually how I run it. Well,  
6 because he beats the children. Well, Ma'am if he beats  
7 the children on Wednesday nights, don't you think he'll  
8 beat the children on alternate weekends? And she wrote  
9 me up in the newspaper and, you know, I kind of came  
10 down hard on her because obviously to you people that  
11 doesn't make too much sense. If you tell me he beats  
12 the children, my ears will perk up, but don't tell me  
13 he beats the children on one day and not on the other  
14 day. And I have seen enough of it and like I said,  
15 maybe because I've been in the program since the  
16 inception and it's been many, many years since we  
17 started this, but I do see it used. The percentage may  
18 not be high. It may be less than 5 percent. I do see  
19 it happening, but most of the time you can weed through  
20 that.

21 I know in our county and in Cumberland  
22 and in Perry we do a lot with psychological  
23 evaluations. Almost no case anymore will go before a  
24 judge without it. Now, unfortunately, as in any field  
25 where an expert begins to realize his worth,



1 psychological evaluations have become prohibitive. We  
2 have maybe three really, really good people that are  
3 used often. I would say the average cost is about  
4 \$2,000 per study, and that's one that doesn't involve a  
5 lot of significant others. Now, you tell the clients  
6 they have to pay a couple thousands dollars for their  
7 attorneys, another couple thousands dollars for the  
8 psychologist, and God forbid you have to have two  
9 psychologists, which we don't see much of anymore. We  
10 can usually get people to agree to one, but you're  
11 talking about a custody litigation that gets somewhat  
12 prohibitive, but I do see it abused a little bit.

13 MS. WOOLLEY: That takes me to my next  
14 point, which is we've had complaints about the  
15 independent evaluations and the time that it takes for  
16 these experts to submit their independent evaluations,  
17 which adds to the protracted nature of custody battles.

18 MS. COGNETTI: I don't hear anything  
19 about that, and one of the good things about a  
20 conciliation system is that while you are waiting for  
21 your court date, which would have happened in any case,  
22 you're getting your psychological evaluation done. A  
23 normal case that would have gone to court before the  
24 conciliation programs would have been scheduled for  
25 court, you get to court, you start the hearing, you

1 realize you should have psychologicals, you continue  
2 the matter, then you get them. So now we're getting it  
3 rolling ahead of time and I know with all the people  
4 that we use in the counties that I mentioned, I haven't  
5 heard of from the litigants nor have I heard of from  
6 any other means that it's taking an inordinate period  
7 of time. Now there are a lot of times when we will  
8 call one of these people up and say, this one's a rush.  
9 The abuse ones. We'll let them know. This is a  
10 possible abuse case, put it on the front burner. And I  
11 find they do it for us.

12 MS. MEILTON: And a lot of the problem  
13 with the delay, and I haven't really heard anyone  
14 complain about the delay with regard to the  
15 psychologicals, but I would bet that if there is a  
16 problem, a lot of it has to do with the scheduling of  
17 the parties. Getting them in there, because you're  
18 going to have to see, normally what they do is they see  
19 mother, father, mother with the children, father with  
20 the children, significant others, baby sitters, they go  
21 out and do their home studies. Until you schedule  
22 those people, there's going to be some delay, but I've  
23 never had a situation where one was ready to go into  
24 court from -- you have your conciliation, you get your  
25 court date set, they get those, at least they do here

1 in Dauphin County, we get those valuations done.

2 MS. COGNETTI: Mary, I retract what I  
3 said. I have heard a complaint about it and that's  
4 from the psychologists themselves who say I can't get  
5 Mr. X in to schedule an appointment. Because most, a  
6 lot of times, one of the parties doesn't really want to  
7 start taking too many tests or doesn't want to go see  
8 someone who thinks they might figure them out or spend  
9 the money. But that may be where some of the problem  
10 lies, I think a lot, is when you can't get one of the  
11 litigants to schedule.

12 MS. WOOLLEY: Thank you.

13 CHAIRMAN CALTAGIRONE: Thank you.

14 MS. MEILTON: Thank you for the  
15 opportunity.

16 CHAIRMAN CALTAGIRONE: We'll take a  
17 10-minute break.

18 (Whereupon, the proceedings were recessed  
19 at 1:20 p.m., and were resumed at 1:40 p.m.)

20 CHAIRMAN CALTAGIRONE: We'll get started.  
21 David Houseal, Case Management  
22 Supervisor, Lutheran Social Services.

23 MR. HOUSEAL: I have prepared some formal  
24 remarks and I would like to follow along with those if  
25 that's possible.

1 CHAIRMAN CALTAGIRONE: Certainly.

2 MR. HOUSEAL: And then at the conclusion  
3 if you have questions or redirects or anything we can  
4 deal with.

5 I would like to begin by introducing  
6 myself. I have been doing a wide range of counseling  
7 for my entire professional life. In addition to  
8 working in the area of domestic violence, I had  
9 previously done a great deal of marriage and couples'  
10 counseling, as well as individual therapy. I have  
11 worked in a variety of institutional settings including  
12 a psychiatric hospital, a general hospital, and a  
13 prison. I would add parenthetically that those have  
14 been in the major metropolitan areas in Chicago and  
15 Houston. I have been with Lutheran Social Services -  
16 South Region for approximately 12 years. In the last 8  
17 of those years I have been increasingly working with  
18 perpetrators, especially in the area of domestic  
19 violence.

20 As Director of the ADVANCE Program of  
21 Lutheran Social Services - South Region in York, I have  
22 met already over 250 men, many of whom have been  
23 referred to us by the court or county or State  
24 probation, because of domestic violence with an  
25 intimate. Some of them are in married situations and

1 some are not. Some continue to reside with the victim,  
2 whereas others have been excluded from the home. They  
3 come from a cross-section of ages, economic,  
4 educational, and vocational lifestyles

5           Currently, we have several groups in  
6 operation. Men, following an assessment process, are  
7 admitted for 26 weeks that provide an opportunity to  
8 examine abusive behavior and establish a non-violent  
9 lifestyle. Admittedly, this is an extensive process  
10 that will require far more than six months of group  
11 treatment. In reality, we call men to work on this  
12 issue for the rest of their lives. Some we believe are  
13 doing remarkably well in that direction. Others are  
14 not.

15           Because of our linkage with the court, it  
16 seems appropriate for me to render these remarks. In  
17 fact, I note that among those testifying before this  
18 august body, it appears that I am the only one  
19 representing a batterer's program. I trust that you  
20 will be assured that I represent not only my own  
21 convictions along with the rest of our staff but also  
22 many men who would support the claims that I will make.  
23 They have significantly come to grips with the impact  
24 of their abusive behavior, have desired to make  
25 changes, and would solicit your continued commitment to

1 ending domestic violence and holding men accountable  
2 where they have committed such acts against their  
3 partners.

4 We have had a significant number of men  
5 who have shared with us that this has been one of the  
6 most important developments in their lives that they  
7 have been required by society, the courts, and others  
8 to examine themselves and make necessary changes. One  
9 man even chose to write a letter of thank you to the  
10 police officer who arrested him on simple assault  
11 charges. He said, "He undoubtedly prevented me from  
12 greater and more extensive battering."

13 At this point, I pause to ask why we are  
14 here. Apparently, the establishment of statutes such  
15 as the Protection From Abuse order have become a  
16 debatable matter. This instrument has been referred to  
17 by some as a paper lion. But it has played a  
18 significant role for men who have come into our  
19 program, since many have done so in conjunction with  
20 conditions established at the time of the issuance of  
21 the PFA. Initially, some have felt inconvenienced  
22 Some have even claimed they are the victims.

23 At this point in his life, the abuser is  
24 hesitant, if not outright unwilling, to engage in  
25 serious self-examination. The idea of criticizing his

1 own behavior is beyond the scope of self-interest, so  
2 he projects responsibility for his violence onto  
3 others. If any of us get caught up in this process  
4 with him, we do a substantial disservice to him. Our  
5 collusion also increases the danger to the victim. By  
6 being distracted from his behavior and its obvious  
7 terror and destruction to the victim, he is exonerated  
8 from acknowledging that he does have choices in how he  
9 responds to her and that some choices are more  
10 constructive than he has demonstrated.

11 At this point we have a crucial mission;  
12 to confront the power and control demonstrated by  
13 batterers and by saying out loud all we know about its  
14 evil. It's here that abusive men are so often  
15 surprised by our response in the ADVANCE Program.  
16 Living in this world which undervalues equality between  
17 people and condones pervasive violence and sexism,  
18 abusive men do not expect their behavior toward women  
19 to be taken seriously. Recently, during an assessment  
20 one man responded to our probing questions about his  
21 slapping, kicking, and wide-range threatening behavior;  
22 "What's wrong with that; doesn't everyone do it?"

23 This past year we have been horrified  
24 with continued homicides of women and children in York  
25 County. One of the most violent was a killing of his

1 wife, two children, mother-in-law, and a nephew by Mr.  
2 Gamboa-Taylor by literally clubbing them all to death  
3 with a hammer. In group as we spoke of this brutal act  
4 and how women throughout the area were expressing great  
5 fear right now, the men distanced themselves by  
6 uniformly becoming quite self-righteous. They were not  
7 that bad after all. In comparison to that "maniac "  
8 what they did was insignificant. It is this denial and  
9 minimization that conspire continually to free men so  
10 that they seldom seek treatment for their abusive  
11 behavior.

12           Women continue to live with their lives  
13 defined by threat. Men simply do not. In this nation,  
14 four out of every five men are not likely to be  
15 sexually harassed on the job. Two out of every three  
16 men living in urban areas of our country are not likely  
17 to be raped during their lives, and one out of every  
18 two of us are not likely to be brutalized and  
19 terrorized in our homes by our partner. Such violence  
20 just doesn't compute for men. Yet it is a reality for  
21 women and especially for victims of domestic violence.

22           Since the nature of the PFA is to provide  
23 safety for victims, we undoubtedly have to face the  
24 reality that we can't lift or guard the rights of any  
25 disadvantaged people without shaking the foundation of



1 the advantaged. I recall an experience I had with my  
2 black friend in college. As a white male who had  
3 graduated from an all-white high school, essentially on  
4 the west shore of this river, I had little familiarity  
5 with black culture or the experience of the  
6 African-American citizen. The only place I knew blacks  
7 was on the football field when I played against them.  
8 Thus, it was quite natural for me, since I was a  
9 sociology-psychology major attending college in the  
10 Chicago area during the late 50's and early 60's, to  
11 work hard at belaboring the issue of racial relations.  
12 Finally, my friend became exasperated with me and  
13 reminded me that most of my extreme friendliness toward  
14 him was undoubtedly working out my own uncomfortable  
15 status as a white male. He said to me one day, "I  
16 don't need your arm around me or any examples of how  
17 hard you are trying to prove that you are not  
18 prejudiced. What would be appropriate, David, would be  
19 for you to somehow communicate to me that you will be  
20 okay as we take power away from you." That testimony  
21 and challenge has stood strong in my memory and applies  
22 to the issue we are examining today.

23 Is it okay for advantaged people, namely  
24 men who have been abusive, to have power taken away or  
25 diminished? Some will make a strong outcry saying it

1 is unfair. Some will strongly claim that they are the  
2 real victims. Some will describe extensive evidence of  
3 her misuse of power granted to her. I would be the  
4 first to acknowledge that for many men it feels like a  
5 significant loss of power, because in reality it is.  
6 It is the restraint and reasonable limit imposed upon  
7 those who have enjoyed almost unrestrained control over  
8 another individual to the point of terror, the  
9 infliction of physical pain, economic control, and many  
10 other abusive effects.

11 I feel certain that this is not the first  
12 time in the history of this great nation that  
13 advantaged people have struggled with the rising claim  
14 to power and influence that the disadvantaged have  
15 acquired. Even before the Revolution, our English  
16 overseers felt shaken by the upstart colonists who were  
17 misusing their freedoms. When we survey their  
18 literature, we can find many examples of people  
19 claiming repeatedly that these individuals who have  
20 moved to the New World must be put back in their place  
21 and reminded of where the real power is. Again, there  
22 were those who struggled midway through the life of our  
23 nation with grave concern about a slave population who,  
24 once granted liberty and self-determination, would  
25 prove unfit or irresponsible in the use of such awesome

1 privileges. It is the claim of people who are seeking  
2 equality to underscore that this is a nation wherein  
3 people have a claim to parity of power, especially  
4 where those who have been abusive have contributed to  
5 the physical, emotional, and spiritual degradation of  
6 the subject.

7           Significant steps have been made over the  
8 last 20 to 30 years, especially in the development of  
9 resources and options for women and all victims. If  
10 women's lives have undergone a revolution, many men  
11 have demonstrated what one writer calls "a stalled  
12 revolution." And I would suggest that some would like  
13 to stall everybody else's revolution. We can't afford  
14 to demonstrate indifference. You, especially, dare not  
15 allow the growth of a socialized deafness; that  
16 selective attention that listens only to what adds to  
17 our sense of comfort. I implore you to be articulate  
18 listeners to the voice of victims of domestic violence  
19 and their advocates and trust their message.

20           Right now I would propose that there are  
21 men who are nearly desperate for you to assist them in  
22 reaffirming their rights to keeping women in their  
23 place. It is what we refer to as "the call to  
24 collusion."

25           Your role and response is critical. Your

1 determination in giving the courts and other  
2 interventions power to intervene will determine whether  
3 abusers attend treatment programs, how long they will  
4 stay in those programs, and whether the victim's safety  
5 is ensured while batterers attend those programs.  
6 Abusers generally lack the internal motivation to seek  
7 counseling or to change their behavior. It is  
8 estimated that less than 1 percent of men who batter  
9 are referred to specialized treatment programs for  
10 abusers. And I want to be clear that even the best  
11 programs do not do the work that shelters provide, that  
12 the courts and the police together represent, and that  
13 legislation designed to increase equality for victims  
14 will allow. Men who do make significant changes are  
15 those who accept the legal sanctions and persevere in  
16 their treatment. These men respect your decisive  
17 action, along with the decisions their partners are  
18 making about the amount and nature of contact she wants  
19 with him. They are learning the importance of their  
20 behavior being moral and non-controlling of others.  
21 How can we even question the appropriateness of  
22 protection orders and other instruments that are  
23 offered to women for safety and parity with the  
24 batterer?

25 The benefit of protection orders depends

1 on these instruments being as specific as possible and  
2 being enforced as consistently as courts and police  
3 together can accomplish. Our legal statutes may be  
4 imperfect, but it is the overall social context that  
5 establishes their integrity. It's when all our  
6 community resources are united together in one  
7 concerted effort to end domestic violence that we have  
8 done our best work. I ask you to personally search out  
9 how appalled you are with violence and how completely  
10 do you reject it as an option in intimate  
11 relationships. Does it seriously trouble you, as it  
12 does me, to see the names of innumerable men coming  
13 before the courts on assault charges listed in our  
14 newspapers? Do you truly hold batterers accountable  
15 and support services that empower victims? It is the  
16 public outcry against their abuse coupled with their  
17 growing shame that men have reported motivates them to  
18 discontinue the abuse.

19 I would like to explore with you the  
20 question of divergent stories of the alleged abuse  
21 Frequently, we have heard the claim that victims  
22 fabricate or exaggerate the details. Initially we have  
23 experienced this contrast particularly around the  
24 petition and when the defendant explains what  
25 "actually" happened. Let me tell you of one in

1 particular that I will call Jim.

2           One of the plaintiff's claims was that he  
3 had isolated her by refusing to let her use the car and  
4 spelled out in detail how he had done this. We were  
5 not privileged to see that petition initially, so all  
6 we had to rely upon was Jim's story in assessment. He  
7 sketched out in some very vague terms a troubled  
8 relationship that seemed to be falling apart and how he  
9 was trying desperately to keep it together. He  
10 acknowledged that he had done some inappropriate things  
11 and may have actually pushed her. He wasn't sure, and  
12 so the story went. As he told this one incident, he  
13 admitted that he had done something to the car but he  
14 couldn't remember exactly what it was, and it wasn't  
15 that important after all. It really didn't  
16 inconvenience her. Continually he minimized and  
17 avoided disclosing actions that he had taken that were  
18 abusive to her.

19           After he was in the program for a while,  
20 this same incident became much more graphic to him and  
21 he felt more comfortable identifying facts that he had  
22 initially avoided. Now he reported how he had not only  
23 taken her keys and removed the distributor cap but had  
24 also mounted the car on cinder blocks, removed all four  
25 tires and taken them to another location. It truly was

1 a very involved process, with many steps, designed to  
2 control her movement.

3           The significance of this is at the very  
4 outset, none of these realities were acknowledged by  
5 him. In fact, he stood firm in outright defiance of  
6 claims that she was making. It was remarkable that  
7 through this process his story became far more  
8 compatible with hers so that there were few, if any,  
9 actual discrepancies between them.

10           Again and again, we have had this kind of  
11 experience. Even men who attempt to disclose from the  
12 beginning, who are clear and honest about their abuse,  
13 experience more graphic details coming back to them as  
14 they continue exploring their actions.

15           I remember another man that we will call  
16 Tom. He had done exceptionally well through the  
17 program and become a very clear and articulate  
18 spokesman as a man who had been abusive and who wanted  
19 to be accountable. In a recent radio talk show he  
20 disclosed still another incident of abuse to his  
21 ex-wife. He had physically assaulted her on their  
22 honeymoon 12 years ago. We had felt as facilitators of  
23 the group that Tom had almost literally disclosed  
24 everything over the six or more months working with us.  
25 But here he was beginning to remember still more things

1 that he had done to her, realizing the impact this had  
2 on her and the relationship

3 The discrepancy in reporting is related  
4 primarily to minimization and denial. It is a fact  
5 that I have seen demonstrated over and over, that men  
6 underreport. He sees absolutely no advantage to  
7 reporting in detail his behavior. In addition, my  
8 professional experience confirms that the majority of  
9 our clinical settings -- I'll remind you that I had  
10 those in the hospital, psychiatric hospital and in  
11 prison -- these clinical settings are not designed to  
12 solicit his disclosure either. Battering of women is  
13 just not taken seriously, as he experiences it.  
14 Repeatedly men have responded in surprise: "I got in  
15 trouble for this, after all the other things that I did  
16 to her; what's the big deal?" I would summarize that  
17 more than 95 percent of the men who come to us  
18 eventually do acknowledge their abusive behavior. Her  
19 claims of abuse are accurate, and his reporting usually  
20 confirms it.

21 In all of this I am describing a new  
22 environment that promotes disclosure by men of  
23 inappropriate, abusive, and battering behavior.  
24 Continually, men tell us that this is a unique  
25 experience for them and that a program such as this



1 stands out in offering them a much more honest  
2 perspective on themselves. It calls for them to stop  
3 obsessing about her behavior and how that makes him  
4 feel and demands that he look at his behavior and how  
5 that must make her feel.

6           The above-mentioned experience of Tom  
7 being on the radio along with four other men from our  
8 program resulted in each one of them feeling the  
9 resistance that exists in our culture to men who insist  
10 on assuming responsibility for their behavior. For  
11 three hours these five men told their story and  
12 received phone call after phone call from individuals,  
13 both male and female, who were willing to excuse their  
14 behavior, to let them off the hook by telling them that  
15 they must have been justified or that it was somehow  
16 inappropriate for them to take responsibility for the  
17 battering behavior.

18           Here we sit struggling with a system that  
19 we know calls men to this kind of accountability, that  
20 promotes women and that protects women and that looks  
21 at the issue of a just and equitable alternative for a  
22 victim of domestic violence and we even question the  
23 legitimacy of maintaining and expanding such statutes.  
24 Your task is a solemn task. I pray that you consider  
25 not only the welfare of victims whose lives physically,

1 emotionally and spiritually may be hanging in the  
2 balance over the support you give to existing statutes  
3 and their implementation but that you also call forth  
4 from men and all persons who are violent in intimate  
5 relationships a standard that will require an end to  
6 such violence and terrorism with consequences, criminal  
7 or otherwise, that are appropriate to their behavior.

8 Thank you.

9 CHAIRMAN CALTAGIRONE: Questions?

10 Ken.

11 BY MR. SUTER: (Of Mr. Houseal)

12 Q. How does a batterer go about getting into  
13 your program for treatment?

14 A. Through a three stage, at least three  
15 interview process usually precipitated by a Protection  
16 From Abuse order, referral from probation, sometimes  
17 from Children and Youth Services, private  
18 practitioners, or a drug and alcohol program. In those  
19 situations it often has the effect of a constraint or a  
20 requirement that he do this in conjunction with some  
21 other consequence and that he comes for an evaluation  
22 to see whether he's appropriate for treatment. The  
23 decision ultimately to admit him or not is the  
24 program's decision to administer. If he completes that  
25 assessment and accompanies with it the various releases

1 and waivers, protections that are written into that  
2 process, he then is admitted, he is given, sent a  
3 letter of admittance, he goes through an orientation,  
4 then subsequently participates for the 26 weeks in  
5 group process.

6 Q. The reason I ask is I wanted to make sure  
7 that you were seeing a cross-section of batterers, that  
8 you weren't just seeing the people that knew they have  
9 some type of problem with abusing other individuals.  
10 But from what you're saying, it sounds like you're  
11 seeing a cross-section of abusers and your statistics  
12 then would probably hold true for the population as a  
13 whole.

14 A. That's correct. As far as the only thing  
15 that they have in common is that there is abusive  
16 behavior, even though it takes its own individual form  
17 with each man. The behavior is evaluated by 30-some  
18 items and the frequency with which they have committed  
19 those various forms of abuse. And it's also evaluated  
20 not only in relationship to one possible partner they  
21 had but if they had other partners as well, whether  
22 there was other victims, whether children or other  
23 individuals outside of the relationship have also been  
24 assaulted in any way.

25 Q. Thank you.

1 BY CHAIRMAN CALTAGIRONE: (Of Mr. Houseal)

2 Q. Who pays for your services and how much  
3 do they cost?

4 A. The client ultimately pays that. There  
5 is a sliding scale. There is a flat fee for  
6 assessment, a flat, one-time fee that he pay that can  
7 be waived--

8 Q. Is it covered by insurance?

9 A. In some instances it is covered by  
10 insurance.

11 Q. Is he mandated or referred to your group  
12 by the courts. Court referred?

13 A. Yes.

14 Q. And how much does this cost per  
15 individual?

16 A. The range, our estimate is \$45 per person  
17 per session. However, nobody pays that rate, so it's a  
18 sliding scale. We have some men who are paying a  
19 dollar a week.

20 Q. Any State subsidy?

21 A. No State subsidy.

22 Q. Any governmental subsidy at all?

23 A. No, sir. It's subsidized. There are  
24 some United Way funds and some funds that come from the  
25 synod resources of the Lutheran Church.

1 Q. And how long have you been in existence?

2 A. Eight years, approximately.

3 Q. And how many staff work there?

4 A. There are four persons who work as  
5 facilitators.

6 Q. Any trained psychologists or  
7 psychiatrists?

8 A. No trained psychologists or  
9 psychiatrists, no.

10 Q. I was just curious about that.

11 BY MS. WOOLLEY: (Of Mr. Houseal)

12 Q. Sir, have you ever appeared in court in a  
13 protection from abuse hearing?

14 A. Yes, I have.

15 Q. In what capacity?

16 A. Primarily on indirect criminal contempt.  
17 The men do not follow through with the order to appear  
18 they are given. We've been working in York County for  
19 standard procedure, and reference was made by the  
20 previous individuals about Judge Dorney and Judge  
21 Uhler, the same judges that refer to us. We have been  
22 endeavoring to try and get a standard referral of 10  
23 days, so that we can anticipate that this man comes, so  
24 that everybody comes basically with the same allotted  
25 time to see us. If he comes and we get a protection

1 order and he shows up in that period of time or he  
2 calls us, at least makes an appointment in that period  
3 of time, then we proceed with the assessment. If he  
4 continues, completes the assessment and we give him  
5 admittance to the program, then he stays in the program  
6 until completion. If at any point he discontinues,  
7 drops out, whatever, then a letter of information is  
8 forwarded to the court, a rule to show cause is issued  
9 why he should not be held in contempt of court, and  
10 then I subsequently appear at that to give any kind of  
11 clarification.

12 Q. The reason I ask is because in some  
13 hearings that we've conducted previous to this one we  
14 have heard testimony from men who have been involved in  
15 divorce litigation who claim that their former spouses  
16 have obtained, inappropriately obtained, Protection  
17 From Abuse orders against them alleging spousal and  
18 child abuse to gain leverage in divorce litigation, and  
19 I was wondering about your personal experiences in York  
20 County with regard to that phenomenon and if it exists.

21 A. Well, as I stated in my written remarks,  
22 when a man goes through the assessment process, he may  
23 disclose absolutely no abuse, so we end up with 5  
24 percent of the men who may not be admitted because they  
25 disclose no abuse during the assessment. If he

1 discloses some level of abuse, we then admit him. At  
2 that point, we experience that that disclosure is more  
3 than likely becoming clear and more elements of the  
4 abuse is testified and disclosed to us subsequently.  
5 My own judgment is that I have not seen that. I have  
6 not seen men consistently say that their abuse is  
7 nonexistent or negligible and that her claims are  
8 invalid. Now, I'm seeing last year we had over 400  
9 PFAs in York County prepared or granted. Of those we  
10 may have had 40 or so referred to our program. The  
11 other ones I can't speak to, only those. And usually  
12 the route is that somehow in the process of her  
13 petition there has been some kind of request for the  
14 referral to be made to the ADVANCE program. If that's  
15 not requested by the plaintiff, then the judge is not  
16 likely to grant that.

17 Q. Thank you.

18 CHAIRMAN CALTAGIRONE: Thank you very  
19 much for your testimony.

20 Is Ronald Katzman here yet?

21 (No response.)

22 CHAIRMAN CALTAGIRONE: no?

23 Is Grella?

24 MS. AUL: Grella's here.

25 CHAIRMAN CALTAGIRONE: Grella.

1 MS. AUL: To the members of the House of  
2 Representatives and guests, my name is Gretta Aul, and  
3 I am a partner in the law firm of Appel & Yost of  
4 Lancaster, Pennsylvania. I have been a practicing  
5 attorney for 14 years. I was counsel to the  
6 Pennsylvania Commission for Women from 1977 until 1980,  
7 during which time I worked closely with members of the  
8 legislature and with the Pennsylvania Bar Association  
9 in drafting the original 1980 Divorce Code. In 1980, I  
10 went into private practice in Lancaster, where I have  
11 been ever since.

12 The vast majority of the work I do is in  
13 the family law area including divorce, custody,  
14 support, Protection From Abuse, and adoption. I am  
15 guessing that my clients are approximately 55 percent  
16 women and 45 percent men. I am currently the Co-Chair  
17 of the Lancaster Bar Association Family Law Section. I  
18 am also one of 18 special divorce Masters in Lancaster  
19 County, which means that I am involved in making  
20 decisions about equitable distribution, alimony, and  
21 counsel fees in addition to doing the procedural work  
22 for divorces.

23 I thank you very much for your invitation  
24 to testify at these hearings on issues for change in  
25 the family law area. I understand that the major



1 problems which have been raised to date by the public  
2 hearings include delays in the system and the expense  
3 involved in litigating family law matters.

4 In my opinion, the major difficulty for  
5 both clients and practitioners in the family law area  
6 is the continued refusal of the court system to accord  
7 family law with the same status and importance to which  
8 it accords criminal and other civil matters. The  
9 second and related problem is that the practice of  
10 family law varies greatly from county to county, unlike  
11 all most other areas of the court. The few specific  
12 examples of this would be the fact that in our county,  
13 for example, the court refuses to schedule custody  
14 hearings for more than one day at a time, which means  
15 that if the testimony is not completed, the case goes  
16 back to the scheduling list, which ensures a date  
17 approximately three months later to complete the  
18 testimony. This is unlike regular civil cases in our  
19 court which are scheduled during a single term begun  
20 from a trial list and litigated until conclusion. To  
21 say that a determination regarding children is less  
22 important than the damages to be awarded in an accident  
23 case, I personally find appalling.

24 Another example is that unlike matters  
25 scheduled for arbitration or for court in our county,

1 divorce and custody matters are scheduled before  
2 Masters in the case of divorces or hearing officers in  
3 the case of custody, and there are significant fees to  
4 be paid by litigants to have these cases heard. In the  
5 case of a Special Master for a divorce, the cost is  
6 \$500 for the first day. In the case of a custody  
7 hearing officer, the fee is \$50 per hour. In addition,  
8 in custody there is no access to our court other than  
9 for immediate and temporary relief, except through a  
10 custody hearing officer, so that there is a two-step  
11 process to get to a judge. In divorces, the Master's  
12 fee is only the beginning, since transcript fees must  
13 be paid prior to transcription of hearings, records,  
14 and the Masters will not make decisions until the  
15 transcript is in their hands. The lack of funding by  
16 the State or the county in family law matters in our  
17 county is abundantly clear.

18 In addition to the extraordinary fees  
19 family litigants pay, there are enormous gaps in  
20 service to litigants. For example, in custody cases  
21 there is no provision for supervised visitation where a  
22 parent has been absent from the child for a significant  
23 period of time or where abuse is suspected but  
24 unfounded by the Children and Youth Agency. In our  
25 county, a number of nonprofit agencies have gotten

1 together and developed a program for supervised  
2 visitation and at this point have obtained the approval  
3 of the court as to the policies and procedures of the  
4 project. This project is fully funded by a United Way  
5 venture grant through June of 1992, and we have yet to  
6 accept the first clients into the program. However,  
7 the court's portion of the county budget has been cut  
8 for the year 1992 to exclude funding for this program  
9 following the termination of the venture grant.

10           Proposals have also been made for the  
11 county to fund the Master's program and the hearing  
12 officer program by hiring full- or part-time attorneys  
13 to handle these positions, in part to avoid conflicts  
14 created by the attorneys practicing in the area also  
15 handling the same cases, but the county appears to be  
16 afraid of incurring liability over and above the  
17 already exorbitant filing fees should they put anyone  
18 on the county payroll. I have attached copies at the  
19 end of the county court costs for 1992. I reviewed it  
20 this morning and you will see that the family law area,  
21 the costs are significantly greater than in any other  
22 area.

23           On the positive side, within the past  
24 month, although perhaps the timing is not so positive,  
25 our domestic relations hearing officers all have

1 computers with a Lexus 123 program for inputting the  
2 State guidelines and coming up with orders. And the  
3 guidelines themselves have resulted, in my opinion, in  
4 more uniform and adequate child support orders in  
5 conjunction with the mandatory wage attachments which  
6 have greatly improved enforcement. In our county, the  
7 system which has been developed for dealing with  
8 protection from abuse cases is working very well,  
9 unlike some surrounding counties. The amendments to  
10 the Protection From Abuse law have made safety a  
11 reality for women and children, and in abuse cases in  
12 our county there are very few delays.

13 Support, however, like custody and  
14 divorce, suffers in the court system from delay. A  
15 support complaint does not reach a conference for 10 to  
16 12 weeks from the date of filing; a custody hearing  
17 officer does not hear a case in our county for  
18 approximately 3 months; it takes over 6 weeks to  
19 schedule a Master's hearing in a divorce, and decisions  
20 shall often not be handed down, regardless of the law, for  
21 6 to 8 months later. I currently have pending a  
22 complex support matter for child support which was held  
23 before our local family court judge on September 3 and  
24 I have received no decision. I had a custody case  
25 heard by the court on August 22 and I received a

1 decision approximately three days ago. I argued a  
2 divorce case in argument court in our county in August  
3 of 1990 and received the decision in September of 1991.  
4 I believe that more funded personnel would help this  
5 situation.

6 In addition to the funding problem, the  
7 judicial time given to family law as compared to the  
8 number of cases in the system is extremely low. I  
9 believe that close to 50 percent of the cases filed in  
10 Lancaster County are family law cases, yet we only have  
11 one full-time family law judge out of currently seven  
12 judges, soon to be nine. We need people on the bench  
13 who are enthusiastic and knowledgeable about family law  
14 matters and who are sympathetic to this front-line  
15 dealing with the public. Not one of the other six  
16 judges currently on the bench is willing to take on the  
17 family law area. We also need sufficient judicial time  
18 to enable the cases to flow smoothly through the  
19 system. This should result in much more timely access  
20 to the court and in consistency in the decisionmaking  
21 process.

22 Another issue which has been brought to  
23 my attention is a concern about ex parte custody orders  
24 being granted by the courts. I believe it is critical  
25 to leave judges with the ability to make ex parte

1 orders in the emergency situations for the protection  
2 of children. A primary example of this is the  
3 kidnapping situation; the second is to maintain some  
4 type of stability for a child when the family is  
5 falling apart. The problem with ex parte orders is not  
6 the ex parte order itself but the inability to move  
7 quickly to a hearing where all parties can be present  
8 and be heard. The remedy is to get those cases to a  
9 judge quickly.

10 Another issue which I understand is under  
11 significant consideration by the legislature and the  
12 committee is the possibility of decreasing the now  
13 two-year requirement for a no-fault divorce in the  
14 event of no consent, popularly known as a 3301(d)  
15 divorce. In my opinion, based on my lengthy practice  
16 in this area, the two-year provision should absolutely  
17 not be decreased. The major reason for this is that  
18 the alimony portions of the law, including the  
19 amendments made in 1988, are not recognized by most  
20 judges, including our judges, to mandate the  
21 replacement of the standard of living which the  
22 dependent spouse enjoyed during the marriage. All of  
23 the national statistics on poverty indicate that  
24 following a divorce, the wage earner's economic  
25 position improves and the dependent spouse's and the

1 children's economic position is worse. It is the  
2 feminization of poverty. Decreasing the two years  
3 further erodes the ability of the dependent spouse,  
4 usually the wife, to negotiate in the divorce and  
5 decreases her ability to obtain the skills necessary  
6 for her to support herself and to supplement the  
7 support of their children.

8           These same arguments apply to the issue  
9 of allowing bifurcations on a more frequent basis than  
10 is frequently done. Allowing bifurcation removes the  
11 impetus to settle economic issues and takes away the  
12 negotiating power of the economically dependent spouse.  
13 It also puts the economically dependent spouse in a  
14 very fragile position with respect to the potential  
15 death, remarriage, or bankruptcy of the other spouse.  
16 On a positive note, I have to say that in Lancaster  
17 County judges are extremely reluctant to enter  
18 bifurcation orders and, of course, I would be  
19 supportive of that position.

20           What can the legislature do to correct  
21 these difficulties? One thing would be to ensure that  
22 a portion of court's budget relating to family law is  
23 proportionate to the court time necessary to handle  
24 family law cases. Another is to require, such as is  
25 done in PFAs, that certain reasonable deadlines are met

1 and set penalties for failure to meet those deadlines.

2 Finally, if judicial time were allocated  
3 appropriately, a lot of the litigants' frustration  
4 would be lessened.

5 And I would be pleased to respond to any  
6 questions or comments that you may have.

7 BY CHAIRMAN CALTAGIRONE: (Of Ms. Aul)

8 Q. Grella, let me ask you, on the last two  
9 pages, I don't know if you would know this, is this  
10 standard as far as these fees are concerned? I would  
11 assume that it is across the State.

12 A. Well, that's one of my points that I made  
13 in the beginning is that this practice varies greatly  
14 from county to county, family law practice, including  
15 the fees. I think that you will universally find that  
16 the family law fees, for example, the process from the  
17 beginning to the end where we're paying for Masters and  
18 custody conference officers, et cetera, that they are  
19 far greater in every county.

20 Q. Yeah?

21 A. But whether they are like ours is not at  
22 all clear.

23 Q. You're not familiar with any of the other  
24 counties?

25 A. Well, I'm a little bit familiar with



1 Dauphin County and I have done a few cases in Chester  
2 County, but I couldn't say.

3 Q. Have you found the fees to vary greatly?

4 A. Yes, and in fact, I have had some cases  
5 where I have suggested, where there was one party in  
6 two counties, that they investigate very carefully the  
7 cost of a Master's hearing figuring the case was going  
8 to go that far and whether transcript fees had to be  
9 paid, and recommended that they file in one county or  
10 the other.

11 BY MR. SUTER: (Of Ms. Aul)

12 Q. We had some prior testimony that some  
13 counties, I believe in Dauphin County, they use a  
14 system where when you file your initial divorce  
15 petition with the court, there is a fee of, I think  
16 it's \$50 in Dauphin County, that's attached to that to  
17 fund the Special Master system, so whether or not you  
18 use the Master system or not, you help pay for it.

19 A. Um-hm.

20 Q. And that way it reduces the cost for the  
21 individuals that do and it encourages people to move  
22 through the Master system. Do you have any thoughts on  
23 that?

24 A. Well, it's sort of, you know, six or half  
25 a dozen. The problem is that I don't think that

1 litigants should pay to have someone hear their case.  
2 And nowhere but in the family law system is that the  
3 case.

4 Q. We've heard that over and over again,  
5 too, in Pittsburgh, and realistically looking at it  
6 with the State being in the deficit situation that it  
7 is, I didn't see the State coming forward with the  
8 moneys, that this is an alternative to that.

9 A. Right, but what I see as the difficulty  
10 is that if you look at the money invested in the public  
11 defender system and the DA system and all of the other  
12 areas of court and look at the percentage of time or  
13 number of cases that are being spent in family law,  
14 it's totally disproportionate, and if you re-allocate,  
15 there may be some room. That's one issue.

16 And the second issue is that I certainly  
17 think that if our county, or if the State were to  
18 mandate our county to accept a system where we had 2  
19 full-time Masters versus 18 of us all out there making  
20 decisions, that we sort of attempt to have some  
21 consistency, and meanwhile we're all practicing family  
22 law at the same time, that the actual cost for Masters  
23 might be less because we would quit reinventing the  
24 wheel. Dauphin County has a much better system than we  
25 have, in my opinion, for doing that, and I think it

1 works to keep the costs down.

2 Q. Do you have any thoughts on mandatory  
3 mediation for custody disputes?

4 A. In effect, that is what our hearing  
5 officer system is.

6 Q. And it works well?

7 A. And I like the system, I think it moves  
8 too slowly. And I'm very upset, as I indicated, with  
9 the fact that we cannot try a custody case from one end  
10 to the other. I mean, these kids are in limbo for, if  
11 you just look at how our system works, we file a case,  
12 we wait three months to get to a conference then we  
13 wait a minimum of three months to get to a judge, and I  
14 didn't mention in my testimony, we have a new system  
15 where two cases are scheduled on one day before the  
16 same judge, one at 9:00 and one at 10:00. And if the  
17 9:00 case is tried, the 10:00 people wait until 1:30.  
18 At 1:30, or when it's clear that the other case will go  
19 into the afternoon, the judge will release the 10:00  
20 case, and then you get back on the original scheduling  
21 list for a 9:00 timeframe, three months later. So that  
22 I have had a case where I had witnesses from Ohio at a  
23 10:00 time slot and I didn't know until the morning of  
24 the trial what was going to happen. And if we don't  
25 finish in one day, again you're back on the list. Now,

1 you're guaranteed a 9:00 time slot for the second  
2 hearing, but you may be nine months to a year before  
3 you get a final determination at the county level in a  
4 custody case.

5 Q. Do you find that judges are not  
6 aggressive in using contempt remedies to prevent delay  
7 in a divorce situation? Is that a problem in your  
8 practice? We've heard some testimony when we were in  
9 Pittsburgh that that was the case in that area of the  
10 State.

11 A. I don't have trouble getting contempt  
12 orders, but there's always huge built-in delays. If  
13 the interrogatories aren't answered, you get a 20-day  
14 rule. So you've waited 30 days, you call the other  
15 attorney, you wait 10 days hoping they'll get them in  
16 because of your telephone call. You give two days'  
17 notice that you're filing a petition for contempt. You  
18 go in, the judge gives them 20 days to respond why they  
19 haven't answer the interrogatories, and, meanwhile,  
20 months are going by. Once you reach the level where  
21 the judge says, okay, this is bad here, and I get  
22 contempt orders. It's just that it takes so long.

23 Q. Thanks, Greta.

24 A. You're welcome. Anyone else?

25 (No response.)

1                   CHAIRMAN CALTAGIRONE: Thank you for your  
2 testimony. I enjoyed it.

3                   MS. AUL: Thank you.

4                   CHAIRMAN CALTAGIRONE: Michael Goldberg?

5                   MS. AUL: He's not here. I offered him a  
6 ride.

7                   CHAIRMAN CALTAGIRONE: Oh, did you?  
8 William Gold? John Howett? Or is Ronald Katzman here?

9                   MR. GOLD: Were you addressing that to  
10 me?

11                   CHAIRMAN CALTAGIRONE: No, I was just --  
12 unless you're one of the four attorneys that are to  
13 appear.

14                   MR. GOLD: No, I'm to be here at 3:30.

15                   CHAIRMAN CALTAGIRONE: Oh, were you  
16 supposed to be here at 3:30? Do you want to--

17                   MR. GOLD: We're in?

18                   CHAIRMAN CALTAGIRONE: We're early, but  
19 you can start.

20                   MR. GOLD: Good afternoon. To the  
21 members of the Judiciary Committee, House of  
22 Representatives of the Commonwealth of Pennsylvania, my  
23 name is William D. Gold, Jr. I am a Director and  
24 Domestic Relations Officer for Union County,  
25 Pennsylvania. I want to thank the House Judiciary

1 Committee and Kenneth J. Suter for this opportunity to  
2 address the issue of the family law system from a  
3 different perspective. This is the first time I have  
4 ever testified before a State committee. I hope you  
5 will bear with me.

6 As a Director and Domestic Relations  
7 Officer for 11 years in Union County, I have witnessed  
8 many changes in Family Law, especially the laws  
9 governing the child support programs in Pennsylvania.  
10 I say "witness," since Union County currently has only  
11 three individuals, including myself, in charge of the  
12 Domestic Relations program. I personally work at the  
13 grassroots level. I am the foot soldier for the court  
14 on child support cases.

15 Over the years, changes made by our  
16 government have had a major impact on the daily duties  
17 demanded on each of the individuals working in Union  
18 County. The changes cannot be allocated out to any  
19 particular person since each person is required to  
20 perform a multitude of overlapping operations. We are  
21 "a jack of all trades" with over 24 years of experience  
22 with working with the public. According to some  
23 people, we are qualified professionals, highly skilled  
24 in the child support programs. There are those,  
25 however, that feel quite the opposite, especially when

1 new changes are made in family law. Fortunately, we  
2 have the full cooperation and expert assistance from  
3 fellow Domestic Relations Association of Pennsylvania  
4 members, the Bureau of Child Support Enforcement, our  
5 local District Attorney's office and the judges for the  
6 17th Judicial District, the Honorable Harold F.  
7 Woelfel, Jr., Judge and the Honorable Wayne A.  
8 Bromfield, President Judge. Their wisdom and insight  
9 in Domestic Relation allows our office to perform  
10 smoothly, capable of handling many problems that erupt  
11 in the field of family law.

12           When I started my employment in Family  
13 Court 11 years ago, domestic relations consisted  
14 primarily of the collection and the disbursement of  
15 child support payments. In a number of counties, the  
16 domestic relations officer held a dual role of  
17 probation officer. Court orders pertaining to support  
18 were brief, often a few sentences long. Most of the  
19 actual litigation of Family Court proceedings were  
20 conducted before a judge. Staffing size were small in  
21 number considering today's standard since the domestic  
22 relation section functions were simple. For example,  
23 prior to 1980, the domestic relations officer in Union  
24 County was also the domestic relations officer in  
25 Snyder County.

1                   Numerous changes have occurred in the  
2 past 11 years. Caseloads have increased tremendously.  
3 In Union County, the caseload has increased 500 percent  
4 from 1980 to 1990. The legal community are better  
5 trained and now include specialists in domestic  
6 relations/family law. The public is more aware of the  
7 vital role of Family Court. But the most significant  
8 changes is the role of government implementing numerous  
9 acts, rules and regulations both at the State and  
10 Federal level on family law. Family Court has now gone  
11 from the title of "brat court" to a highly organized,  
12 respected, multi-function division of the judicial  
13 system. Today, domestic relations addresses medical  
14 and insurance support, Federal and State tax refund  
15 intercepts, wage attachment, establishing orders,  
16 judgments, paternity, enforcement, welfare assignments,  
17 and a number of other functions that requires a  
18 substantial amount of knowledge to comprehend and  
19 implement said responsibilities. All of these  
20 functions were introduced and mandated by either the  
21 Federal or State government.

22                   Despite all these changes, a basic  
23 premise exists when individuals are faced with the  
24 reality of separation and divorce. These individuals  
25 are faced with a traumatic change in their lives, their



1 lifestyles, and their dependent's lifestyles. It is a  
2 point in a person's life that some say is equivalent to  
3 the death of a loved one. While the emotion and  
4 sometime physical crisis is disrupting a person's well  
5 being, one seeks relief by taking the first step by  
6 contacting the legal system. This contact with the  
7 system is often demanding, since individuals are now  
8 revealing themselves to a third party. It is where  
9 individuals officially announce to their friends,  
10 associates, and relatives that their marriage is in  
11 trouble, if not dead.

12           The Family Court system is imposing to  
13 anyone who has not been exposed to legal procedures.  
14 It demands enormous amounts of personal, confidential  
15 information be revealed and analyzed to all those who  
16 are involved in litigation. Often, litigants complain  
17 of the need for all of this information. The  
18 information is vital in order for the court to have a  
19 full understanding of each case and render decisions  
20 that are fair and equitable. The information comes  
21 with the price, the stress of litigation before a court  
22 of law is often so overwhelming that some will stop all  
23 proceedings to avoid this hardship. The costs of  
24 litigation is often a frightening matter. Many avoid  
25 professional legal assistance, they elect to pro se

1 their case with disastrous results. Others will simply  
2 give up, facing defeat and hardship due to the nature  
3 of the system.

4 As you are aware, Family Court is a place  
5 where decisions are often made on peoples' lives, their  
6 personal property, and their financial future. In  
7 child support cases, parents are faced with continuous  
8 contact with the court system for as much as 18 years,  
9 if not longer. Rarely, if ever, litigants walk away  
10 satisfied with the decisions made in child support  
11 hearings. Absent parents complain that they cannot  
12 afford to survive on their new, adjusted level of  
13 income, the custodial parents argue the opposite, they  
14 cannot survive on the limited amount of support paid by  
15 the absent parents.

16 As noted above, any changes mandated by  
17 government on Family Court exposes litigants again and  
18 again to the personal trauma of the legal system.  
19 Family Court personnel are required to understand the  
20 changes and minimize the pain of transition to the  
21 clients they serve.

22 All of the above creates a heightened  
23 level of dissatisfaction with the Family Court system.  
24 Individuals experience stress over separation, divorce  
25 and the constant involvement of Family Court. The

1 legal system is seen as cold, uncaring, and expensive.  
2 Individuals expect and demand a legal system that will  
3 see in their favor, no matter what the circumstances  
4 are associated with their case. They also demand  
5 knowledgeable, professional individuals in the court  
6 system to avoid errors and mistakes. Government  
7 introduces new means to strengthen Family Court  
8 operations which often creates confusion and  
9 frustration when disseminated to litigants.

10 The question is whether anything can be  
11 done to reduce the stress at the personal level when  
12 individuals go through the legal process of the family  
13 law system. There are four areas that I believe would  
14 reduce the level of stress under the current state of  
15 affairs. They are the proper education and training of  
16 the staff of Family Court personnel, the educating of  
17 our citizens of the impact of separation and divorce,  
18 the proper staffing and funding of Family Court  
19 personnel, and continuing involvement of our government  
20 limiting their interest to promoting and not  
21 undermining the system.

22 Court personnel involved in domestic  
23 relations are interesting people. They are required to  
24 perform numerous functions to keep the system running  
25 without hesitation but face the onslaught of

1 individuals stressed out over separation, divorce  
2 and/or burdened by Family Court procedures. Hostile  
3 clients are not the exception but the rule. There is  
4 no specific formal curriculum available at this time to  
5 train individuals in family law. However, training is  
6 provided by the Domestic Relations Association of  
7 Pennsylvania and Bureau of Child Support Enforcement by  
8 conducting local and State conferences, training  
9 programs, and the release of written instructions to  
10 the State. Currently, efforts are being made with Penn  
11 State University to create a curriculum designed for  
12 the training of Family Court officers.

13 If the legislature wishes to address this  
14 area, conceivably guidelines could be established for  
15 baseline minimum education/experience requirements for  
16 the various positions in Family Court. The purpose of  
17 the requirements is to insure competent, trained  
18 individuals are in charge of the Family Court  
19 operations.

20 Coupled with this requirement is the  
21 adequate funding of Family Court. This particular area  
22 is a prevalent problem throughout the counties in the  
23 Commonwealth. For example, some counties insist a four  
24 year college degree for domestic relations officers yet  
25 set the starting salary at less than \$13,000 a year.

1 In the past five years, more than half of the domestic  
2 relations directors in the Commonwealth terminated  
3 their positions. Possibly the problem lies where  
4 Family Court personnel are under the State court  
5 system, supervised in a large part by the State's  
6 Department of Public Welfare, and budgets are  
7 determined at the county level. Again, to have  
8 competent people in charge of Family Court, appropriate  
9 compensation is required.

10 I was recently appointed chairperson of  
11 the Public Relations Committee for the Domestic  
12 Relations Association of Pennsylvania. This committee  
13 is in charge to promote a positive, professional image  
14 of Family Court personnel, to educate the public of the  
15 role of domestic relations, and to provide assistance  
16 to those who are in need of the services of Family  
17 Court. Recent projects of this committee included  
18 public service announcements on television, articles in  
19 newspapers, and the Governor's yearly proclamation of  
20 Child Support Awareness Month. Any endorsements by our  
21 legislators for the promotion of family law would be  
22 appreciated. Keep in mind that approximately one out  
23 of every four individuals in the Commonwealth are  
24 affected directly or indirectly by the influences of  
25 family law.

1           My final comment, the involvement of our  
2 government in the family law system should be seriously  
3 reviewed before initiating any steps to correct or  
4 adjust the program. I am assured that this committee  
5 recognizes the impact of any new legislation on the  
6 overall program. There are a number of specific points  
7 to keep in mind about government involvement in family  
8 law procedures. Any adjustments will immediately draw  
9 the attention of a vast number of individuals in the  
10 Commonwealth. The more significant the adjustment, the  
11 larger legal level of interest will be voiced by your  
12 constituents. This in turn will cause an avalanche of  
13 inquiries into the Family Court and your respective  
14 offices disrupting the daily duties, often times for  
15 weeks. Any inquiry that disrupts one employee of the  
16 Family Court can trigger a situation where numerous  
17 functions are brought to a standstill, bottlenecks can  
18 occur, instantaneously slowing down the work on  
19 numerous cases particularly in those counties where a  
20 small staff exists. If the Family Court employee is  
21 not properly trained or prepared to handle  
22 government-induced changes in family law, wrong  
23 information may be released to numerous litigants  
24 creating a disaster if not the threat of a lawsuit.  
25 Family Court will be tarnished and labeled as being

1       careless and incompetent.

2                   A major overhaul of the child support  
3 programs could create a complete halt of the program,  
4 leaving thousands of custodial parents without support  
5 from the missing parent. In the past several years,  
6 several States in our nation have dismantled and  
7 rebuilt their child support programs. Despite absent  
8 parents faithfully making payments of support on a  
9 regular basis, the custodial parents did not receive  
10 the payments often months after the payments were made.  
11 Support complaints to these foreign States have simply  
12 disappeared. Minor adjustments to the family law  
13 system is far easier to bear than a major overhaul.

14                   Any steps by our government to implement  
15 changes in the child support program should aim for the  
16 strengthening the mission of the program. Any change  
17 that does not serve this purpose only creates stumbling  
18 blocks of assuring an absent parent to pay their  
19 support and the custodial parent to receive the  
20 payments as quickly and efficiently as possible.

21                   Jack Lang, a former domestic relations  
22 officer of Huntington County and past president of the  
23 Domestic Relations Association of Pennsylvania, made an  
24 interesting statement of those who are involved with  
25 the family law/child support programs. Despite all the

1 tensions, poor working conditions, the impossible  
2 reality of performing a dozen functions at one time,  
3 Mr. Lang best said those who work in the Family Court  
4 system in two words -- we care. We care about our  
5 work, how our work touches the lives of the citizens in  
6 our community and upholding the dignity and time  
7 honored trust in the judicial system.

8 Those who work in family law in this  
9 Commonwealth ask that our legislature continue to  
10 provide a level of interest of keeping this frame of  
11 mind in those who labor in the court systems.  
12 Remember, Pennsylvania child support programs has  
13 continually ranked as the best overall program in the  
14 nation for over 10 years.

15 Thank you for allowing me these few  
16 minutes to address the matter of the family law system  
17 from the viewpoint of a domestic relations officer

18 CHAIRMAN CALTAGIRONE: Thank you.

19 Mary.

20 BY MS. WOOLLEY: (Of Mr. Gold)

21 Q. Mr. Gold, we've had hearings for three  
22 days earlier in the fall where we heard from people who  
23 were unhappy with the services they received either in  
24 domestic relations offices or at the hands of a judge  
25 sitting in Family Court. And one of the themes that we



1 heard from husbands and fathers in divorce litigation  
2 was that they felt that visitation, violation of  
3 visitation orders and custody agreements isn't taken as  
4 seriously by the court as a violation of a support  
5 order is. And they feel that, I kept saying or other  
6 people kept saying, you know, the Federal law mandates  
7 lots of the enforcement mechanisms which exist with  
8 regard to child support enforcement and they say we  
9 don't see the same serious treatment of custody and  
10 visitation issues when the custodial, in most cases the  
11 mother, violates and denies me access to my child. And  
12 then they went one step further and said we think you  
13 would see greater compliance with support orders if we  
14 felt that we were getting equity as compared to the  
15 amount of enforcement that's placed on support, and I  
16 was wondering what your thoughts were?

17 A. Fortunately, I don't deal with custody  
18 visitation but I do see it every day. We get at least  
19 a half a dozen phone calls concerning individuals  
20 complaining about visitation custody rights. Not only  
21 is it from the missing, absent parent who is not  
22 entitled to see his dependents but it's the other side  
23 as well where the custodial parent calls our office and  
24 complains, stating that the absent parent is not  
25 utilizing their privileges of visitation custody. You

1 hear from both sides.

2 Q. Do you hear as much that the person who  
3 is entitled to come visit doesn't show as much as the  
4 one who has--

5 A. I would say a majority of the phone  
6 calls, the inquiries that we get are those individuals  
7 who do not get to see their children for one reason or  
8 another. You brought up a good point. What is the  
9 power of the court in terms of violators of custody  
10 visitation? You pointed it out emphatically with the  
11 Federal government. They are far more interested, if  
12 anything they are only interested, in the child support  
13 programs. They want to make sure that the money is  
14 passed on to the custodial parent so that the custodial  
15 parent is not left destitute. Of my limited knowledge  
16 of custody visitation in the State of Pennsylvania,  
17 it's demanding on the court. I don't know what a judge  
18 can literally do. If the judge says to a violator of a  
19 custody visitation arrangement order that they are put  
20 in jail, well, let's just be honest, I've never seen  
21 that done.

22 I think the only thing the court, that I  
23 have the experience is just simply say, look, let's  
24 quit jerking the system. I think one of the powers and  
25 the authority of the court is that anybody who violates

1 a visitation or custody agreement can impose all costs,  
2 including attorney's fees, on the violator, but that,  
3 you know, by imposing that then you are setting up a  
4 financial bind on that person. I'm going to use for an  
5 example if a father cannot see his children and, lo and  
6 behold, takes the matter before the court and the court  
7 rules short of incarceration but says to the custodial  
8 parent, you're going to not only provide the visitation  
9 custody as by court order, but we're now going to  
10 impose on you, custodial parent, the cost of all  
11 proceedings as well as taking care of all attorney's  
12 fees. So now here is a custodial parent now  
13 shouldering a financial problem to meet the custody  
14 visitation arrangements. As I said, unfortunately, I  
15 don't deal with visitation custody in Union County  
16 That's strictly--

17 Q. But your office does get frequent  
18 complaints about failure to comply with the visitation  
19 orders?

20 A. Oh, numerous calls. And Judge McClure,  
21 when he was on the bench in Union County, was very  
22 emphatic, domestic relations in Union County will not  
23 touch custody visitation, and that is a source of  
24 stress. Whether it's a custodial parent, or the absent  
25 parent is not entitled to have visitation custody, but

1 the court has the power and the authority to reach in  
2 their pockets, you know, it's a crisis. It's a  
3 traumatic situation. I can see their viewpoint of  
4 being disturbed under these kind of situations.

5 Q. Thank you.

6 BY MR. SUTER: (Of Mr. Gold)

7 Q. Two complaints that I hear of quite  
8 frequently is, -- well, one of them is that the obligor  
9 sends the check to domestic Relations and then domestic  
10 relations, of course, forwards it and she goes out  
11 drinking or on a shopping spree or whatever, and I  
12 realize that there are still the expenses to maintain  
13 the home and everything, but it's very difficult to get  
14 an obligor to understand that if she takes that check  
15 and goes out and spends it she still must supply the  
16 child with the child's needs. Is there anything we can  
17 do to address this area?

18 A. I have taken on that burden. In 11 years  
19 working in the trenches to avoid the phone calls, to  
20 avoid these absent parents who call and say, I saw my  
21 ex at the bar or I went to the house and the house is a  
22 shambles, and things of that nature. Whenever I  
23 conduct a conference, support conference, in the  
24 initial complaint or a petition for modifications or  
25 any proceedings before the court addressing support, I

1 take a few minutes of my time and explain to the  
2 litigants the purpose of the child support payments. I  
3 point out to them that it's supposed to be used for the  
4 everyday needs of the dependents. The court cannot  
5 demand receipts as to how the money is spent. And I  
6 conclude by making the following remark. I state that  
7 if the missing parent, absent parent, finds that the  
8 children are not being properly taken care of, I don't  
9 think it's a matter that domestic relations should get  
10 involved in. I point out to them that they should talk  
11 to the Child Welfare Department, because now we're  
12 talking areas of neglect on behalf of the kids. They  
13 can come to our office and say that the children are  
14 not being adequately supplied, that the money is being  
15 spent, but if the children are living in a state of  
16 total disarray in the house, that they are sleeping on  
17 the floors or they don't have proper shoes, domestic  
18 relations is very limited and I don't know if domestic  
19 relations can do anything about it. I think child  
20 welfare or somebody or an independent agency should  
21 step in and investigate the situation, and if it's a  
22 problem, a problem of a serious nature, that the kids  
23 conceivably may need to be removed. Hopefully, the  
24 custodial parent will change their way of life and  
25 recognize the needs of the children.

1           Q.    Another concern which we hear of  
2 frequently is that the court is extremely reluctant to  
3 deviate from the statewide guidelines, and I think they  
4 should be reluctant to deviate unless it is justified,  
5 but you hear of these situations where it is justified,  
6 hearing one side of the story, of course.  But do you  
7 find in your experience that the courts are not  
8 deviating from the guidelines as they should in certain  
9 situations?

10           A.   Under the situation in Union County, with  
11 the fantastic support of Judge Bromfield, I do look at  
12 the whole picture.  He demands it.  The judge demands  
13 it on my part to evaluate where each party is coming  
14 from.  If I feel that there is a need to deviate from  
15 the guidelines by law, I've got to let the judge know,  
16 and the judge, literally, always backs me up.  When the  
17 case is litigated before the judge on an appeal, the  
18 judge hears it out.  If he feels that there is a lot of  
19 weight behind the situation, that the amount of support  
20 should deviate from the guidelines, he deviates.  I can  
21 cite specific examples where Judge Bromfield has  
22 deviated from the guidelines, but there is a level of  
23 flexibility.  I would say a vast majority of the cases  
24 conceivably fall right into the guideline, although the  
25 parties may say no, my case is unique.  It should

1 deviate from the guideline.

2 Q. Thank you.

3 A. Yes.

4 CHAIRMAN CALTAGIRONE: Thank you. Thank  
5 you for your testimony.

6 Mr. Howett? Mr. Goldberg? Why don't you  
7 both come up and we'll do you, too.

8 MR. GOLDBERG: Good afternoon. First of  
9 all, I want to apologize for being late. My car broke  
10 down on the way to the hearing this afternoon and I had  
11 to stop and get it fixed, and luckily I found somebody  
12 who would weld my catalytic converter back together and  
13 I was here a little bit late but somewhat on time.

14 CHAIRMAN CALTAGIRONE: No problem.

15 MR. GOLDBERG: I want to thank you for  
16 giving me this opportunity to appear before the  
17 committee. I appreciate that opportunity and I take  
18 this matter very seriously. Because I've never  
19 appeared before a committee like this, I'm going to  
20 read my remarks and I would be happy to be interrupted  
21 at any time to respond to any questions that may arise.

22 My name is Michael Goldberg, and I am a  
23 staff attorney for Central Pennsylvania Legal Services.  
24 Central Pennsylvania Legal Services is a nonprofit  
25 organization providing free legal services to indigent

1 clients in six Central Pennsylvania counties. Those  
2 being Dauphin, Berks, York, Lebanon, Perry, and  
3 Lancaster, where I work.

4 We represent clients in a full range of  
5 civil problems, including but not limited to housing,  
6 loss or denial of governmental benefits, consumer  
7 issues, elderly issues and family law. We continue to  
8 strive to provide a high quality of legal services to  
9 those individuals in our communities who are without  
10 the means and/or the ability to protect and enforce  
11 their most basic legal rights, even though our funding  
12 has been reduced and limited and our staffing has  
13 decreased by approximately one-half over the last  
14 decade.

15 I have held my position as a staff  
16 attorney for almost 17 years. During the last 11  
17 years, I have concentrated my practice and time on  
18 family law matters, particularly the issues of domestic  
19 violence and custody.

20 Although the pressure and problems caused  
21 by the significant loss of staff over the last 10 years  
22 has been allayed, to some degree, by increased  
23 involvement of the private Bar in pro-bono activities,  
24 the impact of less staff and static and/or reduced  
25 funding has had a dramatic impact on family law issues,



1 particularly because there has been a significant  
2 increase in demand for services in that area.

3           In the 1990 report of the Pennsylvania  
4 Bar Association Task Force for Legal Services to the  
5 Needy, it was noted that there exists in Pennsylvania  
6 an "overwhelming unmet need for legal services" in the  
7 family law area. The task force went on to note that  
8 they were "overwhelmed with testimony about the large  
9 and increased volume of domestic cases during the  
10 1980's."

11           The complexities and problems created by  
12 not providing representation to all those with family  
13 law problems, and the ability of Legal Service programs  
14 to provide limited services only when problems reach a  
15 crisis stage, creates a domino effect of compounding  
16 and multiplying the problems, sometimes beyond control  
17 and the ability to remedy. The cost on the individuals  
18 involved, as well as their community and our  
19 Commonwealth, is extraordinary. The domino effect was  
20 noted as a major concern by the task force.

21           Because my practice is predominantly in  
22 the area of domestic violence and custody, I will limit  
23 my comments from now on in those two areas.

24           The majority of my time is currently  
25 spent representing victims of domestic violence at

1 their hearings for Protection From Abuse Order. It is  
2 undeniable that the single most dramatic increase in  
3 demand for legal services is the area of representing  
4 domestic violence victims. I have attached to my  
5 testimony a graph which shows the increased number of  
6 protection from abuse cases handled by Central  
7 Pennsylvania Legal Services during the last five years.  
8 The graph shows an increase from approximately 700  
9 cases during the 1986-87 year to approximately 1,900  
10 cases in 1990-91, with projections of continued  
11 increases this year. Also attached is a graph showing  
12 the progressive increase of protection from abuse  
13 clients represented by legal service programs  
14 throughout the Commonwealth. I myself have represented  
15 approximately 600 clients in Protection From Abuse  
16 proceedings during the period of 1986 to the present.

17 I believe that the handling of Protection  
18 From Abuse cases in Lancaster County is unique,  
19 effective, and combines the cooperative efforts of the  
20 Court and Courthouse personnel, the Sheriff, the  
21 Prothonotary, the District Attorney, the Shelter for  
22 Abused Women, and Central Pennsylvania Legal Services.  
23 The results, although not perfect, create benefits to  
24 the victims, as well as efficiency for the legal  
25 system.

1                   Effective in June of 1988, the Protection  
2 From Abuse Act was amended to provide for a pro se  
3 system of filing petitions for protective orders. The  
4 amended legislation required that the courts provide  
5 simplified forms and clerical assistance to help  
6 individuals who are not represented by counsel to file  
7 a petition for a protective order.

8                   In 1986, through the cooperative efforts  
9 of Central Pennsylvania Legal Services and the  
10 Lancaster Shelter for Abused Women, the Domestic  
11 Violence Legal Clinic was established. The Domestic  
12 Violence Legal Clinic was created to provide options  
13 counseling for domestic violence victims and to assist  
14 victims of domestic violence in the drafting and filing  
15 of pro se petitions for protective orders.

16                   With the approval of the local court, a  
17 pro se procedure for the filing of protective orders  
18 was in operation approximately two years prior to the  
19 legislative amendment requiring a pro se system in  
20 Lancaster.

21                   Currently, pro se litigants seeking  
22 protective orders in Lancaster can either go directly  
23 to the courthouse where they will receive clerical  
24 assistance in filling out and filing of necessary forms  
25 or they can go to the Domestic Violence Legal Clinic

1 where they receive not only assistance in the  
2 preparation of the forms, but in-depth counseling,  
3 options, alternatives and a full explanation of the  
4 civil, criminal and non-legal remedies available to  
5 them. Also included is court orientation and  
6 preparation.

7           The benefits of the Domestic Violence  
8 Legal Clinic are that pro se litigants who have gone  
9 through the Domestic Violence Legal Clinic process are  
10 much better informed and better prepared for the  
11 process that lies ahead, less likely to change their  
12 minds, more likely to proceed and more likely to appear  
13 at their hearings well prepared and understanding what  
14 they are involved in. Statistics from the Domestic  
15 Violence Legal Clinic indicate that during the last  
16 year they provided services to approximately 1,200  
17 victims. From that total number of service requests,  
18 approximately 300 victims were assisted in filing of  
19 protective orders. This process recognizes that not  
20 all victims of domestic violence want a protective  
21 order. There are some alternatives to a protective  
22 order which, if explained, may be a more appropriate  
23 remedy in individual cases. Since the litigants who  
24 have gone through the Domestic Violence Clinic are more  
25 knowledgeable about the process and have had their

1 options explained and evaluated, they move more  
2 smoothly through the legal process to the benefit of  
3 all concerned.

4 Central Pennsylvania Legal Services will  
5 then represent the litigants at the Protection From  
6 Abuse hearing. It is our experience, generally, that  
7 individuals who have gone through the Domestic Violence  
8 Legal Clinic require less time and are better prepared  
9 for the legal process. About one-half of the victims  
10 represented by Central Pennsylvania Legal Services have  
11 filed petitions on their own without prior consultation  
12 with the Domestic Violence Legal Clinic.

13 Despite these efforts and  
14 accomplishments, Central Pennsylvania Legal Services  
15 still cannot represent all the victims of domestic  
16 violence who request our services. There is a critical  
17 need for increased funding for legal advocacy programs  
18 like the Domestic Violence Legal Clinic, as well as for  
19 Legal Services so that all victims can be fully  
20 represented.

21 I would also like to specifically state  
22 to this committee that at no time that I can recall did  
23 I represent a petitioner for a protective order whose  
24 stated or discerned purpose was to use the Protection  
25 From Abuse Act to gain an advantage in a divorce case

1 or other family-related matter. At no time during the  
2 period that I represented family law clients did I  
3 observe or perceive that a domestic violence counselor  
4 or worker had advised a petitioner to fabricate an  
5 allegation of abuse or to use the Protection From Abuse  
6 Act for other than its specified purpose. Over the  
7 last decade I have worked closely with the Lancaster  
8 Shelter for Abused Women, the Pennsylvania Legal  
9 Services Family Law Task Force, and the Pennsylvania  
10 Coalition Against Domestic Violence. At no time have I  
11 observed or discerned any evidence that domestic  
12 violence counselors, legal advocates or attorneys  
13 advised their clients to fabricate allegations of abuse  
14 or to use the Protection From Abuse Act for other than  
15 its stated purpose.

16           The Pennsylvania Protection From Abuse  
17 law is, in my opinion, a good law. It has aptly been  
18 judicially described as a vanguard civil measure  
19 designed to provide immediate protection against abuse.  
20 It is not only a laudable purpose, it provides a  
21 reasonable process and procedure to accomplish its  
22 purpose. There is no need to revamp or create a  
23 different Protection From Abuse procedure. What is  
24 critical now is ensuring that all courts of the  
25 Commonwealth have an accessible pro se system designed

1 to assist petitioners in their navigation in the legal  
2 system. It is also critical that all arms and agencies  
3 of the legal system who have regular contact with  
4 victims of domestic violence receive appropriate  
5 training to assist them in their interaction with the  
6 victims of domestic violence and in the successful  
7 satisfaction of their obligations under the Protection  
8 From Abuse Act.

9 Relating to custody matters. In  
10 Lancaster County after a custody pleading, such as a  
11 complaint for custody, or a petition to modify custody  
12 or a petition for citation in contempt is filed, a  
13 custody conference is scheduled before a custody  
14 conference officer who is one of six private attorneys  
15 who have been approved and appointed by the court to  
16 act as custody conference officers. Scheduling of the  
17 conference can occur within a few weeks or up to 10  
18 weeks after filing of the original complaint. If an  
19 agreement cannot be reached at the custody conference,  
20 a hearing is scheduled and an order is entered pending  
21 the hearing. It can take up to a few months from the  
22 conference date to the hearing date. Hearings are  
23 initially limited to a maximum of one day so if all  
24 evidence is not completed within the one day, the case  
25 is continued and may not be scheduled for another few

1 months. It is also my experience that many custody  
2 cases settle at trial or immediately prior to trial

3 This process, not uncommon throughout the  
4 Commonwealth, causes and allows for an inordinate delay  
5 between the filing and resolution of custody matters.  
6 This long delay causes more problems to develop,  
7 creates tension between the litigants and creates  
8 untold problems for those about whom the process is  
9 supposed to be most concerned, the children.

10 Custody cases beg for expeditious,  
11 efficient, and fairly structured procedures which will  
12 lead to the prompt resolution of their issues.

13 The initial use of custody conference  
14 officers, also called custody conciliators, is a good  
15 idea if they are provided with the proper training and  
16 supervision. However, it is critical that whatever it  
17 is that is scheduled before them, it must be scheduled  
18 promptly within a short and reasonable period of time.

19 If an agreement is not reached at the  
20 conference, it is suggested that a pre-trial meeting be  
21 scheduled with a judge to whom the case is assigned.  
22 The pre-trial conference should attempt to identify the  
23 issues in the case and the evidence and witnesses which  
24 each side will produce. A prompt hearing date and/or  
25 dates should be set depending on the anticipated length



1 of the hearing.

2 Another problem I observe is the  
3 inability of a great number of low-income people with  
4 family law and especially custody issues to receive  
5 legal assistance. Most Legal Services programs are  
6 only able to provide representation in crisis cases,  
7 those being child snatching cases and/or where the  
8 person has received legal papers, they are a defendant  
9 in an action that has been started and a conference is  
10 scheduled or a hearing is scheduled. This process  
11 results in a significant number of people who will not  
12 receive service. Many people who need confirmations of  
13 custody to stop the constant turmoil and child tugging  
14 that results without an order and without a set  
15 schedule are left to their own devices to settle  
16 matters.

17 Also often without representation are  
18 those who are not getting to see their children for  
19 numerous reasons. Again, the domino effect takes place  
20 and problems get worse, situations are exacerbated and  
21 a single issue non-emergency case has become a  
22 multi-issue crisis case. Again, the children, who are  
23 in desperate need of services, stability, continuity  
24 and resolution of their parents' case for their benefit  
25 are most ignored and injured by the lack of access

1 their parents have to the legal system

2           The immediate way to resolve the problems  
3 caused by the very limited availability of Legal  
4 Services to low-income people with festering family law  
5 problems is to increase funding to Legal Services for  
6 the designated purpose of providing more representation  
7 in custody matters and to encourage, cajole and  
8 stimulate the pro bono participation of the private  
9 bar.

10           That's the completion of my prepared  
11 remarks. I'd be happy to answer any question that is  
12 you may have.

13 BY MR. SUTER: (Of Mr. Goldberg)

14           Q. We've heard quite a bit of testimony  
15 today that the district justices should not have the  
16 authority to enter emergency PFAs, that they lack the  
17 ability to determine when it's appropriate and when it  
18 is not. Do you have any thoughts on that? That it  
19 actually should be something that's before the Court of  
20 Common Pleas instead of the district justices?

21           A. I believe that the statutory system  
22 provides that only in certain circumstances can the  
23 district magistrate enter an order and that's when the  
24 court is not available. These situations come about  
25 without notice oftentimes and need immediate attention

1 and resolution. It's my experience that law  
2 enforcement officers often feel unable to respond and  
3 to resolve problems without the benefit of access to a  
4 court or a district magistrate to resolve these  
5 matters. So I would think that it's critical that the  
6 district magistrates remain available during the times  
7 when the court is not available to issue temporary  
8 orders which later have to be immediately transferred  
9 to the Court of Common Pleas for final resolution.

10 CHAIRMAN CALTAGIRONE: If I could  
11 interrupt here, this is where there's a big  
12 disagreement, at least from the minor judiciary, and  
13 those that we've talked to, and we've talked to a  
14 number of them, they don't want the responsibility,  
15 they don't feel they're trained in it and they feel  
16 that it's being abused because many people come to them  
17 after the Court of Common Pleas closes, and they are  
18 telling this to us. I've heard it from a number, and I  
19 know the other members have, too, and staff, and they  
20 wait for weekends or they'll wait specifically until  
21 the Court of Common Pleas closes so that they can,  
22 because they feel it is much easier and they feel, and  
23 they've said it to me, they're being given out like  
24 it's candy, and many times for unjustifiable reasons.  
25 Now, this is what the district justices are saying and

1 they are expressing that not only to the members of  
2 this committee but to the Common Pleas Courts, and if  
3 the need be that we approach the Supreme Court to ask  
4 that a Common Pleas Court judge sit after 4:00, then  
5 maybe that's what we should do with appropriate  
6 evidence being presented then, too.

7 MR. GOLDBERG: Well, I think that if  
8 there is the availability of access to the courts  
9 during the times when it's necessary, then maybe the  
10 minor judiciary wouldn't be needed. However, I think  
11 one of the points that you make is that they feel that  
12 lack of training is a problem and I think that can be  
13 resolved by providing training. I do know that  
14 historically dealing with domestic violence issues is  
15 not particularly palatable to many people. I don't  
16 think the courts have been excited about it because of  
17 the numbers and some of the complexity of the cases. I  
18 know that the police have difficulty, law enforcement  
19 has difficulty and I believe attorneys have difficulty  
20 in understanding and appreciating the seriousness and  
21 depth of the problems.

22 CHAIRMAN CALTAGIRONE: If that's all true  
23 though, then how does your statistics and figures  
24 justify that people have difficulty in dealing with it  
25 if it went from these numbers, and I was looking at

1 your statistic chart there, from 1,478 in 1978 to  
2 23,000 in 1991? Evidently they are not having a  
3 problem bringing the cases before the appropriate  
4 authorities.

5 MR. GOLDBERG: Well, the increase in  
6 numbers I believe are a result not in the fact that I  
7 think partly it's due to the change in the law that has  
8 made the court system a little bit more accessible to  
9 these individuals. It's also a result of the training  
10 that has been going on with law enforcement to explain  
11 to them how to advise people who they come in contact  
12 with that have these types of problems to seek this  
13 type of assistance. I don't -- it's not been my  
14 experience in the people that I have represented or  
15 spoke to in the trainings that I have done, I've done a  
16 lot of trainings for both law enforcement and for  
17 advocates and for attorneys in this area, and I have  
18 not experienced the situation where victims of domestic  
19 violence are so sophisticated in the law that they can  
20 determine that if they wait until after 5:00 that they  
21 are going to have an easier time to get a protective  
22 order, which is only going to last for 12 hours until  
23 court opens, or 13 hours until court opens the next  
24 day, that they are sophisticated or knowledgeable  
25 enough to know that they should go there to get an

1 order and they won't be able to get it in Common Pleas  
2 Court.

3 CHAIRMAN CALTAGIRONE: Do you practice  
4 law in Dauphin County?

5 MR. GOLDBERG: No sir, I don't.

6 CHAIRMAN CALTAGIRONE: Where are you  
7 located?

8 MR. GOLDBER: I'm in Lancaster County.  
9 We have offices in Dauphin County and I work with  
10 people who--

11 CHAIRMAN CALTAGIRONE: I would like  
12 particularly to let you talk with some of the district  
13 justices, even female district justices as a matter of  
14 fact, from either Berks, Dauphin, we just took a tour  
15 yesterday with one of the Dauphin County DJs and I  
16 don't know if he was speaking for himself or I think it  
17 was kind of general sentiment, though, from amongst the  
18 district justices in this county, and I know it is in  
19 Berks County, that they would prefer not to have it.  
20 And they specifically said, and you can look at the  
21 stats, that they wait until after the courthouse  
22 closes, especially when it comes to weekends, Friday  
23 nights. Now, I realize that there could be a  
24 coincidence there with people drinking and having a lot  
25 of problems on the weekend, but it happens. And this

1 is what really disturbs me. They don't understand the  
2 law. They really don't understand the law.

3 MR. GOLDBERG: The district magistrate's  
4 don't?

5 CHAIRMAN CALTAGIRONE: They don't. I'll  
6 give you a perfect illustration of what somebody told  
7 me had taken place. On a PFA, on the issuance, that  
8 somebody had said to them, well, this problem occurred  
9 a week ago, and the district justice and district court  
10 issued it. You know, was that right?

11 MR. GOLDBERG: Well, without knowing the  
12 other extenuating circumstances--

13 CHAIRMAN CALTAGIRONE: Now wait, a week  
14 ago.

15 MR. GOLDBERG: The Court of Common Pleas  
16 has recognized in a case coming from your own county  
17 that incidents of domestic violence that occurred  
18 months prior to the filing are still appropriately  
19 brought before the court and they can enter an order  
20 based on that. The problem is--

21 CHAIRMAN CALTAGIRONE: I'm going to tell  
22 you, there is a serious, I perceive, a serious problem  
23 that somehow is going to have to be addressed. It is  
24 going to have to be addressed because you're talking  
25 about taking away somebody's rights, the basic American

1 freedoms that we all enjoy by saying through ex parte  
2 proceedings that somebody doesn't have a right to  
3 defend themselves to a charge that's being made, number  
4 one; and number two, whether or not in fact that charge  
5 is valid; number three, whether or not those charges or  
6 charge can be substantiated and thoroughly documented  
7 in any way whatsoever, and what you are doing is you're  
8 treading on some very dangerous constitutional grounds,  
9 I think. Let's use the Constitution the way it was  
10 meant to be used and not abuse it either.

11 MR. GOLDBERG: I would agree with you  
12 that the procedures are somewhat extraordinary, but  
13 they are dealing with an extraordinary problem.

14 CHAIRMAN CALTAGIRONE: But I think that  
15 this has to be, and I would hope that some day we will  
16 take it if the law isn't changed right up to the  
17 Supreme Court in this State to see if this would hold  
18 the acid test, and I'll tell you what, I don't think it  
19 would.

20 MR. GOLDBERG: It is my understanding  
21 that the constitutionality of the domestic violence  
22 statute based on due process allegations and some of  
23 the things that you have identified has been litigated  
24 and it's been upheld.

25 CHAIRMAN CALTAGIRONE: Not on these kind



1 of issues that we're talking about.

2 MR. GOLDBERG: Well, on many of the  
3 issues.

4 CHAIRMAN CALTAGIRONE: Not these  
5 particular issues.

6 MR. GOLDBERG: But it does not surprise  
7 me that you tell me that the district magistrates do  
8 not want to handle these things and that they don't  
9 feel capable, and I think that's why I tried to  
10 identify in my presentation the critical need for  
11 training of all people, not just law enforcement. The  
12 act provides for training of law enforcement, but there  
13 are so many people within the legal system who come in  
14 contact with it that it is critical that everybody  
15 receive training, and with the adequate training I  
16 think that they would--

17 CHAIRMAN CALTAGIRONE: Yeah, I don't deny  
18 that. I think training is needed.

19 MR. GOLDBERG: --would be better able and  
20 feel more comfortable in addressing these issues. I  
21 think that they are somewhat difficult issues. Most of  
22 the domestic violence tends to take place behind closed  
23 doors in the privacy of people's homes where there are  
24 not the availability of witnesses and similarly, as in  
25 child abuse cases, it seems that people that have a



1 judge said to me yesterday? If that were to be the  
2 case, why in God's name would that person still remain  
3 there? Okay?

4 MR. GOLDBERG: Well, I think so, and that  
5 example exhibits the critical need for all people in  
6 the legal process, including judges, to receive  
7 adequate training in the issues surrounding domestic  
8 violence as well as the psychological, psychiatric, and  
9 emotional issues that affect victims of domestic  
10 violence, and it's difficult for us all. It's  
11 difficult for me in all the cases that I've done to  
12 sometimes deal with someone who has returned to an  
13 abusive home after they have been abused, even after  
14 they have gotten their protective order, but there are  
15 so many factors that when understood and when dealt  
16 with make that more understandable, and it's not my job  
17 to moralize about whether or not someone should have  
18 done.

19 CHAIRMAN CALTAGIRONE: No, it's a judge's  
20 job. It's a judge's job who should sit and listen to  
21 the facts and make a decision and no one else. And no  
22 one else. Not any of the social service agencies, not  
23 any of the attorneys, not any of the do-gooders that  
24 are saying, well, my God, this is really taking place.  
25 Let's look at the facts, let's look at the evidence and

1 let a judge make that decision.

2 MR. GOLDBERG: And the evidence that the  
3 judge should look at is not whether or not a particular  
4 victim has returned to an abusive home but whether or  
5 not abuse occurred. It is immaterial, in my belief,  
6 whether or not someone went back to a home because they  
7 were weak, they were emotionally dependent or whether  
8 they were financially dependent or whether or not they  
9 wanted to try and make a home for their children and  
10 maintain some contact with the father of their  
11 children. It's not material. What is material is  
12 whether or not that person accused of abusing the  
13 victim did in fact abuse them, and if in fact they were  
14 abused, then it is appropriate to enter a protective  
15 order and not punish a victim because they may be weak  
16 or they may have had some emotional problems or they  
17 may be psychologically dependent as a result of the  
18 continued abuse that may have occurred over the years--

19 CHAIRMAN CALTAGIRONE: What would you say  
20 the consequences should be for false representation,  
21 false filing, false collusion, almost, with an agency  
22 whose promoting somebody to say something that can't  
23 even be verified let alone possibly be an out and out  
24 lie? What would you say should happen?

25 MR. GOLDBERG: I think that there are

1 laws that are already in effect that provide for  
2 sanctions against people who file fraudulent legal  
3 papers and who make knowingly false verified  
4 statements, and I think that those laws are in place  
5 and that they can be utilized. Concerning collusion in  
6 other agencies, I think that that would be a very  
7 serious problem if it occurred. And I can only tell  
8 you from my experience that I have never been aware of  
9 that or have discerned it. As a matter of fact,  
10 through my very close working relationship with the  
11 Domestic Violence Legal Clinic in Lancaster over the  
12 last five or six years since it's been in effect, I  
13 have not discerned that in one bit, and they have seen  
14 thousands and thousands of people.

15 Now, I am not naive enough to believe  
16 that there are not people that approach the court at  
17 particular times with fabricated stories or false  
18 allegations for one reason or another, and those  
19 individuals, I think, can be dealt with appropriately  
20 through existing laws and existing mechanisms. But I  
21 think it is wrong to paint a picture that implies that  
22 there are agencies and advocacy groups and that whole  
23 section of particular litigants are knowingly filing  
24 false pleadings, and I think -- and although I wasn't  
25 present when Judge Hummer spoke, it's my experience

1 from looking at the statistics in Lancaster County and  
2 reviewing the statistics throughout the Commonwealth  
3 that the number of protective orders that are entered  
4 based on the number that are filed is testimony in and  
5 of itself that there are not false or malicious  
6 allegations that are being raised for improper  
7 purposes. I think those statistics stand as the  
8 greatest testament that we can to the fact that this is  
9 a very, very serious problem. And I know that a lot of  
10 times there are people who may be sent to the  
11 courthouse to file protective orders where their facts  
12 may not, after judicial evaluation, warrant that, but I  
13 think that the parties that are most guilty of sending  
14 those people are the law enforcement. They don't know  
15 what to do with these people and if they feel that  
16 there's anything that may have gone wrong, their first  
17 advice to get them away from the law enforcement people  
18 is say, go to a courthouse and file a protective order.  
19 They don't evaluate the case, they don't determine  
20 whether or not there are facts that warrant a finding  
21 of abuse under the act, they simply want to refer  
22 people sometimes out of their jurisdiction and out of  
23 their problem.

24 That is the very benefit of the Domestic  
25 Violence Legal Clinic has as opposed to the current pro

1 se system where the people go to the courthouse and  
2 don't get any counseling. These people at Domestic  
3 Violence Clinic are trained, and I think well-trained,  
4 partly because I help to train them, in understanding  
5 to some degree what it takes to get a protective order.  
6 They understand the law. They deal with it every day  
7 and they understand that not everybody who has been a  
8 victim of some sort of domestic abuse may qualify for a  
9 protective order because our protective statute  
10 provides only certain circumstances that warrant it and  
11 that is why, after counseling, some people find that  
12 they either don't want a protective order, they are not  
13 entitled to a protective order or that there is some  
14 other non-legal--

15 CHAIRMAN CALTAGIRONE: Well, or they  
16 withdraw it.

17 MR. GOLDBERG: well, in the situation I  
18 was speaking of, these individuals go to the Domestic  
19 Violence Clinic before they file and so before they  
20 file they receive counseling and they receive  
21 understanding about the law and they are better able to  
22 determine whether that's the proper avenue for them. I  
23 would agree with you if what you were saying is that  
24 there are some individuals who may not be entitled to  
25 protective orders, but that's the case with every legal

1 petition that's filed in this Commonwealth. In any  
2 matter, there are people that file petitions that  
3 aren't necessarily entitled to what they are asking  
4 for. But I would also suggest to you that the number  
5 of people who file for protection orders and the number  
6 of people who get protective orders and that incredible  
7 percentage that receive them in the '90s, is--

8 CHAIRMAN CALTAGIRONE: As a permit. But  
9 I'm talking about the initial filing, because I'll give  
10 you an illustration. I know Mary has a question but  
11 I'll drop it at this. Union president comes back from  
12 a trip to California, goes to his home and is  
13 immediately served with a PFA while his wife is in  
14 there with her boyfriend. That happened. He was  
15 escorted into his home, was able to get his clothes and  
16 had to leave. Fair? What was the justification for  
17 that?

18 MR. GOLDBERG: If he abused her, then  
19 it's fair.

20 CHAIRMAN CALTAGIRONE: How could he have  
21 abused her? He wasn't even in the area. He was in  
22 California. She had said that there was potential for  
23 abuse because he would get upset that her boyfriend had  
24 moved in with her.

25 MR. GOLDBERG: Well, again, this is not



1 her fault. It may be the judiciary's fault for  
2 granting that temporary order in the first place.

3 CHAIRMAN CALTAGIRONE: Where does some of  
4 this stuff makes sense?

5 MR. GOLDBERG: I would agree with you  
6 that out of all the thousands of cases that are filed  
7 it wouldn't be difficult to find a few that may not  
8 have been warranted. And I think that that may be an  
9 improper perspective to take. I think what we look at  
10 and you see these numbers is that there are huge  
11 numbers of people that need this protection and that's  
12 why they are affording it. And not only that but for  
13 every one person that gets an order there are probably  
14 tens or hundreds that need it and don't get it and  
15 don't know to get it and don't have access to the legal  
16 system or don't understand how to get to the legal  
17 system or are discouraged by family, by church, by  
18 community members, and by sometimes by their own  
19 advocates.

20 CHAIRMAN CALTAGIRONE: If that were true,  
21 your own figures that you show on the chart would be  
22 this way instead of this way, okay?

23 MR. GOLDBERG: No, my position--

24 CHAIRMAN CALTAGIRONE: It has grown,  
25 number one, and the amount of litigation in this whole

1 area is like a tidal wave sweeping over the courts

2 MR. GOLDBERG It's partly because it's  
3 new litigation. The Protection From Abuse statutes are  
4 somewhat new throughout our whole country. It wasn't  
5 until the mid-1970s where this type of relief even  
6 became available to people and it hasn't -- wasn't well  
7 publicized in the beginning. People weren't aware of  
8 it and there is a lot of inertia that we're trying to  
9 stop, a lot of, I mean, when you go back and you look  
10 at the history of domestic violence and back through  
11 the centuries where it was condoned by court decision,  
12 by the rule of thumb. We all know what the rule of  
13 thumb is where it says that you're allowed to strike  
14 and discipline your wife with a rod as long as it was  
15 no thicker than your thumb. The courts have  
16 acknowledged that. Our religious institutions have  
17 acknowledged that. In Lancaster County today we still  
18 have religious advisors telling victims that they have  
19 to tolerate this type of behavior from their husbands  
20 often.

21 And I want to reiterate that we have  
22 represented men who have been victims of domestic  
23 violence as well as women. The statistics show it's an  
24 overwhelming number, but that is the reason why the  
25 numbers are increasing and they are going to continue

1 to increase and not because people are fabricating  
2 them, because it's such an incredibly serious problem.

3 CHAIRMAN CALTAGIRONE: All I'm saying is  
4 protections from the abuse of the Protections From  
5 Abuse have got to be incorporated in the law somehow.  
6 Protections from the abuse have to be incorporated into  
7 the law.

8 MR. GOLDBERG: And I think in Lancaster  
9 County we do a good job of that because, one, the court  
10 has directed that the public defender represent  
11 indigent defendants in Protection From Abuse hearings  
12 and the District Attorney's office prosecutes  
13 contempts. And in that way they have tried to provide  
14 the fullest amount of rights available to both parties.  
15 And I will tell you that I would just as soon see the  
16 most competent attorney on the other side of a case as  
17 I would to see an incompetent attorney or someone not  
18 represented because when you have a competent attorney  
19 on both sides of the case there's a better opportunity  
20 and a chance that all the facts are going to be fully  
21 litigated and the judge is going to be given the best  
22 opportunity to make a fair and just determination. I  
23 don't take any pleasure in representing victims of  
24 domestic violence when there is no representation on  
25 the other side. And I have no problem with affording

1 the respondents as much rights as possible. But I  
2 think that we must be careful and realize the kind of  
3 problem we're dealing with here and the need for  
4 immediate action, because if we don't take immediate  
5 action, if we don't provide victims with immediate  
6 access to the legal system, problems get worse. And  
7 what we're learning now is not only are these problems  
8 bad for the victim, but they are affecting the  
9 children.

10 CHAIRMAN CALTAGIRONE: I don't disagree  
11 with you, but we also heard from one of the judges  
12 today, too, that by putting a man out of his house,  
13 he's ended up with three homicides in his county. He  
14 said, you know, at the one end of the spectrum that's  
15 the worst thing that can happen. I don't know what the  
16 answer is. I really don't. I'm just saying, you know,  
17 that there are--

18 MR. GOLDBERG: Those homicides did not  
19 occur because someone was put out of their house. They  
20 occurred because the man was irrational and was  
21 violent, and nothing else was going to stop that.

22 CHAIRMAN CALTAGIRONE: Who knows what  
23 would have set him off or what would have been the  
24 circumstances involved, but, you know, you can start an  
25 incendiary situation which can lead from one thing to

1 another to another and you don't know where it is going  
2 to end

3 MR. GOLDBERG: But you don't deny people  
4 their protection because of the fear of what's going to  
5 happen. We have cases where a man has gone to jail, I  
6 believe in Illinois, for beating up his girlfriend and  
7 threatening her, goes out on furlough and then kills  
8 her on the street.

9 CHAIRMAN CALTAGIRONE: It's wrong and  
10 what I'm saying to you is there has to be a balance in  
11 the scales of justice for people's rights, too, so that  
12 people's rights are not also being abused on the other  
13 end of the scale.

14 MR. GOLDBERG: As an advocate for victims  
15 of domestic violence, I would agree with you that  
16 everybody's rights should be protected--

17 CHAIRMAN CALTAGIRONE: That's the  
18 ultimate goal.

19 MR. GOLDBERG: And I believe that the  
20 Protection From Abuse Act does a good job. I believe  
21 that there may be counties where the court system does  
22 not address this in a serious enough fashion and take  
23 it seriously enough and where public defenders and  
24 District Attorneys do not address the problem, just  
25 like district magistrates, because they don't want to.

1 It's a difficult problem to deal with. It's difficult  
2 for me, after all the years I've been doing this, it's  
3 difficult for me sometimes to deal with these things.  
4 But just because it's difficult doesn't mean we don't  
5 provide the rights that are absolutely necessary. For  
6 those three people that were killed, I just wonder how  
7 many thousands and thousands of people were saved as a  
8 result of the protections that are afforded through  
9 Protection From Abuse and the untold number of children  
10 whose lives have been changed for the benefit and  
11 better as a result of getting some relief from living  
12 in a home like that.

13 CHAIRMAN CALTAGIRONE: Mary.

14 BY MS. WOOLLEY: (Of Mr. Goldberg)

15 Q. Just following up on the district justice  
16 issue, the counsel to the District Justices'  
17 Association has advised us that -- maybe it's not in  
18 Dauphin County because we heard from the Dauphin County  
19 judge today, but in some counties the problem is that  
20 the court only deems itself available -- the Common  
21 Pleas -- for limited hours on limited days during the  
22 week so that, in fact, our intent under the act, which  
23 is to have DJs hear ex parte hearings at night and to  
24 have the Common Pleas review it the next day, is not  
25 occurring. That a DJ ex parte order will be entered

1 during the day, during a working day, and go on for  
2 several more days. Are you aware of that in any of  
3 your jurisdiction in Central Pennsylvania Legal  
4 Services?

5 A. No, I am not personally aware of that,  
6 and again, most of my practice is limited to Lancaster  
7 County and I haven't been aware of that, but it also  
8 sounds very similar to the fact that there are counties  
9 in Pennsylvania where they still haven't set up a pro  
10 se system. So if they don't follow the law, then it  
11 doesn't surprise me that the law doesn't work  
12 effectively. And I think that if the law was adhered  
13 to and the courts took it seriously and addressed it  
14 the way the legislature meant for it to be addressed,  
15 that some of these problems wouldn't occur. And I  
16 think, again, and I would agree with you that training  
17 is critical, not only for the district magistrates but  
18 for the judges as well.

19 Q. And is it the case in Lancaster County  
20 where a DJ enters an ex parte order at night that it is  
21 heard the next day by a Common Pleas judge?

22 A. It is my understanding that it is sent  
23 immediately over to the Court Administrator's office to  
24 be scheduled before a judge, and I think that the  
25 instructions are that the petitioner should appear at

1 9:00, or 8:30, at the Court Administrator's office to  
2 where they assist them in filing a formal petition for  
3 a protective order.

4 Q. So that--

5 A. And again, the problem can be resolved by  
6 the fact that the order can dissolve at a stated time.  
7 And that would obviate the problem, I would think, to a  
8 degree. And the other interesting fact which I didn't  
9 address -- I don't want to take anybody else's time --  
10 but that I believe needs more attention is the  
11 relationship of domestic violence to custody issues.  
12 And we have a new custody law that requires that to be  
13 considered, and I believe that this is another area  
14 which begs for training of the judiciary and the impact  
15 of domestic violence on custody cases. We are just  
16 learning that a lot of the experts in this area are  
17 starting to discern the problems that affect children,  
18 not only if they are victims of abuse themselves and  
19 not only if they witness abuse with their own eyes, but  
20 we realize that they discern this violence, they  
21 understand what's going on and the impact on them is  
22 very dramatic and sometimes very long lasting. And we  
23 have to become aware of that.

24 In one case that I litigated, the court  
25 stated that they could not understand how victims, how



1 a victim of domestic violence at the end of October of  
2 one month could have been influenced by that domestic  
3 violence to sign an agreement about a month and a half  
4 later giving custody of her child to the perpetrator of  
5 that violence. And I think that is an indication that  
6 the court was unaware of the impact that domestic  
7 violence has on individuals, especially if it's  
8 prolonged and had been ongoing, and I think that is  
9 another critical issue which should be addressed.

10 Q. Thank you.

11 A. Thank you very much for your time and--

12 MR. SUTER: I think we have one--

13 MS. BEEMER: I have one question. My  
14 question is it's not the first time today that I've  
15 heard that one of the problems of the pro se additions  
16 to the PFA act was, in a sense, that women still were  
17 not able to effectively get a Protection From Abuse  
18 order by themselves. I'm wondering if the  
19 simplification of the filing requirements and all the  
20 administrative things were done but perhaps more needs  
21 to be done to get victims into court and is there -- do  
22 you think that there's some interim factor that could  
23 do that and effectively advocate their case? I  
24 understand that most of the ball has come down on Legal  
25 Services' shoulders, but perhaps, for example, the

1 legal clinic that you've established in Lancaster or  
2 other women shelters. Many seem to have very competent  
3 advocates that are well-versed in the law and maybe  
4 could provide an effective alternative to a Legal  
5 Services attorney but in the interim so that a victim  
6 does not have to go to court by themselves. Would you  
7 anticipate this being part of the solution?

8 MR. GOLDBERG: Well, I believe that our  
9 system in Lancaster should be a model system and should  
10 be duplicated because I think that not only does it  
11 give the victim an advocate to go along with them --  
12 and Legal Services is struggling right now throughout  
13 the Commonwealth in dealing with this problem of  
14 numbers and reduced funding and the increased demand  
15 for services, so it is a problem. And I think it helps  
16 in a number of other ways because there are other  
17 issues which I have not been trained and I'm not  
18 competent to deal with which are necessary ingredients  
19 in making sure that the victim totally understands  
20 their rights, not only legal rights but is confident in  
21 understanding what they want to do and those advocates  
22 are best qualified to do that. And I have found that  
23 the Pennsylvania Coalition Against Domestic Violence  
24 has a tremendously effective legal advocacy program  
25 They provide training to the agencies throughout the

1 State, they've recently been recognized by the, I  
2 believe it's the National Council of Family and  
3 Juvenile Court Judges as a model agency in their legal  
4 advocacy work, and they were applauded for that. The  
5 agency came and reviewed their work to see about using  
6 it as a model, I believe, and I think that's really  
7 critical, and I think that would help the judiciary I  
8 think people would move more smoothly through the  
9 system.

10 We have attempted in Lancaster to ask for  
11 specific funding when the pro se system first came  
12 about, through legislation, to have -- instead of it  
13 being done at the courthouse where people don't get  
14 advice and don't get explanations but they are given  
15 forms and help in filling out the form. And in  
16 Lancaster the people are very good who do that but  
17 that's all they do and that's all they are capable of  
18 doing, and they have other clerical work that they are  
19 supposed to be doing for the county in the meantime.  
20 And so sometimes it's very difficult to continue to  
21 interrupt what you were originally hired to do and stop  
22 and deal with a victim of domestic violence who  
23 sometimes is not really well prepared for being there.  
24 Sometimes she's just been beaten up or something  
25 terrible has happened and the police say go to the

1 courthouse. She doesn't even know what she's at the  
2 courthouse for but she's following the instruction. If  
3 we can get them to the advocate, they can find,  
4 sometimes, the services that they need in addition to  
5 the legal remedies. And I think that it would be a  
6 very, very effective way of helping to deal with the  
7 court's calendar and the impact on the whole legal  
8 system as well as insuring a greater likelihood of  
9 success for these victims in changing their lives and  
10 avoiding these problems in the future.

11 I'm not sure if that directly answers  
12 your question--

13 MS. BEEMER: Yes, thank you.

14 MR. GOLDBERG: --but I have the highest  
15 respect for all the legal advocates that I've worked  
16 with and through the clinic, through the shelters and  
17 through the Pennsylvania Coalition Against Domestic  
18 Violence and I have -- I owe them a great debt for my  
19 own abilities, however they may be, to what I've  
20 learned from them, and I think everybody would benefit  
21 from that.

22 MR. SUTFR: I just wanted to clarify that  
23 the legal advocates are not necessarily attorneys,  
24 correct?

25 MR. GOLDBERG: That's correct

1                   MR. SUTER: And in a lot of cases I would  
2 imagine that really keeps the expense down, that these  
3 individuals are trained in this area and have become  
4 very good in this area and really know what they are  
5 doing, but yet it doesn't necessarily require an  
6 attorney to go through with this.

7                   MR. GOLDBERG: The example is, in our  
8 county, the individuals, instead of coming to our  
9 office, Legal Services Office, initially and then we  
10 have to determine whether or not they wanted a  
11 protective order or whether or not they were entitled  
12 to one and then draft it up and take it and file it,  
13 all that's done through the clinic program. We see  
14 them after they've filed and gotten their temporary  
15 order and a hearing date is scheduled. They come to  
16 us, people from the clinic, often with the necessary  
17 papers, medical reports, statements of losses. They  
18 understand the process a little bit. They have been  
19 taken to the courthouse and walked around the  
20 courthouse to the various offices. They understand  
21 that a little bit. They understand what to expect.  
22 Makes my job a lot easier. Less time, I believe I am  
23 able to serve more people as a result of that, and I  
24 think it's very, very cost-effective.

25                   MR. SUTER: Thank you.

1 MR. GOLDBERG: Thank you very much.

2 MR. HOWETT: Should I wait for the  
3 Chairman to come back? To whom am I giving my  
4 testimony?

5 MS. WOOLLEY: This is Representative  
6 Dennis O'Brien from Philadelphia.

7 MR. HOWETT: Oh, good. I'm glad there's  
8 a Representative here.

9 Hi, Jack Howell. May I proceed?

10 My name is John C. Howell, Jr. I'm an  
11 attorney with a practice in Harrisburg limited to  
12 matrimonial law. By way of background, I am the past  
13 Chairman of the Family Law Section of the Dauphin  
14 County Bar Association; I am a member of the Governing  
15 Council and I am the Secretary of the Pennsylvania Bar  
16 Association's Family Law Section. I have served two  
17 terms on the Board of Governors of the PBA, once as  
18 Chairman of the State Bar's Young Lawyers Section, and  
19 once as Zone 3 Governor. I'm a certified Fellow of  
20 both the American Academy of Matrimonial Lawyers and  
21 the International Academy of Matrimonial Lawyers, and  
22 have been listed in "Best Lawyers in America" for the  
23 last four years. In addition to my practice, I served  
24 until a year ago as a Special Master in Divorce in  
25 Dauphin County since the adoption of the Divorce Code.

1 I was a member of the task force which assisted the  
2 legislature in drafting the 1988 amendments, and I  
3 wrote the commentary on those amendments for the  
4 Pennsylvania Bar Institute, and I've written and  
5 lectured frequently on family law topics.

6 Having practiced in the area of family  
7 law for 17 years, I can tell you that this area of the  
8 law is treated as the proverbial stepchild of the legal  
9 system. Without question, more lives of the citizens  
10 of this Commonwealth come into contact with the  
11 judicial system and our courts through the family law  
12 area than through any other area of the law. Yet,  
13 those citizens are treated differently than other  
14 litigants by a legislature and a court system that  
15 allocates resources to what are apparently perceived as  
16 more important concerns. Moreover, those resources  
17 which are allocated to the family law area are not  
18 being utilized as efficiently as they could be.

19 The fact that these hearings are taking  
20 place is a positive note which signals an interest and  
21 concern in matters which affect a majority of  
22 Pennsylvania citizens. As to House Resolution Number 8  
23 itself, which I understand is the underlying basis for  
24 these hearings, the establishment, with public funds,  
25 of the task force to investigate the allegations of a

1 few unhappy but very vocal litigants I think is  
2 inappropriate. It's a misuse of funds which are  
3 desperately needed elsewhere to increase court  
4 personnel and improve services for the benefit of many  
5 rather than to provide a personal vindication for a  
6 few. I do not mean, however, to imply that most people  
7 are happy about divorce. In fact, the dissatisfaction  
8 level is quite high; but that should not come as a  
9 surprise, nor is it anything new. Moreover, the  
10 inherent dissatisfaction will exist, it will continue  
11 to exist, in this area of the law even under a  
12 perfectly administered and fully funded system. And  
13 this dissatisfaction certainly extends to the lawyers  
14 for the litigants.

15 Divorce is probably the area of law where  
16 there is the most hiring and firing of counsel. This  
17 is because two can live more cheaply than one, and in  
18 most cases the economically independent spouse believes  
19 that he or she is losing too much and the dependent  
20 spouse believes that she or he is getting too little,  
21 be it in terms of support, alimony, property  
22 distribution, and even in terms of time spent with  
23 minor children. Often parties have unreasonable  
24 expectations sometimes, unfortunately, the fault of  
25 attorneys who are not realistic with their clients.



1           Giving a client unrealistic expectations,  
2 either inadvertently as a result of inexperience or  
3 lack of knowledge or deliberately as "puffery" does a  
4 great disservice to the client and the legal system. A  
5 client with grandiose expectations is a client unlikely  
6 to settle on objective realistic terms and who will  
7 insist on going to court whether or not that is  
8 appropriate. Additional delay results when cases which  
9 should have settled instead are fully litigated at  
10 great financial and emotional cost to the parties and  
11 at great expense to an already overburdened system.  
12 These factors in divorce matters cause unhappiness and  
13 litigants often turn their anger on counsel - their own  
14 or their spouse's. This is a natural human reaction  
15 But it should not be the basis of a task force  
16 investigation.

17           This is not to say that there aren't  
18 problems in the system. There are, but there are also  
19 some solutions, some of which are in your power to  
20 effectuate.

21           One of the major problems is the  
22 fractured or multi-track system of handling various  
23 family law issues. Divorce cases involve not only the  
24 divorce itself but support, alimony, alimony pendente  
25 lite, equitable distribution, custody and visitation

1 just to name the most significant areas of potential  
2 controversy. Unfortunately, under the current system  
3 in the majority of counties, each issue is litigated in  
4 a separate forum. In support, parties go before a  
5 domestic relations conference officer with the right to  
6 a completely new, de novo, hearing before a judge. In  
7 fact, in some counties for support, parties must first  
8 go to a domestic relations officer, then to a Master  
9 and then to a judge. In custody matters, parties go  
10 before a conciliator with a de novo trial before a  
11 judge, usually a different judge than the one who heard  
12 the support issue. For divorce, alimony and equitable  
13 distribution, parties go before a Master with review by  
14 a judge, so now there may have been three different  
15 judges and three different hearing officers/Masters/  
16 conciliators who each heard a piece of the case. For  
17 alimony pendente lite, interim counsel fees, protection  
18 from abuse proceedings, petitions to protect assets or  
19 other special relief and motions for discovery and  
20 other interim petitions, parties may go before yet  
21 another judge.

22 This fragmented system is expensive for  
23 clients and for the court system. The fact that  
24 hearings often take longer than one day and subsequent  
25 hearings are scheduled on non-consecutive days results

1 in the second or third day of trial being weeks or even  
2 months after the first, requiring parties to incur  
3 additional fees each time their counsel has to  
4 re-prepare for the continued proceeding. In addition,  
5 because the evidence pertinent to one issue often is  
6 relevant to another, each separate hearing may take  
7 longer than necessary as duplicative evidence is  
8 presented in the various forums. This not only  
9 increases the amount of attorney's fees required but  
10 wastes precious judicial resources. If a client wants  
11 to call a particular individual as a witness with  
12 respect to more than one issue, for example child  
13 support, alimony pendente lite and permanent alimony,  
14 where the same witness may be pertinent to all three of  
15 those financial issues, that witness would have to  
16 appear at least three times in three different  
17 proceedings with resulting increased costs and  
18 duplication of effort. Finally, no one judge may ever  
19 know the complete facts of the case or the history of  
20 the proceedings. This makes it much more difficult for  
21 the court to control certain obstreperous litigants who  
22 seek to manipulate the system or who are judge  
23 shopping.

24 These difficulties can be alleviated  
25 with a one-judge-one-family system where a particular

1 judge would be assigned to hear all related issues  
2 involving the parties, including interim motions and  
3 petitions and to permit that judge to hear, in one  
4 forum, all issues pertinent to that case. Such a  
5 system would move cases along more expeditiously and at  
6 a lesser cost to litigants and the court system. This  
7 is an idea which has been discussed for some time and  
8 has substantial support from the family law bar. It is  
9 a practical and achievable solution to one of the most  
10 serious concerns about the system of divorce in this  
11 Commonwealth.

12           The other major problem is the system in  
13 some counties which requires litigants to pay the costs  
14 of the Master who hears the divorce case. This is a  
15 procedure which can and does result in a denial of  
16 equal access to the courts on the basis of ability to  
17 pay. The parties in a divorce action, like all other  
18 litigants no matter how rich or poor, are entitled to  
19 their day in court. For a one-day divorce hearing,  
20 however, it can cost as much as \$1,000 or more just for  
21 the Master and the stenographic record, not to mention  
22 counsel fees, witness fees, and other costs. This  
23 daunting figure is beyond the reach of many litigants,  
24 so the practical effect is the absolute denial of a  
25 right to be heard for solely financial reasons. I

1 submit that such a result is blatantly  
2 unconstitutional.

3           However, as with the multi-track problem  
4 in family law cases, this situation also has a solution  
5 - a solution that already has proved workable since  
6 its inception in Dauphin County and which also has been  
7 determined to be constitutional by the Third Circuit  
8 Court of Appeals. If, as in Dauphin County, each  
9 person who files a complaint for divorce pays an  
10 additional filing fee to cover the cost of the Master  
11 system, sufficient funds are then available for the  
12 county to incur the costs of paying for the Masters and  
13 the court reporters and transcripts in a revenue  
14 neutral fashion. This system has worked well in  
15 Dauphin County since its adoption in 1983. In other  
16 counties, however, litigants are still required to pay,  
17 and pay dearly, for that their "right" to go to court.

18           To me, simply stating the facts  
19 establishes this cruel injustice to family law  
20 litigants. A fender bender accident with relatively  
21 minor personal injuries can tie up a judge and jury for  
22 several consecutive days of trial at great expense to  
23 the system but no expense to the litigants, whereas a  
24 divorce case that often involves, at minimum, the  
25 distribution of a house and pension, at dollar values

1 substantially greater than the vast majority of civil  
2 cases, has to be tried before a Master rather than an  
3 elected judge, does not get consecutive day trials, and  
4 costs the litigants shocking sums of money, over and  
5 above the expense of their own counsel to have their  
6 cases heard.

7 Divorce reform is an ongoing process. In  
8 providing no-fault grounds for divorce, the Divorce  
9 Code of 1980 changed the focus in most divorce cases  
10 from "who struck John," to "what do we have, what is it  
11 worth and how should it be fairly divided?" The  
12 emphasis now is on locating and valuing assets,  
13 including businesses, real estate and pensions. The  
14 need for discovery has increased. The use of experts  
15 has increased. With the increasing number and  
16 complexity of divorce cases, the legal system has  
17 become bogged down making access slower and more  
18 expensive.

19 Additional reforms were enacted in 1988  
20 with the Divorce Code amendments and further proposals  
21 are in progress. The Senate Judiciary Committee  
22 recently voted favorably on legislation to reduce the  
23 waiting period from two years to one year for a  
24 unilateral no-fault on the basis of separation; to make  
25 binding arbitration available and to permit interim

1 orders distributing marital property before the final  
2 adjudication.

3           With the respect to the proposal for the  
4 reduction of the waiting period to one year, such may  
5 not reduce the burden on the court system but actually  
6 increase it. As many cases take more than a year to  
7 resolve because of lengthy or complex discovery, or  
8 simply because one of the parties is simply not yet  
9 emotionally capable of proceeding and concluding a  
10 divorce in a year, more bifurcation hearings are likely  
11 to result from a reduced waiting period.

12           However, amending a Divorce Code to allow  
13 interim distributions of marital property prior to the  
14 entry of a decree and a final equitable distribution  
15 proceeding is a necessary reform. Some witnesses who  
16 have testified before you have questioned the necessity  
17 for this amendment on the basis that the authority  
18 already exists under the broad grant of equity powers,  
19 to make interim awards of assets. I agree that the  
20 authority exists. Unfortunately, some courts have  
21 disagreed, concluding that the language of the Divorce  
22 Code requires that no equitable distribution of any  
23 nature can occur prior to the entry of a decree in  
24 divorce and accordingly, will not permit any interim  
25 distributions. Therefore, dependent spouses may have

1 to borrow heavily until a final equitable distribution  
2 order is entered or incur legal expenses in pursuing a  
3 claim for interim counsel fees, costs, and expenses  
4 just in order to obtain the funds needed to pursue or  
5 defend a divorce action while marital assets, some of  
6 which ultimately will be awarded to the dependent  
7 spouse in any event, are kept under the control of the  
8 other spouse throughout the entire litigation. Under  
9 such circumstances, a dependent spouse often finds  
10 himself or herself at the mercy of the financially  
11 independent spouse who seeks to increase the costs of  
12 litigation to gain an advantage in the case. Allowing  
13 partial distributions prior to the entry of a decree  
14 and prior to the final determination of equitable  
15 distribution, without prejudice to the overall  
16 distribution scheme and with any amount received to be  
17 credited to the recipient spouse's ultimate share of  
18 the assets, would go a long way toward equalizing the  
19 footing between litigants of disparate financial  
20 resources.

21           Mandatory mediation in custody or partial  
22 custody disputes by trained and experienced mediators  
23 is also an appealing idea, but only if mediators and  
24 conciliators are able to recommend a temporary interim  
25 order. If they cannot, and if attorneys counsel their



1 clients that the mediator or conciliator has no  
2 authority and the process is just a pro forma step  
3 before getting before a judge, then there's no  
4 motivation for a reluctant party to fully participate  
5 in the process, and, moreover, that party will view the  
6 process as an unnecessary delay before he or she gets a  
7 day in court.

8                   Legislation authorizing the option of  
9 binding arbitration for economic issues should be  
10 adopted and each county should be mandated to have such  
11 an optional system in place.

12                   It's been a consistent theme throughout  
13 these hearings that increased funding is necessary to  
14 relieve the delays within the system. The  
15 under-staffing of those parts of the legal system  
16 dealing with family law issues is in large part  
17 responsible for delay. For example, in early 1991 in  
18 Dauphin County, it took, in some cases, from 16 to 20  
19 weeks after the filing of a support petition to get a  
20 conference before a domestic relations hearing officer.  
21 Although retroactivity was preserved to the filing  
22 date, the fact remained that a dependent spouse and  
23 children could conceivably have no income whatsoever  
24 for up to four months and even then, arrears are paid  
25 off slowly without interest over an extended period of

1 time. In the judiciary, the number of judges assigned  
2 to hear family law cases usually is far less than those  
3 designated to hear criminal or other civil matters. In  
4 some counties, even counties with several judges,  
5 there's no family division or family court judge at  
6 all.

7 After the enactment of the Code in 1980  
8 came years of court decisions, often conflicting and  
9 changing, interpreting the new law and the new, at  
10 least for this State, concepts of marital property,  
11 equitable distribution and alimony. Some court  
12 decisions were codified in the 1988 amendments and some  
13 were overturned. With each year of living with the  
14 Divorce Code and each new decision, issues which  
15 previously clogged the courts are put to rest and  
16 others raise their heads. Each will have to wind its  
17 way through the system until the final interpretation  
18 is rendered which will guide cases to follow. Every  
19 possible circumstance and every possible interpretation  
20 cannot be addressed in legislation. That's why it's  
21 essential that sufficient judicial resources be  
22 available.

23 What is needed to better the process of  
24 marital dissolution, custody determinations and other  
25 family issues is not propositions simply decrying the



1 familiar with the details of those systems. My feeling  
2 about mediation is that the existing adversarial  
3 litigation system is simply not an effective system for  
4 dealing with issues such as custody and visitation.  
5 And that if we can have some alternative to that, it  
6 will in fact resolve 80 or 90 percent of the cases that  
7 end up in litigation. And I think the existing  
8 attempts of these conciliation processes that now seem  
9 to exist in most counties in the Commonwealth is proof  
10 of the pudding. The problem is that you have got to  
11 give more teeth to that interim process. You've got to  
12 make sure that it occurs expeditiously and the people  
13 that are administering it have to be competent people.  
14 We're fortunate in Dauphin County that we have that,  
15 but I know that it's not always the case in all  
16 counties.

17                   And it's still a very limited  
18 intervention. The conciliation typically is a one-hour  
19 intervention, it's a mandatory step and the longer it  
20 takes you to get to that conciliation and then from  
21 there to your eventual court proceeding, the less  
22 effective that interim step is. So I'm a firm believer  
23 that the existing, you know, adversarial process of a  
24 civil trial is not the best way to resolve custody  
25 cases, with the implication of all the rules of

1 evidence and so forth. It just doesn't work well

2 Now, as far as mandatory arbitration and  
3 in non-custody issues, the economic issues, the Senate  
4 bill that permits counties to adopt arbitration  
5 proceedings I think is a good step forward. In fact, I  
6 think it should mandate every county to adopt a process  
7 and, not mandate its use but mandate the process to  
8 exist in that county so that litigants may, if they  
9 want to, regardless of which county they live in, avail  
10 themselves also of that arbitration system. And not  
11 everyone will want to or be able to afford to, but a  
12 lot of people will and that will help take some of the  
13 burden off of the judiciary.

14 Q. You know, the other thing, too, if we --  
15 according to what I've been going through the Maine  
16 arbitration legislation that they've had on the books I  
17 guess for about 10 years and they have substantially  
18 cut back on their case load because of it. So whatever  
19 they are doing has been working. And what I'm thinking  
20 is if we could utilize that, with adaptations, of  
21 course, to our own situation in Pennsylvania, to  
22 expedite divorces and disposition of property and  
23 things like that, without having it to be costly or  
24 adversarial. Or put the carrot before the horse there  
25 and make it advantageous for the parties that are

1 involved to try to resolve that difficulty I think,  
2 you know, it would be in our best interest to see if we  
3 couldn't look at that and possibly see if we couldn't  
4 implement that here in Pennsylvania. I agree with what  
5 you said absolutely and I just think that we've heard  
6 so much and during those three days of hearings and  
7 during that week prior and after we were just flooded  
8 with phone calls from one end of the State to the  
9 other. And we still have calls and letters that  
10 continue to come in by people that are very unhappy  
11 with the length of time, with the judges, with the  
12 attorneys, with the process. You know, if--

13 A. Well, I don't doubt that at all. As I  
14 said in my prepared remarks that, you know, this is an  
15 area that is just rife with dissatisfaction in general  
16 It's, you know, people are parting with assets or  
17 people aren't getting enough assets--

18 Q. Um-hum.

19 A. --the system is slow. There is  
20 invariably incentive on one side of the case or the  
21 other to delay. And if there is that incentive, then  
22 it shouldn't surprise anyone that attorneys who are  
23 hired to be advocates to enhance their client's  
24 position will utilize those delays which are  
25 permissible under the law. One of things that the

1       legislation can do is to help remove those incentives.  
2       And one of the things that will remove, in part, those  
3       incentives is the concept of interim distribution of  
4       assets so that parties can be placed on equal footing,  
5       so they don't have to spend \$1,000 in counsel fees in  
6       time and effort asking the judge to award them an  
7       interim fee of \$1,000. I mean, that's just a churning  
8       of the system. It does nothing but benefit the  
9       lawyer's pocketbooks in the long run. It doesn't help  
10      the client at all, but it's not done to benefit the  
11      lawyer's pocketbook, it's done to benefit the client.

12                        But the system is such that it costs  
13      money to get money and if you have to do that to get  
14      these interim awards -- and then the interim awards are  
15      so chintzily given -- then it is not worth the candle.  
16      So, instead, permit interim awards that, my God, if  
17      there's \$100,000 sitting there in liquid assets, or  
18      bring it down to a more typical case, you know, a  
19      \$5,000 or \$10,000 CD or a stock holding or something,  
20      plus the house, the pension, the cars, the personal  
21      property. Allow that certificate or that stock to be  
22      liquidated and distributed to the dependent spouse as  
23      an advance interim distribution so that she's got the  
24      money to go to Atlantic City and gamble it away if she  
25      wants to or to hire her attorney and to hire an expert

1 and to get that case moving. And the husband can sit  
2 there and he can tie up that money and know that every  
3 penny the wife's going to have to spend she's going to  
4 have to scrimp to get and that is an incentive to  
5 delay. There are ways to remove some of those  
6 incentives and to try and equalize the system and then  
7 you have already in place, you know, rules of procedure  
8 of the courts and so forth, that can be used by both  
9 sides to get the case moving along.

10 CHAIRMAN CALTAGIRONE: Very good points  
11 you raised.

12 BY MR. SUTER: (Of Mr. Howett)

13 Q. Last session we had legislation, which  
14 I'm sure you saw, that established a Family Court  
15 system in counties that had a certain number of judges.  
16 Would you advocate the adoption of such legislation?

17 A. Mr. Suter, I had seen that legislation  
18 but I don't recollect it specifically. It seemed to me  
19 it was like counties of more than eight or nine judges,  
20 or something like that.

21 Q. It was the larger counties.

22 A. I, frankly, would like to see a Family  
23 Court division in every county, even one-judge counties  
24 where you can have a family court docket, although it  
25 doesn't mean anything in one-judge counties because



1 they do everything anyway, but to have a Family Court  
2 division in, certainly in counties that have more than  
3 three judges. You know, limiting to only eight or  
4 nine, I think, limits it to just a few counties in the  
5 Commonwealth.

6 Q. That's right.

7 A. I'd love to see it in Dauphin County,  
8 which wouldn't have qualified under that legislation,  
9 but, yet, is a big county with, I think, seven judges  
10 now. All our surrounding counties here have at least  
11 five or six judges now but none of them would have  
12 qualified or been required to have a Family Court  
13 division. Even if it's only one judge that takes these  
14 cases, calendars them, implements sub-systems, Masters,  
15 conciliators, you know, honchos the domestic relations  
16 office. It's going to be better than rotating  
17 everything around, one judge gets it for one year and  
18 then, thank God, I'm done with that, and then another  
19 judge gets it for a year and then at the end, the same  
20 thing, thank God, I'm done with that. There are judges  
21 out there who would love the responsibility of  
22 implementing a Family Court process in an orderly  
23 fashion.

24 Q. Do you know if the PBA Family Law Section  
25 would support that concept?

1           A.    The concept of a family law or a Family  
2 Court division?

3           Q.    Right.

4           A.    I can't imagine the Family Law Section  
5 not supporting something like that. But I can't speak  
6 for the Section, even though I'm an officer of the  
7 Section. I don't think that the Section has  
8 specifically addressed that, but, you know, any  
9 legislation that would be proposed on those lines or on  
10 the lines that I suggested in my prepared testimony  
11 would, if I have anything to do with it, be given  
12 prompt attention by the Section, and certainly that  
13 particular issue, I would think, would be well  
14 supported. But that in itself, Ken, is saying that  
15 we'll have a family law court.

16                    It's good to say it, it's the  
17 implementation and the methodology by which it's  
18 implemented that becomes more crucial. I'm not sure it  
19 lends itself to any simple solution and I know that  
20 every issue that you gentlemen and ladies have to deal  
21 with, that there's always one solution and that's throw  
22 more money at the problem and you just simply have to  
23 allocate resources, and I appreciate that. That's why  
24 I said, again in my prepared remarks, that even with  
25 the existing system, some of the things that can be

1 done that are revenue neutral are some of the things  
2 that can be done to just change the system and funnel  
3 it in another way without any changes in dollars

4           This one-family-one-judge concept, you  
5 know, it doesn't mean you're going to have more issues  
6 or more judges to deal with it, you just have one judge  
7 dealing with it. And then the second thing are these  
8 fragmented and fractured forums where you have one  
9 thing heard here, support's heard here, APLs heard here,  
10 alimonies heard here, custodies heard over here  
11 Different days, different forums, different costs. Why  
12 not have one judge hear that? The judge that knows  
13 that there is a particular custody problem is this  
14 household because of the health of the six-year-old  
15 daughter, that's going to bear on custody, it's going  
16 to bear on support, it's going to bear on the needs of  
17 the mother whether she should have more alimony, it's  
18 going to bear on the needs of equitable distribution.  
19 Why not have one judge hear that instead of four or  
20 five different judges who know they're only hearing one  
21 aspect. They can't get interested. They simply don't  
22 care and it's no wonder why.

23           Q. I think part of the problem with that is  
24 that there's been a reluctance on the part of the  
25 judiciary for that to occur--

1           A.    No question.

2           Q.    --because a lot of these judges do not  
3 want stuck and that's the type of language they use  
4 with those types of issues.

5           A.    No question.

6           Q.    And they are afraid that they will be  
7 stuck with it and that, in fact, is why the legislation  
8 was not passed last session that spoke of that

9           A.    I agree that this is a problem that  
10 judges don't want stuck with things.  It's this problem  
11 that you were talking about with the prior witness on  
12 PFAs.  Nobody wants to deal with it.  Nobody wants to  
13 deal with family problems.  Yet the people that are out  
14 there that pay the taxes, the people that are out there  
15 that vote, their lives are affected in the family law  
16 area more than any other area of the law.  That's how  
17 they see the justice system, in many case that's the  
18 only time they ever see the justice system.

19          Q.    That's right.

20          A.    And if the judges don't want to do it,  
21 then in my response, that's too damn bad.  That's their  
22 job to do it.

23          Q.    Thank you.

24          A.    Thank you.

25                   CHAIRMAN CALTAGIRONE:  She has a

1 question.

2 MS. BEEMER: One last question, if you  
3 don't mind.

4 MR. HOWETT: Certainly.

5 MS. BEEMER: Earlier today we heard  
6 testimony that much of the responsibility for the  
7 unnecessary delays in resolving the divorce itself, and  
8 the property distribution, should fall on the shoulders  
9 of the members of the Bar or the attorney that employs  
10 the delay tactics, or works the system to stretch it  
11 out as long as possible. And now you seem to be --  
12 actually some of the solutions to that were proposed  
13 sanctions on the attorney as well as the clients. And  
14 you seem to be advocating the position that it's the  
15 availability of the delay tactics in the law, or some  
16 defects in the law, that are the actual root of the  
17 problem. I'm wondering if it's a combination of the  
18 two or if the solution can be cured by simply changing  
19 the law itself or maybe there is some responsibility  
20 that needs to go to the attorney.

21 MR. HOWETT: There's no question that  
22 there is responsibility in the overall scheme of delay,  
23 that some of it is inherent in the system just by the  
24 fact that you have 20 days or 30 days to respond to a  
25 particular pleading, and then so much time to respond

1 to a rule, and then you list it for a hearing, and the  
2 court administrator has to assign it to a judge, and  
3 that judge has to find time to calendar it, and so  
4 forth. Those are inherent problems in the system.  
5 Well, you can shorten time periods if you want to, but  
6 you can't deal with that. The Supreme Court takes that  
7 be away from you by their Article X powers and say that  
8 they have the right to make the rule changes. The  
9 family law Bar can deal with it to help recommend to  
10 the court changes in that area. You have clients who  
11 just simply refuse to provide information that is  
12 required to be provided or create delays in that sense,  
13 or refuse to pay orders that demand then contempt  
14 proceedings or modification proceedings. And, finally,  
15 you have attorneys who will use the system for the  
16 benefit of their client to request a delay, request a  
17 continuance on a made-up excuse. There's no question  
18 that that happens. But I do not believe that the  
19 delays that occur in the family law area are any more  
20 significant than the same kinds of delays that happen  
21 in all aspects of civil and criminal law. Some of it's  
22 the responsibility of attorneys. Some of it's judges  
23 who are perhaps too lax in granting continuances, too  
24 lax in not enforcing their own rules, the rules of  
25 procedure, that said you're supposed to do something

1 and if you don't do it, you're going to get sanctioned  
2 for it. Well, my gosh, you can go out and file  
3 sanctions against another side for not responding in a  
4 proper time or answering interrogatories in a timely  
5 fashion. Do the judges put those sanctions on? In  
6 most instances they do not.

7           So the rules exist, the methods exist,  
8 the laws, you have passed them, they are there. They  
9 just need to be enforced. Now, how do you make that  
10 happen? You're not going to make it happen by  
11 disciplining lawyers or saying that you're going to get  
12 more sanctions for lawyers. The sanctions are there.  
13 I mean, the things exist. I mean, we're governed by  
14 codes of professional conduct, we're governed by  
15 statutes, we're governed by rules if we violate them,  
16 then we should be sanctioned. But if the system  
17 permits us to take steps that will cause delay, even  
18 though they are permissible steps, and it's because  
19 there is benefit to our client do so, then you're going  
20 to have to expect that to happen. Now, what is the  
21 benefit to the client? Well, it is economic. It is  
22 only economic except in kid issues, and it's the same  
23 thing, possession. But take away the kid issues  
24 because, hopefully, those kind of things will be, or  
25 certainly should be, expedited anyway, but on the

1 economic issues the incentive to delay is keeping the  
2 bucks.

3           So if you can permit, if you give the law  
4 the things that it needs, such as this interim  
5 distribution of assets, it's just one example, then you  
6 can remove some of that incentive. I've always  
7 believed that judges should hit recalcitrant fathers or  
8 husbands, the income side, the independent spouse, with  
9 perhaps heavier orders than are provided for in, for  
10 example, the support guidelines, as a stronger  
11 incentive to move the case forward. What's he care if  
12 he doesn't, you know he doesn't pay for months and  
13 months and months and delays it and delays it and he's  
14 going to get hit with an arrearage. Big deal, he gets  
15 an arrearage. He gets to pay it off at \$5 a week, no  
16 interest. It takes him four years to eliminate his  
17 arrearages. Great, it's an interest-free loan. In the  
18 meantime, he's had the use of all the capital. Well,  
19 if you can eliminate that incentive, then -- or at  
20 least give teeth to make things equal -- then you have  
21 the potential for eliminating some of that problem.

22           Now delay also occurs, you know, from the  
23 embittered spouse, often not the monied spouse, who  
24 just, well, I'm going to punish. I'm not going to let  
25 Joe Schmoe get his divorce because he ran off with his



1 secretary, or something, and I'm going to punish him by  
2 creating delay. You know, these kinds of things do  
3 happen, but there are ways to move the system forward.

4 MS. MITLAHOV: I have a question, too

5 MR. HOWETT: Yes, Ma'am.

6 MS. MITLAHOV: If the legislature were to  
7 pass legislation which would mandate Family Court  
8 divisions in each county, would we also have to  
9 formulate some sort of procedural rulings where there  
10 would be one judge, one family such as you suggest?  
11 And, also in line with that, would there have to be  
12 funding for special training of the Family Court  
13 division judges?

14 MR. HOWETT: As to the first part of your  
15 question, I'll take the second question about the  
16 funding for the training. The judges already have  
17 funding for training, certainly all new judges are  
18 required to go to the new judge's school and if they  
19 are going to be in Family Court, then I think they  
20 should have Family Court training. And I think there  
21 should be funding for that training. The State trial  
22 judges body that implements the training now, I think,  
23 for the new judges, along with the Supreme Court, would  
24 be a good body to do that.

25 Now your other question was should there

1 be legislation requiring the one-judge-one-family rule  
2 in conjunction with the implementation of a Family  
3 Court requirement, and I would say that probably either  
4 legislation or court rule will be necessary to do that  
5 because there is an ingrained problem in any system  
6 whether it be family law or, you know, repairing a car  
7 engine that everybody wants to keep on doing it the way  
8 they've always done it. There's just a reluctance to  
9 change and when you change, you're going to have to  
10 change some internal operating systems which will take  
11 some time and change computer systems or forms and that  
12 sort of stuff. So there will be an inherent reluctance  
13 to change.

14           So it's going to have to change by fiat  
15 from above. It's going to be either by legislation or  
16 by rule of the Supreme Court. I fear, however, that in  
17 implementing a one judge, one family type of approach  
18 -- I don't want to say I fear -- I can certainly  
19 conceive of the possibility that the Supreme Court  
20 might say that that falls within our Article X powers  
21 and that the legislature can't mess with that, we have  
22 to do that. I don't know that. I haven't looked at  
23 this. I suspect that might be the case. But, you  
24 know, I personally would be very much in favor of  
25 whatever it takes to permit, encourage or mandate that

1 kind of a system where one judge can hear all issues  
2 and can hear them in the same forum.

3 MS. MILAHOV: Being born and raised in  
4 Montana, schooled in New York State and Washington  
5 State and lived in Indiana for several years, I am  
6 totally amazed that divorce can see as many as five  
7 judges before each issue is finalized and I do not  
8 understand why Pennsylvania does it that way.  
9 Apparently it's been considered constitutionally  
10 appropriate in other States that it is one judge, one  
11 family.

12 MR. HOWETT: Without question, other  
13 States do it and I don't know how, I have not tried to  
14 research as to how they've done it, whether they've  
15 implemented by statute or by court rule, or what, but  
16 certainly other States do it. I haven't practiced in  
17 other States or very limited practice in other States,  
18 so I don't have experience with it. But so many of the  
19 things that we've got in our judicial system are  
20 anachronistic. They're just there because that's the  
21 way they were in 1880. A lot of the procedures that we  
22 have are there because that's the way they were in the  
23 Divorce Code of 1927. That was the Code that we had up  
24 until 1980. It was ancient, it was out of place for  
25 the times when we adopted it. Yet a lot of the

1 procedures still exist in trying to implement the  
2 Divorce Code of 1980. So you're trying to, you know,  
3 bring a race horse adopted or born in 1980 that's  
4 capable of running now on a track that you know has  
5 been around for a hundred years. Probably not a good  
6 analogy. There's probably better ones, but any way.

7 MR. SUTER: We understand.

8 MR. HOWETT: You understand what I'm  
9 talking about.

10 MS. MILAHOV: Thank you very much.

11 MR. HOWETT: Thank you.

12 CHAIRMAN CALTAGIRONE: Thank you for your  
13 testimony.

14 We'll adjourn the hearing for today.  
15 Thank you.

16 (Whereupon, the proceedings were  
17 concluded at 4:20 p.m.)

18

19

20

21

22

23

24

25

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  
9  
10

11 THE FOREGOING CERTIFICATION DOES NOT APPLY TO  
12 ANY REPRODUCTION OF THE SAME BY ANY MEANS UNLESS UNDER  
13 THE DIRECT CONTROL AND/OR SUPERVISION OF THE CERTIFYING  
14 REPORTER.  
15  
16

17 Ann-Marie P. Sweeney  
18 3606 Horsham Drive  
19 Mechanicsburg, PA 17055  
20 717-732-5316  
21  
22  
23  
24  
25