

HOUSE OF REPRESENTATIVES  
COMMONWEALTH OF PENNSYLVANIA

\* \* \* \* \*

House Bills 2003 and 2562

\* \* \* \* \*

House Judiciary Committee  
Task Force on Domestic Relations Hearing

--oOo--

Room 8E-A, East Wing  
Main Capitol Building  
Harrisburg, Pennsylvania

Tuesday, August 20, 1996 - 9:00 a.m.

--oOo--

BEFORE:

Honorable Lita Indzel Cohen, Madam Chairman  
Honorable Stephen Maitland  
Honorable Al Masland  
Honorable Sam Smith  
Honorable Chris Wogan

Honorable Thomas Caltagirone, Minority Chairman  
Honorable Lisa Boscola  
Honorable Michael Horsey  
Honorable Harold James  
Honorable Kathy Manderino

KEY REPORTERS  
1300 Garrison Drive, York, PA 17404  
(717) 764-7801 Fax (717) 764-6373

ORIGINAL

## ALSO PRESENT:

Brian Preski, Esquire  
Chief Counsel for Judiciary Committee

Karen Dalton, Esquire  
Majority Counsel for Judiciary Committee

Dan Fellin  
Counsel for Committee

Meira Kensky, Staff Member  
Office of Representative Rita Indzel Cohen

Cathy Motto, Staff Member  
Office of Representative Rita Indzel Cohen

## C O N T E N T S

	WITNESSES	PAGE
1		
2		
3		
4	Opening remarks by Madam Chairman Cohen	5
5		
6	Opening remarks by Honorable Sam Smith	9
7		
8	Phyllis Witcher, President and Founder Protecting Marriage, Inc.	13
9		
10	Robert E. Rains, Professor of Law and Supervisor Family Law Clinic The Dickinson School of Law	32
11		
12	Dr. Paul D. Gehris, Director Pennsylvania Council of Churches	48
13		
14	David S. Rasner, Esquire American Academy of Matrimonial Lawyers Pennsylvania	58
15		
16	Dr. Frederick Kompass, Jr., President PA Assoc. for Marriage & Family Therapy	83
17		
18	Sandra T. Murphy, Legal Advocacy Coordinator Judy Yupcavage, Public Policy Coordinator PA Coalition Against Domestic Violence	93
19		
20		
21	Dory Zatuchni	102
22		
23	Leslee Silverman Tabas, Esquire Matrimonial Practitioner and Fellow American Academy of Matrimonial Lawyers	110
24		
25		

	C O N T E N T S (CONTINUED)	
	WITNESSES	PAGE
1		
2		
3		
4	Ned Hark, Chair	
5	Family Law Section	
6	Philadelphia Bar Association	129
7		
8	Barbara DiTullio, President	
9	Pennsylvania NOW	145
10		
11	Larry Frankel, Executive Director	
12	American Civil Liberties Union	
13	Pennsylvania	160
14		
15	Michael Geer	
16	Pennsylvania Family Institute	173
17		
18	David Blankenhorn	
19	Institute for American Values	174
20		
21	Lynne Z. Gold-Bikin, Esquire	
22	Author and Lecturer - Family Law	203
23		
24		
25		

1                   MADAM CHAIRMAN LITA COHEN: Good  
2 morning. I am State Representative Lita Cohen  
3 from Montgomery County and I am Chairman of this  
4 Task Force to examine two bills that are before  
5 the Pennsylvania House of Representatives.

6                   Some of our other members will be, of  
7 this Task Force, will be arriving hopefully  
8 shortly. But those of you who know me, know  
9 that I start and end my hearings on time. And I  
10 do have some opening remarks. But, understand  
11 that each witness has been allotted 10 minutes  
12 to speak and then 10 minutes have been allotted  
13 to the representatives for some questioning if  
14 they have some questions. I do stick to time  
15 frames very carefully and I wanted you to know  
16 that.

17                   I would like to introduce the folks who  
18 are up here. To my right is Representative Tom  
19 Caltagirone of Reading, he is the Minority  
20 Chairman of the House Judiciary Committee. To  
21 my left is Karen Dalton, one of my favorite  
22 lawyers. Karen is an attorney with the House  
23 Majority Judiciary Committee. To her left is  
24 Representative Sam Smith, whose bill 2003 --

25                   Yours is 2003? No, yours is the other

1 one.

2 -- 2562, we will be examining and his  
3 bill is the topic of today's hearing. To his  
4 left is Representative Al Masland, also a member  
5 of the Judiciary Committee of the House.  
6 Representative Masland is from Cumberland  
7 County.

8 Okay. With that, we will begin this  
9 Task Force hearing. This hearing is on no-fault  
10 divorce, particularly House Bills 2003  
11 (sponsored by Representative Pitts) and 2562  
12 (sponsored by Representative Smith) is being  
13 held by the Task Force on Domestic Relations of  
14 the House Judiciary Committee.

15 Thomas Gannon, Chairman of the  
16 Committee, appointed a five-member task force to  
17 investigate whether the no-fault divorce system  
18 in Pennsylvania is working and whether we should  
19 repeal or modify that system.

20 We are going to hear from a wide  
21 variety of witnesses, each with a unique  
22 perspective on marriage and divorce.

23 And I would like to welcome  
24 Representative Manderino, who is also a member  
25 of the Judiciary Committee and a member of this

1 Task Force.

2 Clergy, domestic violence advocates,  
3 mental health professionals, marriage advocates,  
4 as well as members of the legal community who  
5 write about, teach and practice family law, will  
6 be testifying. We will also hear from a woman  
7 who will tell us how divorce affected her and  
8 her family.

9 There are many others like her who  
10 contacted my office wishing to speak at this  
11 hearing, wanting to tell their individual  
12 stories to the Task Force. I am sorry that the  
13 realities of time and limited resources will not  
14 allow that. However, I have invited those  
15 individuals to submit written comments which  
16 will be placed with the rest of the testimony  
17 and made a part of the record and many are  
18 present there at the table.

19 I wish there was no need to examine  
20 this issue. As a legislator, citizen, wife of  
21 30 years, mother of two, I wish that every bride  
22 and groom truly, really lived happily ever  
23 after. We all know that, all too often, that is  
24 not the case.

25 Before I recognize the sponsor of House

1 Bill 2562, Representative Sam Smith, I would  
2 like to emphasize again how specific the mission  
3 of this Task Force is. The Task Force was  
4 established to look at whether the General  
5 Assembly should modify or change the grounds for  
6 divorce in Pennsylvania: namely, whether  
7 no-fault grounds should continue to exist as  
8 they are, whether we should modify it in some  
9 way or whether we should repeal these grounds  
10 all together.

11 We are not here to duplicate the work  
12 of the Joint State Government's Task Force and  
13 Advisory Committee on Domestic Relations Law, we  
14 are not here to look at court rules, we are not  
15 here to examine the mechanics of filing for a  
16 divorce or custody issue. We are here, as I  
17 have stated, solely to examine the no-fault  
18 divorce system in Pennsylvania and should any of  
19 our witnesses deviate from this topic, they can  
20 rest assured that I will get them back on track.

21 Likewise, because of our full agenda  
22 today, we will adhere to the time limit of 25  
23 minutes per witness.

24 Representative Joseph Pitts, sponsor of  
25 House Bill 2003, could not be with us today.



1           I will now recognize Representative Sam  
2 Smith, as sponsor of the bill which would repeal  
3 no-fault divorce, for opening remarks. After  
4 that, I will call the first witness.

5           Representative Smith.

6           REP. SMITH: Thank you, Representative  
7 Cohen, and I also want to thank Chairman Gannon  
8 for setting up this Task Force, of course,  
9 Representative Cohen and the staff, as I realize  
10 there is a lot of work involved.

11           And this is an emotional issue, as you  
12 mentioned in your remarks, drives a lot of  
13 comments from individuals, as I have become well  
14 aware of over the past couple of months also.

15           Generally speaking, the one thing I  
16 wanted to address, and I am not going to speak  
17 to the bill, per se, but was that a lot of  
18 people have asked questions about my motive or  
19 what was my interest. And I think to, in part,  
20 answer that, I want to read just a paragraph  
21 from the memo of co-sponsorships that I had sent  
22 around back in March of this year in which I  
23 suggested something to the membership.

24           If you are old enough to remember the  
25 term broken home, then you are old enough to

1 remember when divorce was viewed by society as  
2 tragic and not just another court proceeding.

3 Another term, in terminology about  
4 divorce, the change in ideas about the  
5 importance of a traditional family unit. It  
6 seems that the importance of the children and  
7 the family unit have been superseded with the  
8 importance of the happiness of the parents.

9 And I think that probably speaks to  
10 what was in my mind, or the back of my mind,  
11 anyhow, as we were proceeding at that time  
12 through the issue of welfare reform and a lot of  
13 -- and we had a lot of discussion about  
14 illegitimacy and single-parent families.

15 It seemed to me that we might be  
16 missing part of the problem and that being: are  
17 divorce laws working properly? And is the  
18 divorce law allowing people, just because one  
19 parent is saying they are unhappy, that I am no  
20 longer happy in this situation, that I am going  
21 to get out of it? And I don't think that is the  
22 most productive thing that we can do, in terms  
23 of the looking at the children. And the bottom  
24 line to my motive, of course, was the children.  
25 Or, how are we dealing with that aspect?

1 Because I think that they are the ones that are  
2 truly harmed in a divorce.

3 Some have questioned my motives, in  
4 terms of legislating values. And I just want to  
5 comment that I realize that we can't legislate  
6 values. And I certainly realize, as a member of  
7 the legislature, and I am sure with my fellow  
8 legislators here, that we realize that that's  
9 not a possibility, but it is something that we  
10 have to look at.

11 And I appreciate the specifics, the  
12 direction that the Chairman has set forth with  
13 this Committee at what we are looking at. And I  
14 do appreciate that very much.

15 There were others who instructed, had  
16 certain comments about with expertise in this  
17 area of law. And it is certainly one that I  
18 don't pretend to know all the answers. And I  
19 don't sit here today telling this Committee what  
20 is right or wrong.

21 The bill I introduced was certainly one  
22 of a significant measure. It made, it suggested  
23 a significant change in the law. And I  
24 appreciate the Chairman, Lita Cohen, for  
25 bringing a hearing forth with a variety of

1 people from many walks of life and trying to,  
2 trying to kind of factor in to this hearing  
3 those individual stories along with those people  
4 who work in the various professions and fields  
5 that are related to marriage counseling outside  
6 of, say, the legal profession.

7           And so with that, I again thank you. I  
8 hope that as we discuss this that we recognize  
9 that whether or not making it harder to get  
10 divorced is the solution or perhaps make it  
11 harder to get married is a part of the solution,  
12 that I don't sit here today telling anybody what  
13 they should or shouldn't do regarding this bill,  
14 but I do think that it is important to, we  
15 discuss it and take a closer look at where we  
16 are going with the no-fault divorce law in  
17 Pennsylvania.

18           And, hopefully, out of that, we can  
19 create a situation in Pennsylvania where the  
20 families will be more healthy and it will be a  
21 better situation, as the Chairman alluded to in  
22 her opening remarks. I thank you for your time.

23           MADAM CHAIRMAN COHEN: Thank you,  
24 Representative Smith. Representative Smith will  
25 have to leave at some point during the hearing

1 and may or may not come back. But, he has got a  
2 conflict today.

3 I would like to welcome Representative  
4 Steve Maitland, also a member of the Judiciary  
5 Committee; and, Chief Counsel of the Judiciary  
6 Committee, Brian Preski, in the back, is also  
7 here. We have several staff members. And,  
8 certainly, I want to welcome my two staff  
9 members, Meira Kensky and Cathy Motto, who have  
10 come out to Harrisburg today.

11 At this point, I would like to  
12 introduce Phillis Witcher from Protecting  
13 Marriage, Inc., from Chads Ford, who will make  
14 her presentation.

15 Good morning and welcome.

16 MS. WITCHER: Good morning, ladies and  
17 gentlemen. I do wish to thank Chairman Gannon  
18 and Representative Cohen for extending me this  
19 invitation, even as I am the author of 2003  
20 introduced by Representative Pitts. I would not  
21 have anticipated this invitation. So please  
22 know that my appreciation is genuine and my task  
23 here more daunting.

24 As Representative Cohen said, I am the  
25 founder of this non-profit watchdog

1 organization, an educational organization. And  
2 in our 1992 mission statement, the last sentence  
3 concludes: its guiding belief is that the  
4 primary disincentive to divorce rests on the  
5 state's obligation to restore constitutional  
6 principals of justice in the enactment and  
7 application of all laws pertaining to marriage,  
8 divorce and the protection of children.

9 I politely remind you that the state is  
10 a body of people delegated by us. I remind our  
11 citizens that, we the people allow the divorce  
12 catastrophe to happen through our own  
13 inattention.

14 Your time for listening is valuable and  
15 you have given the divorce law issue a  
16 significant position on your agenda, which is a  
17 necessary first step. The citizens of the  
18 Commonwealth are now alerted, as is, indeed,  
19 perhaps the entire nation. The unparalleled  
20 disaster caused by uniform compulsory no-fault  
21 divorce law is reaching the consciousness of the  
22 broader population of married and single  
23 Americans.

24 There was always the risk that the  
25 sheer numbers of people forced to divorce,

1 crushed by laws that stripped them of very basic  
2 constitutional rights and property, would be so  
3 bad that the response now is simple: rescind the  
4 bad law.

5 I am flattered that Representative  
6 Smith agrees with House Bill 2562.

7 We sovereign citizens know in our  
8 hearts from an observable human history and from  
9 the Bible that a thriving middle class depends  
10 upon communities of stable families and  
11 committed marriages.

12 Prior to the lift-off of no-fault only  
13 statute in 1970, nationwide, our divorce law did  
14 have two major flaws:

15 1. Because proven fault was required  
16 back then to obtain a divorce, one often had to  
17 trade off an acceptance of an occasionally  
18 perjured testimony from an innocent spouse for  
19 an exchange of assets and child custody  
20 privileges.

21 2. Flaw number two, there was no  
22 provision in American divorce law for mutual  
23 consent divorces. The law prohibited collusion  
24 between the partners to obtain a divorce, taking  
25 a religious and common law view that marriages,

1 at least, should endure for the purpose of  
2 raising children. But recall that, even then,  
3 the law recognized the right -- absolutely --  
4 for one person to divorce another.

5 Perpetuated by attorneys and the press,  
6 the myths and lies persist that someone can be  
7 prevented from divorcing you. It never was  
8 true. The divorcing party simply self-selected  
9 themselves out of the divorce process. He or  
10 she remained by choice to make a bad situation  
11 better. That is the marital choice that again  
12 must be public policy.

13 Unfortunately, our legal institutions  
14 have gone from moral rectitude to moral  
15 turpitude. As early as 1893 when the American  
16 Bar Association and the Uniform Law  
17 Commissioners presented their first model  
18 predecessor to today's no-fault, they were based  
19 on Marxist etiology: enact laws to profitably  
20 unload yourself or wife and watch the divorce  
21 rate soar.

22 I have been told that the founders of  
23 no-fault fully knew that, in time, predatory  
24 wives would figure out how the scheme could be  
25 turned around. The ULC existed: a) quite



1 unconstitutionally in the active agency of the  
2 Legislative Reference Bureau.

3           What happened here in 1988 was that a  
4 law was sent out from the LRB that was designed  
5 to be clever, but that actually contained a  
6 landmind. Only this time, it would damage the  
7 reputation of the General Assembly.

8           In the vast majority of divorces and in  
9 social science data, one party in a divorce is  
10 distinctly at fault. In 1980, the LRB thought  
11 it had written a full-proof bill to dodge that  
12 fault problem with Title 23, Section 3301 (d)  
13 establishing irretrievable breakdown. But in  
14 1985, a Philadelphia lawyer, Joe Restifo, was  
15 insensed that his long-term adulterous wife was  
16 granted a divorce under (d) even when he had  
17 counterclaimed under fault grounds.

18           His wife did not even dispute the  
19 adultery charge. She thought the code protected  
20 her from a court record of his evidence because  
21 she was not requesting alimony.

22           He said that was irrelevant. He  
23 demanded a decree that represented the truth.  
24 And he knew that the most basic principal of law  
25 was on his side.

1           To this date, it is embarrassing for  
2 anyone to read the Superior Court of  
3 Pennsylvania's opinion in the Restifo case.

4           And if I may paraphrase, the panel was  
5 saying, oh my God, this man has discovered a  
6 loophole for justice in our divorce code. We  
7 can't have that. How can we steal rights and  
8 property from innocent spouse if there is fault  
9 allowed again in divorce? Legislature, do  
10 something fast. And so, in 1988, slipped in  
11 among several minor amendments was 3301 (e).

12           The details embedded in (e) are almost,  
13 almost, comical. Remember Section 3301 is  
14 titled, Grounds For Divorce. And as you can  
15 see, on the bills in front of you. We knew that  
16 the absolute purpose of the lawyers and  
17 legislators in (e) was to deny the  
18 constitutional right of due process so that the  
19 injured spouse would never be heard. This  
20 little statute could put a bolt across the  
21 courthouse door just after the no-fault filer  
22 entered, shutting out the responding spouse.

23           As late as last month, a board member,  
24 Protecting Marriage, here this morning, pointed  
25 out to me on the page a detail that had escaped

1 me. Remember, we are still under grounds for  
2 divorce which lists: (a) for fault grounds,  
3 (b) institutionalization, (c) mutual consent,  
4 (d) irretrievable breakdown, and (e) no hearing  
5 required in certain cases.

6 No hearing required. A ground for  
7 divorce. Aside from being syntactically  
8 ludicrous, since when has no hearing required  
9 been a grant for a divorce anywhere?

10 One can see the problem that they were  
11 having back in 1988, put this legislative  
12 malfeasance under (d) and it could cancel the  
13 hopefully deceptive meaning of (d), list it as a  
14 new section and it would call attention to what  
15 they were doing.

16 So the decision was made to include it  
17 at the end of the grounds for divorce and hoped  
18 that no one would notice. All of this is now  
19 history. Albeit, a very disturbing history.

20 We are the threshold of a new beginning  
21 of integrity in our marriage laws. Pennsylvania  
22 can stand at the forefront. We cannot undue the  
23 evil damage done by statute to so many helpless  
24 and innocent spouses. But as Reverend Jessie  
25 Jackson commented recently: the victims must

1 lead the moral charge. We shall make divorce  
2 law honorable for us in the future.

3 Representative Smith has promised me  
4 that he will introduce House Bill 2562. It too  
5 is a total rescission bill, but he swept out  
6 mutual consent. And he agrees the Committee  
7 will want to likely amend and retain that law, a  
8 good law.

9 When Representative Pitts offered me a  
10 bill, I left out other segments that demanded a  
11 correction because I felt the legislature would  
12 attend to statutes that pulling out (e) would  
13 expose. So now we confront what is the true  
14 problem statute in the Domestic Relations Code.  
15 That of 3502 (a), the property division law in  
16 the Code.

17 It is my understanding that only six  
18 states have this little clause that protects  
19 batterers and adulteresses alike without regard  
20 for marital misconduct. The whole sentence in  
21 (a) goes that: the property shall be divided  
22 without regard for marital misconduct. For  
23 states like ours that left fault grounds on the  
24 books for political consideration and now seeks  
25 to activate those grounds, the words in 3502 (a)

1       become a clear takings clause and a serious  
2       problem for you.

3               But the solution is not difficult. The  
4       clause must be rescinded and maybe substituted  
5       with a phrase like relevant factors of fault.  
6       In other words, the court shall divide the  
7       property and must consider relevant factors of  
8       fault.

9               The Domestic Relations Code is replete  
10      with old deception. It is time to stop it. The  
11      alimony section must be rewritten. It is  
12      maliciously deceitful in its may/shall wording.  
13      Rescission won't cure the wrong so easily.  
14      Alimony imposed by the state, when warranted, is  
15      the public policy statement that we value  
16      marriage highly and will enforce its  
17      obligations. Marriage without the backup of an  
18      alimony law is actually mere cohabitation.

19              do I favor the total abolition of  
20      no-fault in Mr. Smith's bill? Yes, I do. But I  
21      fear that it may be politically improbable for  
22      the short term. But please prove me wrong.

23              On every philosophical and moral  
24      intellectual grounds, divorce statutes should  
25      underscore that marriage is a contract, yet one

1 that can be broken; but, after all broken  
2 contracts, it comes with a penalty. Breaking it  
3 can mean adultery or cruelty or any fault  
4 ground, but it is fault and our code must say  
5 that our courts, judge or jury, will recognize  
6 fault.

7           What will happen? Married people shall  
8 begin to behave better and regard their partners  
9 more sympathetically, domestic violence reports  
10 will drop precipitiously, child support payments  
11 will rarely default, the marriage rate will  
12 climb as young people learn that marriages have  
13 much improved prospects, those unhappy couples  
14 who are contemplating divorce will rethink their  
15 options.

16           Far from overburdening our state  
17 courts, the exact opposite will occur. And this  
18 body knows it. There will be fewer divorces  
19 because economic penalties from a court of law  
20 act as a disincentive. Don't let anybody today  
21 tell you otherwise.

22           The 1996 Republican Party platform has  
23 responded with a statement in it that is simply  
24 superb and would, I hope, make your task easier.  
25 It is attached to my written testimony. I

1 called Congressman Hyde's (phonetic) office to  
2 express our gratitude.

3           The Michigan bill failed in committee  
4 because it wrongly required that fault be proven  
5 in order to obtain a divorce from a spouse who  
6 would not agree. It was limited by a time  
7 period after which the statute would revert to  
8 irretrievable breakdown and the person gets the  
9 divorce that he wants. But the mere idea that a  
10 divorce could be contingent upon fault proof  
11 will not survive, in my opinion, anywhere in the  
12 United States.

13           Once a divorce is filed, you must give  
14 an innocent responding to spouse the inalienable  
15 right to a defense of private property rights  
16 and the protection of child custody and  
17 responsibility with a legitimate counterclaim.

18           In closing, I speak to Governor Ridge.  
19 Governor's Angler of Michigan and Angstadt of  
20 Iowa have stated that they will sign bills in  
21 their states. Time is past due for our Governor  
22 to be heard on this issue. His party has  
23 spoken. You and he know that Section 3301 (e)  
24 is indefensible. Governor Ridge has deservedly  
25 made his leadership recognized through his

1 vigorous attack on crime. Policy analysts  
2 report that the divorce issue, though, is far  
3 worse than we think.

4 Governor, the divorce rate in any  
5 neighborhood is the single strongest predictor  
6 for street crime in that neighborhood.

7 We the people insist that you  
8 legislators do your constitutional lawmaking  
9 duty in public view, removing all bill drafting  
10 from unelected and unaccountable LRB lawyers or  
11 any other such bar group. House Bill 2003 and  
12 2562 must have a bill analysis now.

13 To this testimony, I have also attached  
14 a glossary of terms that Protecting Marriage  
15 distributes.

16 Thank you for having me here today.

17 MADAM CHAIRMAN COHEN: Thank you, Miss  
18 Witcher. We really appreciate you coming out  
19 today to speak with us. Before we get to  
20 questions from the panel, I would like to  
21 introduce Representative Jere Birmelin, a member  
22 of the Judiciary Committee, and Representative  
23 Lisa Boscola, who is also a member of the  
24 Judiciary Committee on this Task Force.

25 Are there any questions, first, from



1 the members of the Task Force, Representative  
2 Boscola?

3 REP. BOSCOLA: No. Thank you.

4 MADAM CHAIRMAN COHEN: Representative  
5 Manderino.

6 REP. MANDERINO: Thank you. I just  
7 have one question. And I do understand your  
8 testimony. I guess there are two items that  
9 while you acknowledge, I am wondering whether or  
10 not you have, either since you have been working  
11 on this issue, some background data or things  
12 that you can share that might substantively  
13 re-enforce your position? And that is on the  
14 issue of fault only. You make the statement  
15 that occasional perjured testimony from an  
16 innocent spouse is an acceptable tradeoff, at  
17 least it gave leverage to obtaining some  
18 fairness in the process.

19 My understanding from practicing  
20 attorneys was that: prior to no-fault divorce,  
21 it was much more than occasional perjuries. It  
22 was the modus operandi, the way things happened,  
23 it was common place. And I wondered if you had  
24 something that supports your way of viewing it  
25 and maybe refute what I have come to understand

1 as what was common practice.

2 MS. WITCHER: I have never seen any  
3 statistics, which seems logical to me: nobody is  
4 going to go out there and tabulate perjury. But  
5 there is also, I would think, an inherent  
6 suspicion that attorneys might want to slide  
7 over the issue of perjury, or give it, in order  
8 to keep this juggernaut going, suggest that it  
9 was common.

10 I really wish I could answer it  
11 accurately. I can't.

12 I am inclined to think that because it  
13 was tied to the contingency aspect, that you had  
14 to prove fault in order to get a divorce, that  
15 to the extent that it happened, I think it came  
16 to be viewed as less of a legal crime. Maybe  
17 there is a way to recharacterize it. I no  
18 longer considered that pertinent.

19 REP. MANDERINO: The second issue that  
20 kind of struck me about your testimony, and  
21 again, if you had any documents or articles or  
22 research on the issue, I would be interested,  
23 is, again, I come to this with not any  
24 particular opinion but with a notion that is  
25 different than yours vis-a-vis violence in a

1 domestic violence relationship. And your  
2 assumption is that by repealing, by abolishing  
3 no-fault insurance, people who work things out  
4 better and domestic violence reports will drop  
5 precipitiously. Where do you get that from?

6 MS. WITCHER: Well, the two rates went  
7 up parallel. I mean, with the inception of  
8 mandatory no-fault, okay? It is not so much --  
9 I think the words, we can trip up on them  
10 constantly, there is no way to avoid it -- it is  
11 really not so much eliminating no-fault as it is  
12 establishing fault accountability. And across  
13 the milenium, people do not modify their bad  
14 behavior themselves until they are looking at  
15 the threat of a penalty. And so before, it  
16 seems to me, logical, that the rates went up. I  
17 mean, in other words, why not slap her up aside  
18 of the head, there is no-fault.

19 REP. MANDERINO: Thank you, Madam  
20 Chairman.

21 MADAM CHAIRMAN COHEN: Thank you,  
22 Representative Manderino.

23 MS. WITCHER: Thank you.

24 MADAM CHAIRMAN COHEN: Representative  
25 Masland.

1           REP. MASLAND: I will try to be quick  
2 in my questions. Hopefully the answer is quick.

3           On pages two and three of your  
4 testimony, you make reference to the Uniform Law  
5 Commissioners, back in 1893, and then you refer  
6 to the Legislative Reference Bureau as I guess  
7 the current embodiment of the Marxist ideology  
8 and basically attribute to them the blame or the  
9 credit for coming up with various language. Do  
10 you really mean to focus in on the Legislative  
11 Reference Bureau? That is a group of attorneys  
12 --

13           MS. WITCHER: I know.

14           REP. MASLAND: -- that work up on the  
15 top floor here that we refer bills to, we refer  
16 suggestions to, and they put them into bill  
17 form. Is that who you are really pointing the  
18 finger to? And if you can sum it up shortly,  
19 what is the basis? This would be two volumes of  
20 a conspiracy book or something.

21           MS. WITCHER: No.

22           REP. MASLAND: Maybe you could give it  
23 to me in a nutshell.

24           MS. WITCHER: But you did a fine job of  
25 summarizing it. I introduced it because I think

1 it is a separate issue that might have to be  
2 addressed outside of this. But it is clearly a  
3 problem. And it is not just Pennsylvania.  
4 There is something the equivalent of a  
5 legislative reference bureau in every state.

6 But the constitutions of both the state  
7 and federal are very clear: that bill writing is  
8 exclusive to the elected body. And that was why  
9 I bought it in. And because we have this  
10 problem that occurred in 1988 with (e), it  
11 somewhat makes the case.

12 I will tell you that when  
13 Representative Pitts first introduced 2003 as  
14 3119, two years ago, the LRB sent me back the  
15 way they would rewrite 3101 (e). So it is kind  
16 of a fun thing to look at.

17 REP. MASLAND: Well, let me just say  
18 this: I have sent suggestions up to LRB and I  
19 have gotten suggestions back.

20 MS. WITCHER: Sure.

21 REP. MASLAND: I don't, for one second,  
22 believe that there is any conspiracy up there or  
23 that they are trying to force me to write a bill  
24 a certain way. I take it as their advice as to  
25 how they think things should be.

1           But if I say, no, I don't want it that  
2 way, it is not going to be that way. So that I  
3 don't see any real --

4           MS. WITCHER: I appreciate that and I  
5 accept that.

6           REP. MASLAND: Of course, I don't know  
7 whether you really want to focus on the LRB or  
8 whether you just want to say the legislature  
9 made a mistake.

10          MS. WITCHER: I wanted to call  
11 attention to the possibility of a problem.

12          REP. MASLAND: Thank you.

13          MADAM CHAIRMAN COHEN: Thank you.  
14 Representative Caltagirone.

15          REP. CALTAGIRONE: I just want to  
16 reiterate something similar to what  
17 Representative Masland has said. I am here 20  
18 years and I must say, coming to the Legislative  
19 Reference Bureau, they are a non-political body  
20 of professionals. Of course attorneys and  
21 paralegals and secretaries. They only respond  
22 to what we request them to do.

23                 With any legislation, even with the '88  
24 legislation that you referred to --

25          MS. WITCHER: Um-hum.

1           REP. CALTAGIRONE: There would have  
2 been -- probably were, and we can check the  
3 record -- public hearings, input from the  
4 public. There is open committee meetings like  
5 this. At the regular committee meetings,  
6 normally you are afforded an opportunity for  
7 amendments to legislation on the Floor of the  
8 House, the Floor of the Senate. There are also  
9 amendments to any of the legislation that can be  
10 approved or rejected.

11           I kind of think that in the 20 years  
12 that I have worked with the professionals and  
13 ladies in the Legislative Reference Bureau, they  
14 have been nothing but forthright, honest,  
15 credible and have done, I think, a commendable  
16 job for the legislators.

17           If there is any fault, it rests with  
18 particular legislators. We are not perfect.  
19 Things do slide by. We do get recommendations  
20 from the Reference Bureau on whether or not  
21 particular drafts of what we are proposing  
22 really make good legal sense or conflict with  
23 the constitution or other areas.

24           What we are dealing with here in this  
25 particular subject matter is an extremely

1 emotional sensitive issue and anybody that has  
2 been involved in a marriage and/or divorce can  
3 attest to that. So in some aspects, I agree  
4 with what you are saying; and other aspects, we  
5 have been dancing around with this issue.

6 I know that there are people in this  
7 audience here today that have had their share of  
8 problems in trying to get some finality or  
9 closure to their particular situations. That is  
10 sad and I do think that we need to try to remedy  
11 those types of situations through the courts and  
12 additional legislation, if it need be.

13 But I did want to come back and just  
14 set the record straight about the Legislative  
15 Reference Bureau.

16 Thank you, Madam Chairman.

17 MADAM CHAIRMAN COHEN: Thank you, Mr.  
18 Caltagirone.

19 Thank you again, Miss Witcher, we  
20 appreciate you being here.

21 MS. WITCHER: Thank you.

22 MADAM CHAIRMAN COHEN: Our next person  
23 to testify is Robert Rains, who is a Professor  
24 of Law and Supervisor of the Family Law Clinic  
25 at Dickinson Law School.



1           Professor Rains, thank you for being  
2 here.

3           MR. RAINS: Thank you, Madam Chair.  
4 Thank you for the invitation to be here this  
5 morning. I really bring you several backgrounds  
6 to this area. As you mention, I am a professor  
7 and I teach family law at the Dickinson School  
8 of Law and I also supervise a Family Law Clinic  
9 in which we have upper level law students  
10 provide free legal services to indigent clients  
11 in the area of family law which, of course,  
12 includes divorce.

13           Before joining the faculty of the Law  
14 School, I was in private practice in Harrisburg  
15 and I was in private practice at the end of the  
16 pre no-fault era and then into the no-fault era.  
17 But I do want to emphasize that my comments  
18 today are my own. I don't speak for the Law  
19 School or any of the other organizations or  
20 committees to which I belong.

21           There are myriad reasons that have been  
22 posited for the breakdown of the family in  
23 Pennsylvania, in the United States, and really  
24 worldwide. I think that it is unlikely that  
25 despite the combined wisdom we have here this

1 morning that we are likely to resolve those  
2 issues finally today.

3 I noted in my comments, the last week  
4 it was posited in Ann Landers that it is  
5 actually the Internet that today is breaking  
6 down the American family.

7 I don't think it is realistic to think  
8 that either of the bills that you have before  
9 you today are going to have a significant impact  
10 to lower the divorce rate, much less accomplish  
11 what I believe we would all agree is sound  
12 public policy, which is really to encourage  
13 families to stay together and to re-unit  
14 families that are apart.

15 What these bills are, primarily do, is  
16 provide economic relief to one segment to the  
17 population which I submit to you doesn't need  
18 any economic relief and that is domestic  
19 relations attorneys. In order to understand  
20 that, you have to have an understanding of how  
21 the process actually operated before the  
22 no-fault legislation in 1980. And I speak from  
23 some experience in that regard.

24 In order to get a divorce, a plaintiff  
25 had to go through a system which was inherently

1 corrupt. Now, I do not mean that in the sense  
2 of individuals taking bribes. I mean, morally  
3 corrupt, demeaning to all participants,  
4 demeaning to the court system and wasteful of  
5 the court's time.

6 First the plaintiff had to find an  
7 attorney to represent her. Attorneys wanted to  
8 be paid for their services so the plaintiff had  
9 to pay the attorney. Normally, the plaintiff  
10 also had to pay a filing fee. So that is then  
11 two payments.

12 Now, judges, elected judges, were  
13 hardly going to spend their time listening to  
14 countless indignities hearings. Indignities is  
15 the major grounds for divorce, fault divorce,  
16 that was utilized. So the judges would appoint  
17 individual masters to hear the testimony in each  
18 case. Those masterships typically went to the  
19 new attorneys in town to give them a little bit  
20 of experience and a little bit of money. And I  
21 know because when I was a new attorney in this  
22 town, the court was nice enough to appoint me to  
23 several of those masterships. And, of course,  
24 the master had to be paid. So that was the  
25 third person the plaintiff had to pay.

1           But the plaintiff wasn't done yet  
2 because private attorneys do not typically have  
3 court reporters in their offices and because  
4 this wonderful testimony had to be preserved for  
5 eternity, it was necessary to hire a court  
6 reporter that would come to the attorney's  
7 office typically and record the testimony, and,  
8 needless to say, the court reporter wished to be  
9 paid also; and, therefore, the plaintiff had  
10 ended up paying her own attorney, the filing fee  
11 for the court, the second attorney who was  
12 pointed as the master, and the court reporter.

13           Now, to what end was all of this done?  
14 In the vast majority of circumstances, certainly  
15 not all, the marriage was long-since  
16 irretrievably broken and the husband and wife  
17 had agreed as to who would profer this testimony  
18 and go through this exercise and who would not  
19 show up to defend. Often, money changed hands  
20 as to who would pay the different fees that were  
21 involved.

22           Of course, the plaintiff had to  
23 proclaim that she was the innocent and injured  
24 spouse, because you can't get a fault divorce  
25 without being an innocent and injured spouse,

1 and it would have to testify as to the fault  
2 grounds for divorce whether they actually  
3 existed or not. And once the plaintiff went  
4 through these mental gymnastics and the economic  
5 gymnastics, then the court would grant the  
6 divorce.

7 Often, there was collusion between the  
8 parties which was, of course, strictly  
9 prohibited. Often, there was perjury which is,  
10 of course, illegal. It was never prosecuted and  
11 you will not find any statistics on the amount  
12 of the perjury that was involved and those  
13 statistics would not be obtainable, okay?

14 It is distressing to believe, to think  
15 that this body would seriously consider  
16 repealing no-fault in the unrealistic impression  
17 that somehow this would keep marriages and  
18 families intact.

19 There is yet another negative aspect to  
20 the proposed repeal of no-fault. One hears  
21 countless, well-justified complaints that our  
22 court system is clogged and that litigants,  
23 particularly civil litigants, have to wait  
24 unconscionable periods of time to have their  
25 cases heard in court.

1           Could anybody here seriously believe  
2           that forcing Pennsylvanians to go through  
3           countless no-fault hearings and to use up the  
4           court's time in this fashion would do anything  
5           but make that situation worse?

6           I would like to turn briefly to House  
7           Bill 2003 which as our previous speaker  
8           correctly noted is intended to overturn the  
9           Restifo case. Section 3301 (e) is a salutary  
10          provision of the Divorce Code that basically  
11          says that once no-fault grounds have been  
12          established, it is not necessary to waste the  
13          court's time or the litigant's money to hold a  
14          hearing to establish a second ground for  
15          divorce.

16          There may be a mistake in impression  
17          here today that avoiding a fault hearing on the  
18          divorce ground would effect economic justice  
19          between the parties. That is simply not the  
20          case.

21          Under the current Divorce Code, fault  
22          is a factor in determinations of alimony.  
23          Either pro or con, fault is a factor. But it is  
24          not necessary to establish fault grounds for  
25          divorce for either a litigant to litigate the

1 issue of fault when it comes to a hearing on  
2 alimony. In other words, you could have a  
3 no-fault divorce in which the parties mutually  
4 agree to consent to the divorce and yet there  
5 can be a battle over fault when there is  
6 litigation on the issue of alimony.

7 Other than the malicious pleasure of  
8 potentially embarrassing the other party, at  
9 expense to both and to children, if there are  
10 any of the marriage, repealing Section 3301 (e)  
11 would have no meaningful purpose.

12 I would like to focus more on House  
13 Bill 2562 which would return Pennsylvania to the  
14 situation prior to the 1980 Divorce Code. Other  
15 than fault or the rare instance of  
16 institutionalization in the mental institution  
17 for a protected period of time, there are only  
18 two ways that couples in Pennsylvania can become  
19 divorced today: either they both agree that the  
20 marriage is irretrievably broken and after a  
21 90-day cooling off period both consent in  
22 writing to the divorce; or, if those consents  
23 cannot be obtained, there is a mandatory waiting  
24 period of a two-year separation and after the  
25 two-year separation the court can grant the

1 divorce under subsection (d).

2 In other words, without the written  
3 consent of the other party, the only way that an  
4 individual can get divorced, other than a fault  
5 ground or the rare instance of lengthy mental  
6 institutionalization, is by living separate and  
7 apart for a period in excess of two years.

8 Does anybody here seriously believe  
9 that denying an individual the ability to get  
10 divorced on this ground is going to reunite a  
11 significant number of families after a two-year  
12 period of separation? That does not seem to me  
13 to be a very realistic prospect.

14 I noted earlier that I am one of the  
15 supervisors of our Family Law Clinic, and I  
16 don't have exact numbers, but I would guess  
17 that, during the last 13 years, I have  
18 supervised students representing indigent  
19 clients in roughly 2,000 cases: divorce matters,  
20 custody matters, support, unfortunately many  
21 abuse cases. And during that entire period of  
22 time, I can recall only one instance in which a  
23 couple reunited after they had lived separate  
24 and apart for two years.

25 I don't mean to demean that couple in



1 any way, they were not from this country, they  
2 were not from our culture, they would not  
3 represent the demographics of anybody, anybody,  
4 infinitesimal portion of our population.

5           Is it realistic, is it worthwhile, to  
6 make thousands or tens of thousands of  
7 Pennsylvanians go through an expensive charade,  
8 enriching domestic relations lawyers and others  
9 involved with the court system, clogging our  
10 court system with repetitive hearings so that  
11 one or the other spouse can establish fault  
12 grounds in order to end a marriage that is  
13 irretrievably broken? I submit that it is not.

14           I don't mean to suggest that the  
15 Domestic Relations Code is perfect. I think it  
16 should be thoroughly examined. I think that  
17 that is a good idea which is under way. I think  
18 there are actions this body, the General  
19 Assembly and, indeed, Congress, can and should  
20 take to promote marriage, to encourage couples  
21 to remain together.

22           The prior speaker referenced Section  
23 3502 of the Domestic Relations Code, which as  
24 she correctly noted, states that fault is not an  
25 issue for equitable distribution of marital

1 property. If this body believes that it is  
2 appropriate to give heightened consideration to  
3 fault, then I agree with the prior speaker only  
4 to the extent that that is the section that you  
5 should examine and consider whether you want to  
6 retain it in that form or whether fault should  
7 be a factor in distribution of marital property.

8 Finally, I want to point out one thing  
9 to you. As the Supremem Court in the United  
10 States has specifically recognized, in many  
11 instances, making divorce available may actually  
12 promote marriage. This is simply because, in  
13 many instances, the original married couple have  
14 long-since separated and gone their separate  
15 ways and have established new relationships.  
16 The state has a monopoly on a divorce. You  
17 cannot get a divorce without going through the  
18 state. If we prevent divorces for couples whose  
19 marriages are irretrievably broken, or make them  
20 more expensive at the expense of both parties  
21 and their children, then we inhibit remarriage.  
22 And the statistics indicate that a vast majority  
23 of people who get divorced do, in fact, get  
24 remarried.

25 In many instances, the injured clients

1 of our Family Law Clinic have long-since gone  
2 their separate ways from their marriages and  
3 have established new relationships and often  
4 have begotten children by the new relationships.  
5 Because of the delays that are already inherent  
6 in the divorce system, many of those children  
7 end up being born out of wedlock despite the  
8 fact that both parties to the original marriage  
9 wished to become divorced.

10 I submit to you that it is not sound  
11 public policy to make that situation worse and  
12 that the bills before you could only do so.

13 Thank you, Chairman.

14 MADAM CHAIRMAN COHEN: Thank you,  
15 Professor Rains. I would like to introduce two  
16 other members of the Judiciary Committee,  
17 Representative Harold James and Representative  
18 Michael Horsey. Due to time constraints, I am  
19 not sure that we are going to be able to permit  
20 all of the representatives and members of the  
21 Task Force to ask questions, but we will start  
22 anyway. Representative Smith, since it is your  
23 bill, sir.

24 REP. SMITH: Thank you, Representative  
25 Cohen.

1 I guess I just wanted to focus on one  
2 point of your testimony and that is, which that  
3 you suggest that under the current system, it is  
4 a much more free-flowing and open process, that  
5 you started off by commenting that an element of  
6 corruption and you didn't mean in the sense of  
7 bribery but just in the sense, I presume, that  
8 things didn't work well.

9 I find it interesting because many of  
10 the people that I have spoken to under the  
11 current system have experienced a great deal of  
12 frustration with the very things that people say  
13 happened under the old system, under fault. The  
14 mudslinging and the dragging people's names into  
15 the families -- the whole families into the  
16 process.

17 And so what I, I guess what I want to  
18 ask you is: I am going to quote, I am going to  
19 read you a quote from the Pennsylvania Law  
20 Weekly of May 13th, 1996, in which an attorney  
21 said, before 1980, we had law firm secretaries  
22 making up these stories for the parties. To go  
23 before the master, she said, one spouse had to  
24 be innocent and one person had to be guilty.  
25 Now where do you see that?

1           Now, when I read this, I thought to  
2 myself, where is the corruption if you have an  
3 attorney suggesting that, before 1980, the law  
4 firm secretaries were making up the stories to  
5 throw the mud in the old fault system? What was  
6 so great about that? That's not the individuals  
7 getting the divorce. That's the legal  
8 profession. Were they applying that law  
9 properly if they were involved in that kind of  
10 activity?

11           MR. RAINS: The sense in which I used  
12 the word corruption is really two-fold. One,  
13 that everybody had their hand out to pick the  
14 pockets of what was normally the couple seeking  
15 the divorce. And as I spelled out, normally,  
16 four different entities had to be paid in order  
17 for the divorce to go through, even though in  
18 most instances, the parties had long-since  
19 agreed that they were going to get divorced.

20           The second, which is more unfortunate,  
21 and I would like to say that my firm certainly  
22 never engaged in the practice that you have just  
23 read about, is the fact that there was, as  
24 everybody who was involved in the process  
25 recognized, often manufactured testimony.

1           Understand, that as you just said, the  
2 plaintiff had to testify that she was an  
3 innocent and injured spouse, okay -- or she  
4 could not get the divorce -- whether she was an  
5 innocent and injured spouse or not. And that's  
6 a term of art, of course, under the law. And,  
7 needless to say, she was told by her attorney  
8 that when that question came that if she  
9 answered, no, I fooled around, too, or whatever,  
10 the court would be prohibited from granting her  
11 the divorce.

12           I believe that what you just read me is  
13 completely in accord with my testimony, that  
14 that system was a highly irregular system and I  
15 think it would be most unfortunate to return to  
16 it.

17           REP. SMITH: I understand what you just  
18 said. My point for reading it, though, is that  
19 how could that system have worked properly when  
20 the officers of the court were the ones that  
21 were corrupting it and not the individuals who  
22 were seeking an action through the court, the  
23 two people seeking a divorce, or however?

24           MR. RAINS: Certainly --

25           REP. SMITH: That is the point. I

1 mean, how could it work properly?

2 MR. RAINS: Sir, the system did not  
3 work properly.

4 REP. SMITH: And I am suggesting, in  
5 part, because the legal profession wasn't doing  
6 their job either.

7 MR. RAINS: The legal profession, for  
8 better/for worse, responds to their clients.  
9 When a client comes to your office seeking a  
10 divorce, then the lawyer will want to be paid  
11 for his or her services and will try to obtain  
12 the divorce for the client.

13 I am not trying to sanction that type  
14 of behavior. Indeed, I believe that my  
15 testimony was clear, that that type of behavior  
16 was loathsome. But I think that we would all be  
17 kidding ourselves to believe that the repeal of  
18 no-fault would create a significantly different  
19 system than we had before.

20 And very unfortunately, and I made this  
21 point in my written remarks, most people are  
22 fortunate enough that they don't go to court  
23 frequently and their only experience with our  
24 judicial system was this experience which it  
25 hardly would give the people of Pennsylvania

1 much of an impression of the system of justice  
2 in this Commonwealth. And I agree with you, it  
3 is unfortunate.

4 MADAM CHAIRMAN COHEN: Thank you,  
5 Professor Rains. I would like to reiterate just  
6 a few of the comments that I made, some opening  
7 remarks, that we do have other members of the  
8 Task Force as well as other members of the  
9 Judiciary Committee that are here that would  
10 like to ask some questions. Unfortunately, we  
11 do not have time. We could go on for hours and  
12 perhaps days, weeks, and months. So I would  
13 hope that all of you who are here to testify  
14 would be open to some questions from members at  
15 a later date, and, if necessary, we will  
16 incorporate your comments in the record before  
17 we make our final report.

18 The next person to testify is Dr. Paul  
19 Gehris, who is the Director of the Pennsylvania  
20 Council of Churches.

21 Dr. Gehris, do we have any written  
22 material from you?

23 DR. GEHRIS: Yes.

24 MADAM CHAIRMAN COHEN: Thank you. You  
25 may begin at any time. Thank you.



1 DR. GEHRIS: Honorable House members  
2 and Task Force members and staff, thank you for  
3 providing an opportunity to share some thoughts  
4 on no-fault divorce on House Bills 2562 and  
5 2003. My name is Paul Gehris. I am on the  
6 staff of the Pennsylvania Council of Churches, a  
7 statewide ecumenical agency comprised of 44  
8 church bodies: mainline Protestants, including  
9 the historic Black denominations, Anglicans, and  
10 Orthodox.

11 And let me say as an aside that I am  
12 not a lawyer, although I am a clergy.

13 About 16 years ago, the Council  
14 testified in favor of creating a no-fault  
15 divorce in Pennsylvania. It seemed to us then,  
16 and remains the case, that when all neighboring  
17 states have no-fault divorce -- and without  
18 no-fault divorce, people resort to telling  
19 untruths or certainly exaggerating -- that  
20 no-fault divorce clearly conceived and placed  
21 into law would be a step forward for the  
22 Commonwealth of Pennsylvania.

23 It is not lost on us that since  
24 no-fault divorce became the law in the  
25 Commonwealth, the divorce rate has not leveled

1 but risen albeit having just subsided a tad.  
2 However, the rate of divorce has been rising  
3 steadily in the Commonwealth and in the country  
4 since the middle of this century. We believe  
5 there is still a place for no-fault divorce in  
6 Pennsylvania.

7 We support, in House Bill 2003,  
8 allowing judges to hold hearings and hear  
9 testimony about a counterclaim to a no-fault  
10 divorce request. We do not believe one should  
11 simply walk away from a marriage because it no  
12 longer suits.

13 Our greatest concern regarding divorce  
14 is not the act of divorce and the breaking of a  
15 once-made covenant, but the effect that it has  
16 especially on children who are innocent in the  
17 matter and in many cases the spouse who ends up  
18 with a significantly diminished standard of  
19 living.

20 We submit that there should not be any  
21 impediments made to civil marriage. Two people  
22 consenting to marriage should be able to get a  
23 marriage license, present it to someone who is  
24 allowed to officiate at a marriage service and  
25 have the marriage performed.

1 Marriages performed by clergy as part  
2 of the religious institution are another matter.  
3 Every church body has its own expectations of  
4 those wanting to be married. Clergy as  
5 individuals generally recognize that they are  
6 doing more than simply linking persons as  
7 spouses. Clergy do different kinds of  
8 premarital counseling and postmarital counseling  
9 and counseling in times of marital stress.

10 And I would like to say that a typo  
11 that was changed there that my secretary put in  
12 was martial stress and maybe that is the way it  
13 should have been in the first place.

14 We believe there is both a religious  
15 and moral responsibility to do this. The  
16 Commonwealth should leave this with religious  
17 bodies and their clergy.

18 Some of our concerns regarding public  
19 policy in general, and divorce reform in  
20 particular, is setting criteria wherein poor  
21 people lose options while the well-off can do  
22 what they wish simply because they have the  
23 resources to get it done. In all cases of  
24 divorce, be it no-fault or contested, people who  
25 are married in a religious or civil setting, our

1 chief concern is for the well-being of children  
2 and justice for the spouse. It is not lost on  
3 us that women traditionally have been the  
4 economic losers in divorce.

5 We support the portion of House Bill  
6 2003 that I mentioned, and have serious  
7 reservations about House Bill 2562, and that  
8 concludes my testimony.

9 MADAM CHAIRMAN COHEN: Dr. Gehris,  
10 thank you very much.

11 Do any members of the Task Force or  
12 representatives have any questions or comments?

13 Representative Maitland.

14 REP. MAITLAND: Yes, I have a question.

15 Professor Rains, who spoke earlier,  
16 stated that the finding of fault really has no  
17 effect on a divorce decree. Do you see it  
18 having an effect?

19 DR. GEHRIS: My sense, having married  
20 hundreds of people and gone through divorce with  
21 some of them and others, is that in both  
22 marriage and divorce, the Commonwealth and the  
23 church may be there and in some cases are taken  
24 very seriously; but, most people who want to get  
25 married will get married, no matter what an

1 attorney or a clergy says to them. And if  
2 divorce is where they finally want to go, they  
3 will find a way to get there.

4 I frankly stopped doing premarital  
5 counseling because -- and this was a while ago,  
6 of course. But my experience was that the woman  
7 involved was really concerned about the wedding  
8 as the event and the man involved was concerned  
9 about the honeymoon as the event and premarital  
10 counseling really wasn't where it was for them.  
11 So I would tell them, after six months, or you  
12 have had your first really good fight, let's sit  
13 down and start to talk about what it means to  
14 have this relationship together.

15 When people would come to me and say it  
16 is over, it almost always was over and in very  
17 few cases was that relationship retrievable.  
18 And I really believe that no matter what the  
19 church says or what the Commonwealth says, when  
20 people decide it is over, it is over.

21 And I would agree that it is not  
22 appropriate for this, for us then to put  
23 impediments in place, but it is very important  
24 for us to try to see that justice, as well as we  
25 can, is done in that instance.

1           REP. MAITLAND: And that is why you  
2 support allowing hearings on fault, for the  
3 sense of justice?

4           DR. GEHRIS: Well, for the sense of  
5 justice, yes. And, again, I must say that all  
6 that I really know about these bills is the good  
7 material that the staff sent me, but I continue  
8 look at it from an attorney's point of view.  
9 And I would say I have not gone through divorce.  
10 Though, in 35 years, one thinks about it a time  
11 or two. So I have not had that experience.

12           REP. MAITLAND: I am not an attorney,  
13 nor have I ever been divorced either so I  
14 understand. Thank you.

15           MADAM CHAIRMAN COHEN: Thank you,  
16 Representative Maitland.

17           Representative Manderino.

18           REP. MANDERINO: Thank you.

19           I don't want to read into your  
20 testimony what isn't there, but what I think I  
21 hear you saying is that with 2003, and I mean  
22 you allude at the end of your testimony to  
23 economic losers in divorce, and it, and is what  
24 you are saying is that we should allow or we  
25 should consider allowing testimony about fault

1 so that it can be considered in the economic  
2 division of property, if you want to call it  
3 that way?

4 DR. GEHRIS: From what I know, that  
5 sounds reasonable to me. There isn't the ugly  
6 reality of divorce, as you can't take what you  
7 have and divide it in any fashion and have  
8 everybody have all that they had together. And,  
9 certainly, the data would indicate that women  
10 and children tend to be losers in those  
11 decisions. So anything that would bring us  
12 CLOSER TO A POINT OF JUSTICE, I think would be  
13 very helpful. How that is crafted, of course, I  
14 would have to leave to the experts who make  
15 public policy.

16 REP. MANDERINO: Thank you.

17 Thank you, Madam Chairman.

18 MADAM CHAIRMAN COHEN: Thank you, Dr.  
19 Gehris.

20 Any other representatives?

21 Representative James.

22 REP. JAMES: Thank you, Madam Chairman.

23 And thank you for your testimony. I  
24 just wanted to be clear and I just want to ask  
25 the previous speaker that there is only one case

1 he knew of where one was reunited, and I thought  
2 that was very interesting.

3 And it seemed like, in your testimony,  
4 you are saying that you are not aware of any  
5 cases when the marriage is over and that they  
6 want to get divorced, the no-fault makes it  
7 easier, in terms of doing that, without causing  
8 added stress and problems to the relationships  
9 on the no-fault (dropped voice) and be it  
10 further. So you would say that, and I just want  
11 to make sure, that House Bill 2562 would add  
12 those kinds of problems to the relationship and  
13 make it much, the relationship much worse if  
14 that was enacted as opposed to taking away, I  
15 mean as opposed to keeping the no-fault?

16 DR. GEHRIS: Yes, my sense is that, by  
17 the time folks get to the clergy, the attorney,  
18 or whoever, it is almost an irrevocable  
19 decision. Indeed, one of the, I think one of  
20 the roles of the religious institution is to not  
21 just be in the front and then worry about the  
22 end, but create the kind of opportunities for  
23 folks who are in relationship together, usually  
24 that's married but in our culture not always, to  
25 strengthen that relationship so we don't get to



1 that far end.

2 But once there, it's, it's -- I can  
3 only remember one couple who got there, looked  
4 at it, and for what some of us might call the  
5 wrong reasons, decided. And, frankly, the  
6 reason was, they saw that they couldn't,  
7 couldn't have enough when they divided it so  
8 they decided to stay together with the stress to  
9 have the lifestyle they wanted with the stress  
10 rather than get divorced.

11 So, yes, I don't think we should make  
12 it more difficult because I think the decision  
13 has been made.

14 REP. JAMES: Do you also -- and this is  
15 my last question, Madam Chairman -- do you also  
16 see the fact that, if, in fact, 2562 was enacted  
17 that it would make it, that some people, since  
18 it would make it more difficult to try to prove  
19 who is wrong and all of that, that people just  
20 walk away and not go through it and that would  
21 add to those --

22 DR. GEHRIS: Well, I think people are  
23 doing that now and I think that probably would  
24 induce more people to do it.

25 REP. JAMES: Thank you.

1                   MADAM CHAIRMAN COHEN: Thank you,  
2 Representative James.

3                   Dr. Gehris, thank you very much. We  
4 appreciate your coming out.

5                   And the next person to speak is David  
6 Rasner, Esquire, American from Fox, Rothschild,  
7 O'Brien & Frankel in Philadelphia, and the  
8 American Academy of Matrimonial Lawyers in  
9 Pennsylvania.

10                   Welcome, Mr. Rasner.

11                   MR. RASNER: Good morning, Madam  
12 Chairman. Good morning, representatives of this  
13 committee.

14                   I guess I will read from my prepared  
15 statement, which I think you all should have by  
16 this time.

17                   Thank you for inviting me to address  
18 this committee and express my thoughts and  
19 position regarding House Bills 2562 and 2203. I  
20 have been a practicing attorney for 24 years in  
21 Pennsylvania since my graduation from the  
22 Villanova University Law School. I have devoted  
23 my practice exclusively for the last 16 years to  
24 the area of Family Law.

25                   And I might add: prior to that time, I

1 had a full head of hair before I began devoting  
2 myself exclusively to that practice.

3 I am a partner in the Philadelphia law  
4 firm of Fox, Rothschild, O'Brien & Frankel,  
5 which has a regional commercial, litigation,  
6 transactional and labor practice in the  
7 Philadelphia Metropolitan Area and New Jersey.  
8 My practice takes me to all the counties in the  
9 Philadelphia Metropolitan Area, particularly  
10 Montgomery, Philadelphia, Bucks and Chester  
11 Counties. I am a member of the American  
12 Pennsylvania and Philadelphia Bar Associations.  
13 I am co-chair of the Support and Alimony  
14 Committee of the Philadelphia Bar Association.  
15 I am also a Fellow of the American Academy of  
16 Matrimonial Lawyers in Pennsylvania. I am here  
17 today to state my professional position  
18 regarding these bills. I have also been  
19 authorized to state that my position represents  
20 the position of the American Academy of  
21 Matrimonial lawyers of Pennsylvania of which I  
22 am a member.

23 Let me state, from the outset, my  
24 professional position regarding these bills so  
25 that there is no confusion or mistake in the

1 minds of those present. The enactment of these  
2 bills, into law, would be emotionally and  
3 economically injurious to the welfare and  
4 well-being of the citizens of this Commonwealth.

5 I don't think I could be more clear.

6 To prepare for this presentation, I  
7 again reviewed the legislative history of our  
8 present Divorce Code which became law in 1980  
9 and which was subsequently amended in 1988. The  
10 nature of the debate has not changed. What has  
11 occurred is that we now have 16 years of  
12 experience to determine if the law has worked as  
13 envisioned by our legislators. As the adage  
14 goes, quote, if it ain't broke, don't fix it.  
15 The Divorce Code isn't broke, so my message  
16 today is don't attempt to fix it in this way.

17 What I believe has caused our  
18 legislature to initiate these bills has been the  
19 hue and cry of a vocal minority of our  
20 citizenry, well-intentioned, but wrapped up in  
21 myopic morality which has no place in the law  
22 and which is certainly not grounded in the facts  
23 or the reality of experience. The legitimate  
24 concerns for the sanctity of marriage and the  
25 preservation of the family unit would not be

1 enhanced by the repeal of no-fault as grounds  
2 for divorce in Pennsylvania or by providing an  
3 option for considering fault by the trier of  
4 fact in the resolution of the divorce and  
5 consequent economic issues which affect every  
6 marital break-up.

7 First, some statistics are in order.  
8 If some of our legislators feel that the  
9 introduction of no-fault as part of our divorce  
10 law in 1980 has made divorce easier or more  
11 prevalent, they are mistaken.

12 And by the way, my footnote that refers  
13 to the 1996 Pennsylvania Abstract, published by  
14 the Pennsylvania State Data Center, Institute of  
15 State and Regional Affairs, Penn State in  
16 Harrisburg.

17 In 1979, before the enactment of our  
18 current law, there were 3.4 divorces per 1,000  
19 of our population. Today, as of 1994, there  
20 were 3.2 divorces per 1,000 of our population.  
21 Virtually, no change. If it is felt that  
22 no-fault makes it easier for people to get  
23 divorced then, it seems logical to assume that  
24 more people would be getting married as they  
25 would expect that ending the marriage would be

1 simpler. Again, that assumption is incorrect.  
2 In 1979, there were 93,677 marriages. In 1994,  
3 there were only 75,703 marriages. A decrease of  
4 approximately 19 percent.

5 Then, what is the intent of these House  
6 Bills and what effect would their passage have  
7 on the lives of our citizens? The intent can  
8 only be the introduction of morality as a  
9 punitive factor when considering and resolving  
10 the economic issues arising in a divorce. It is  
11 my unalterable personal and professional  
12 experience that forces me to state unequivocally  
13 that punishment (or the introduction of  
14 morality) has no bases in family law or the  
15 resolution of family conflict. The  
16 introduction of fault into the complex personal  
17 and economic issues that effect all marriages  
18 and divorce would, ipso facto, undermine and  
19 irreparably injure the family unit (which we are  
20 trying to preserve) and the very standards and  
21 ideals that this Assembly wishes to maintain.

22 As there are expectations when people  
23 marry, there are also expectations when people  
24 divorce. The introduction of fault would  
25 introduce a wild card in the dissolution of the

1 marriage causing the parties to inject spite,  
2 anger, hurt, and other emotions into the  
3 delegate negotiations and legal resolution  
4 process which accompanies the disappointments of  
5 every failed marriage ending in divorce. It  
6 would place an undue burden on our judges and  
7 the judicial system which is composed of mere  
8 mortals to make Solomon-like decisions which, to  
9 date, they are either incapable of or unwilling  
10 to make. It would change the focus of divorce  
11 from the central issue of providing economic  
12 justice to the parties to a sideshow of who  
13 struck John and for what reason or reasons.

14 I submit to this Assembly that the  
15 causes leading to divorce are many and generally  
16 not black and white and are personal and  
17 individualistic and complex for all married  
18 couples. It would unnecessarily protect the  
19 litigation into an endless series of battles on  
20 on secondary or tertiary issues of no economic  
21 significance but directed only to some moral  
22 vindication (perhaps) in the end. It would  
23 additionally financially burden the dependent  
24 spouse (generally, predominantly the wife) who  
25 already does not have sufficient financial

1 resources to fight on a level playing field with  
2 her husband for a just economic resolution of  
3 the marriage for herself and the children.

4           And, finally, what does it mean to the  
5 children? It is my professional opinion that  
6 the longer (and harder) the divorce battle is  
7 waged, the greater and more permanent  
8 psychological harm there is to the children.  
9 These bills would aid and abet such an  
10 unintended consequence.

11           Further, children are inevitably drawn  
12 into such a conflagration and are asked either  
13 expressly or implicitly by either or both  
14 parties to take sides. My professional  
15 experience tells me that children generally love  
16 both parents; demand neutrality in such battles;  
17 and, wish to maintain ties to both of them.  
18 Again, the passage of these Bills would further  
19 undermine those family relationships if not  
20 cause the family unit to be forever fractured by  
21 exacerbating emotional/psychological wounds that  
22 never will heal.

23           Divorce laws should be remedial in  
24 nature designed to mitigate the financial losses  
25 engendered to one or both spouses, when the



1 marriage breaks down. Those laws should be  
2 compensatory not punitive in nature. They  
3 should not encourage a dialogue which, for  
4 example, would degenerate into, quote, I'll let  
5 you out of the marriage but you can't see your  
6 kids, end of quote; but should elevate the  
7 dialogue so that the parties can obtain a  
8 divorce with dignity. That is the point.

9 Divorce laws should not inquire into the  
10 internal workings of a marriage but should look  
11 only to supplement and ameliorate the financial  
12 losses of the parties occasioned by the divorce  
13 through the administration of a wise and  
14 compassionate system of justice.

15           Question: Do people stay together  
16 because divorce laws make it more difficult for  
17 people to be divorced? Answer: I think not.

18 Question: Does the individual about to commit a  
19 crime not commit that crime because of the  
20 threat of serving jail time if caught or even  
21 worse, face capital punishment because of the  
22 possible nature of that act? Answer: Again, I  
23 think not. Question: Will the threat of  
24 staying in a failed marriage strengthen the  
25 family unit for the betterment of the parties

1 and the children? Answer: Again, I think not.

2           Legal divorce ends the interpersonal  
3 losses suffered by the parties as a result of  
4 the termination of that relationship. Moral  
5 discourse in the guise of fault has no place in  
6 what should be an economic inquiry into  
7 mitigating the harm and damage caused the  
8 parties (either or both of them). It is a  
9 destructive waste of human, economic and  
10 judicial resources to permit such an inquiry.  
11 Only the lawyers would benefit.

12           MADAM CHAIRMAN COHEN: Thank you, Mr.  
13 Rasner.

14           The prime sponsor of the bill,  
15 Representative Smith.

16           REP. SMITH: Thank you, Madam Chairman.

17           Just real quickly. You, in page three  
18 of your testimony, said that the intent can only  
19 be the introduction of morality as a punitive  
20 factor. Just as someone involved in this  
21 process, well, I said that is really not my  
22 intent at all; however, it is more the intent of  
23 seeing people living up to commitments and  
24 responsibilities in the sense of a contractual  
25 nature.

1           One other comment and question I have  
2 is: on page five, you listed these laws should  
3 not be compensatory nor punitive in nature, they  
4 should not encourage a dialogue and you listed  
5 several things there. The middle paragraph on  
6 page five.

7           MR. RASNER: I have that.

8           REP. SMITH: Do you think that the  
9 current law is doing all of those things?

10          MR. RASNER: No, I don't. I think that  
11 the introduction of fault would then reduce or  
12 take the focus away from the main economic --  
13 the main issue, which should be economic. It  
14 should not be punitive. It should not be: why  
15 is this person leaving the marriage? Why does  
16 this person want out? What caused the marriage  
17 to break down?

18          I think the preamble to the current law  
19 says that the purpose of the Code is to mitigate  
20 the harms, the economic harms, and the emotional  
21 harms to the spouses, the children, or whatever,  
22 the family unit and I think that's where a  
23 divorce with dignity is appropriate.

24          The current law, I think should not be  
25 changed, is my position. There are other ways,

1 I think, you could change it, but this is not  
2 the purpose of me to express that today unless  
3 you want to hear it.

4 REP. SMITH: I think you are  
5 contradicting yourself when you say that the  
6 current law does not do some of the those things  
7 you list and then you say that it does not need  
8 changed.

9 MR. RASNER: Well, the old law because  
10 if one party wanted out, it could only establish  
11 fault, okay? Then, as has been testified,  
12 people would contrive ways to extricate  
13 themselves from that marriage, okay? And there  
14 it did degenerate into, well, I will let you out  
15 of the marriage but you have got to give me X or  
16 you can't see little Johnny or whatever, okay?  
17 I don't want to see a return to that system.  
18 That's my point.

19 REP. SMITH: I think that is still  
20 going on today, too.

21 MR. RASNER: Yes, it is. But to a  
22 lesser degree, to a lesser degree. Because the  
23 battleground is not wanting out of the marriage.  
24 The battleground becomes economic. So the focus  
25 is changed based upon the current law. To

1       repeal no-fault, you then go back to the old  
2       system and it would, I think, doubly burden the  
3       parties. Then you would have, again, a more  
4       heightened discourse on who struck John and let  
5       me out and I will give you something in exchange  
6       for letting me out of the marriage.

7                REP. SMITH: Thank you.

8                MADAM CHAIRMAN COHEN: Thank you,  
9       Representative Smith.

10               Representative Boscola.

11               REP. BOSCOLA: Hi.

12               MR. RASNER: Good morning.

13               REP. BOSCOLA: You had said that the  
14       enactment of these bills into law would  
15       emotionally and economically be injurious to the  
16       welfare and well-being of our citizens. I have  
17       had numerous phone calls into my office. Since  
18       The Morning Call, a newspaper up in my area,  
19       they wrote an article that the state legislature  
20       was going to be looking into the no-fault  
21       divorce law and these people are already  
22       emotionally distressed. Because what is  
23       happening is, they are in this two-year period  
24       where an individual, men and women alike, men  
25       are leaving marriages and women are leaving

1 marriages and the other spouse is left with a  
2 couple of children and meanwhile bills aren't  
3 being paid, educations aren't being paid for,  
4 and a lot of them are crying on the phone.

5 But what I want to ask you is, because  
6 this is the question period, is: in this  
7 interim, in the two-year period, if somebody, if  
8 a man or woman can prove that they haven't lived  
9 in the residence for a year or two, is that  
10 then, then they can get a divorce? What if the  
11 other contests that? Well, yes. What if they  
12 said, well, yeah, he did live away from me for  
13 two years but I still don't want the divorce,  
14 even if he can prove that he did live away from  
15 the residence for two years?

16 MR. RASNER: I feel that the present  
17 Code that you are referring probably to the  
18 statutory provision that deals with abandonment,  
19 malicious desertion for a period of one year, I  
20 think it is. And I think, if I am not mistaken,  
21 that provision also says that that desertion has  
22 to be without cause; that is, there still has to  
23 be an innocent and injured spouse as well as a  
24 fault spouse, okay?

25 And today, traditionally, I have in the

1 last 16 years of practice, maybe two cases in  
2 those 16 years where I have had to deal with  
3 fault as a basis for a divorce. All of the  
4 others have been no-fault divorces.

5 And as you express concern -- The  
6 concerns that you have expressed are legitimate.  
7 They are economic concerns. And one way that I  
8 have or what I would suggest for this panel of  
9 changing the system, although this is not the  
10 focus of this committee, the focus is the two  
11 bills pending, okay, but if you asked me what I  
12 would do, I would change the two-year separation  
13 period to a one-year separation, okay? Because  
14 I think what happens is that the strong survive;  
15 that is, the strong financially. And,  
16 typically, a husband, who has the funds, can  
17 hold out longer than the wife for a longer  
18 period of time. But if you shortened that  
19 period, okay, and addressed the economic issues  
20 in the marriage on a sooner rather than later  
21 basis then that would, in effect, level the  
22 playing field. Time works against the wife,  
23 generally, in the divorce case.

24 RFP. BOSCOLA: Thank you.

25 MADAM CHAIRMAN COHEN: Thank you,

1 Representative Boscola.

2 Representative Manderino.

3 REP. MANDERINO: Thank you. Good  
4 morning, David.

5 MR. RASNER: Good morning.

6 REP. MANDERINO: Putting all moral  
7 issues aside and focusing only on the economic  
8 effects of establishing fault in the marriage, I  
9 don't think that you would argue with the notion  
10 that, more often than not, it is the women and  
11 children who, after the divorce, end up in a  
12 worse economic state.

13 MR. RASNER: Agreed, agreed.

14 REP. MANDERINO: And looking at it from  
15 that point of view and what I am hearing  
16 underlying in some of the prior testimony is, if  
17 you let fault be a consideration in the economic  
18 distribution, then maybe the women and the  
19 children would not end up as impoverished or as  
20 worse off as they do today or maybe the escape  
21 wouldn't be as easy to abandon your children and  
22 leave them that way, and I would like to hear  
23 your comments on that aspect from an economic  
24 view, looking at it from an economic consequence  
25 and not a moral decision.



1           MR. RASNER: Well, first of all, after  
2           devoting my practice exclusively for 16 years to  
3           family law, I am not sure that I could find  
4           fault in every household where it is assumed to  
5           exist, okay? I mean, I am not sure what fault  
6           is anymore, okay, based upon experience, that  
7           has caused the break-up. I think, as I said in  
8           my statement, it is maybe due to a myriad of  
9           factors. And the spouse who commits adultery in  
10          the marriage, maybe he or she was driven to that  
11          by the certain happenings or whatever was going  
12          on in the marriage itself with the other spouse,  
13          okay? So I don't know how fault would  
14          ameliorate or be determined, first of all.

15                 How fault would affect the economic  
16          resolution of the situation, I am not that  
17          certain either, okay?

18                 The purpose of the Divorce Code is to  
19          economically -- make the parties economically  
20          even or on a level playing field or somehow not  
21          cause their lives to be further disrupted, okay?  
22          It is true that usually the wife and the  
23          children come out worse in a divorce, okay, that  
24          goes without saying. The husband who has a job,  
25          is free to go on with his life, generally does

1 better, okay, economically. And I think it is  
2 up to our judicial system, our judges and our  
3 masters, to implement the law in such ways as to  
4 cure those results, to make it even, okay, to do  
5 economic justice, okay? So the husband who has  
6 left the wife after 20 or 30 years of marriage  
7 does have an obligation for, perhaps, alimony,  
8 okay? And, again, as was stated before, I think  
9 by Professor Rains and others, that alimony, in  
10 the consideration of alimony, fault is a factor;  
11 but, in terms of the equitable distribution of  
12 marital assets, I have seen too many situations  
13 where I think the fault is unclear, okay? And  
14 there, it could work adversely, it could be more  
15 punitive to the spouse as opposed to a  
16 betterment.

17 I think if our courts enforce the law  
18 as it is supposed to be and acted wisely and  
19 compassionately, as I suggested, then I think  
20 that would provide for a better situation for  
21 the parties.

22 REP. MANDERINO: One quick follow-up  
23 question. Do you know how often, in  
24 Pennsylvania, alimony is given? Is that more  
25 common than not? I mean, I was under the

1 impression that it is not very common.

2 MR. RASNER: It depends, county to  
3 county, okay? I can give you my own beliefs and  
4 positions as regards the five-county  
5 Philadelphia area in terms of which counties  
6 favor alimony and which counties do not. And  
7 just in passing, for those curious, generally  
8 Montgomery County is not an alimony county,  
9 okay, per se. Generally, Bucks County is.  
10 Generally, Philadelphia County is, okay? So it  
11 varies, county to county. You could have the  
12 same set of facts in one county, okay, and get a  
13 different result than you would in another  
14 county; and, I think there, we would have to be  
15 more uniform to effecuate justice.

16 Because as we said before, I think most  
17 people living in the Commonwealth only come in  
18 contact with the judicial system in terms of any  
19 punitive criminal wrongdoing or divorce, okay?  
20 And I think we have to make the system more  
21 compassionate for those who pass through it.  
22 But that is up to the administration of justice.  
23 And I don't think, if you want to talk about  
24 changing the administration of justice, then I  
25 think we could have some meeting of the minds,

1 but in adopting --

2 REP. MANDERINO: In another hearing.

3 MR. RASNER: In another hearing.

4 -- but adopting, but enacting these  
5 bills, I think it would be contrary to the  
6 well-being of our citizens. That would not  
7 accomplish the intent which I think we all wish  
8 to make.

9 REP. MANDERINO: Thank you.

10 Thank you, Madam Chairman.

11 MADAM CHAIRMAN COHEN: Thank you,  
12 Representative Manderino.

13 Representative Masland.

14 REP. MASLAND: Thank you, Madam  
15 Chairman.

16 I wasn't going to say anything because  
17 I know we are short on time, but I think we are  
18 okay on this particular witness and there is one  
19 thing you said that I just, I can't let pass. I  
20 don't know, maybe a light went off in my head  
21 for once, but I practiced law for 10 years  
22 before coming to the General Assembly, and one  
23 of the best things about being in the General  
24 Assembly, I have found, is that I am unable,  
25 because of time constraints, to do any domestic

1 work anymore. I don't miss it. I don't miss it  
2 one bit.

3 MR. RASNER: That would be a blessing  
4 rather than a curse.

5 REP. MASLAND: But that, outside of  
6 being a part-time Assistant D.A., was the bulk  
7 of my civil practice. And I would like to think  
8 that I was pretty good at divorce law, support,  
9 custody, maybe a pretty good clinician. And I  
10 have to say, with all due respect, that when  
11 you, after 16 years of practicing under the  
12 no-fault divorce act say that you are not sure  
13 what fault is anymore, that hit me like a ton of  
14 bricks. And I started to say maybe the best  
15 thing that has happened to me is not doing any  
16 divorce practice over the last four years so  
17 that I can still maybe retain some aspect of  
18 fault in this relationship. It is more than  
19 just an economic contract, right? And you admit  
20 that.

21 MR. RASNER: I agree.

22 REP. MASLAND: It is more than that.

23 I don't think you can completely  
24 divorce fault at any time from these types of  
25 situations. I don't think that in a custody

1 matter, when you are looking at the best  
2 interests of the child, that you can completely  
3 divorce fault while the meretricious (phonetic)  
4 relationship is not necessarily evidence that  
5 the person should not have custody. Now, I have  
6 seen and said that plenty of times. But the  
7 fact is, it does have an impact.

8           So when you make statements like the  
9 injection of morality, the induction of  
10 morality, Solomon-like decisions and things like  
11 that, it just hit me that, you know, I am not  
12 saying let's do away with the no-fault divorce  
13 code, but let's not try to emasculate things to  
14 the extent that our society does not have any  
15 concept of fault anymore; and, if that is my  
16 saving grace for having been in the Pennsylvania  
17 Legislature over the past few years, that I  
18 still think that there should be some fault out  
19 there and that maybe I still understand what  
20 fault is, then thank God for the Pennsylvania  
21 Legislature and I never thought I would say  
22 that.

23           MR. RASNER: Representative Masland, I  
24 respect what you have to say, and my comment  
25 really was that we don't -- what goes on behind

1 the closed doors of a household, we are not  
2 privy to, okay? And I can't judge what goes on  
3 in that home, whether it is good, bad or  
4 indifferent, visiting the parties, okay?

5 Yes, there are clear instances of  
6 fault. No question about that, okay? But the  
7 greater likelihood is that it is all blurred, it  
8 is all blurred, okay?

9 In your comments, I think you kind of  
10 mixed apples and oranges together, okay? You  
11 spoke about the children and then you also spoke  
12 about -- and we are speaking about economic  
13 relief, okay?

14 The focus of these bills, as I see it,  
15 okay, is to deal with economic relief, okay?

16 In terms of custody of children, okay,  
17 a meretricious relationship does have an impact  
18 upon the custody of that child if due to that  
19 relationship that parent is neglecting, in some  
20 fashion, that child; so, I think that fault, in  
21 that limited element, does have a role.

22 But on these bills, you are talking  
23 about the abolishment of no-fault in terms of  
24 economic issues, in terms of getting divorced.  
25 And I agree with the previous speakers that once

1 a client comes to my office, okay, invariably,  
2 he or she wishes to be divorced. In my 16 years  
3 of doing this exclusively, I have had two  
4 situations that I can remember as I was thinking  
5 back on, as other previous speakers spoke, where  
6 parties reconciled to their credit, to their  
7 credit, okay?

8 But generally when -- invariably when  
9 people come to seek a divorce lawyer, they want  
10 a divorce. And what I am talking about is what  
11 I think Professor Rains stressed and, that is,  
12 let's not contrive a system to attain a result.  
13 Let's improve the system that we have. And I  
14 think that by improving the system that we have,  
15 we can do things like, well, we can do things  
16 with the judges that are appointed, elected, by  
17 the administration of the justice, and by  
18 changing, by tinkering with the Divorce Code but  
19 not by changing the Divorce Code as these two  
20 bills wish to do.

21 REP. MASLAND: Just a quick follow-up.  
22 I don't think we should go back to pre-1980  
23 because I have heard all of the war stories from  
24 practitioners who say, yes, people just went in  
25 there and made things up. Yes, he used to throw



1 cigarette butts in my face. Well, you wouldn't  
2 do that but it sounded good and it was enough  
3 for indignities.

4 MR. RASNER: Correct.

5 REP. MASLAND: I don't think we should  
6 go back to that. My concern is, and I think you  
7 would agree, we should not make the Code so  
8 sterile that all we are looking at are dollars  
9 and cents in a divorce situation. People do  
10 come into that relationship, in many instances,  
11 not all, but in many instances with a measure of  
12 spirituality.

13 MR. RASNER: Correct.

14 REP. MASLAND: And I don't think that  
15 they should go out completely based on or solely  
16 based on economic consequences. So I think  
17 that, yes, I was talking about children in  
18 custody but I don't think that it should be  
19 emasculated from the Divorce Code itself also.  
20 Thank you.

21 MADAM CHAIRMAN COHEN: Thank you.

22 Representative James, we have time for  
23 one quick one. Did you have one?

24 REP. JAMES: Yes. Thank you, Madam  
25 Chairman. I have one but I think it developed

1 into two after hearing that.

2 MADAM CHAIRMAN COHEN: We are on a time  
3 constraint.

4 REP. JAMES: Okay. Maybe I could say  
5 it this way: you say that we are not privy to  
6 what goes on behind closed doors and that this  
7 bill does not improve the system, I will say,  
8 because you say that's what we need to do,  
9 improve the system, but these bills do not do  
10 that?

11 MR. RASNER: That's correct.

12 REP. JAMES: And so, I know that I got  
13 a divorce in '76, it was about 20 years ago, and  
14 I had to prove all of these things. So if these  
15 bills passed, would that mean then that we have  
16 to involve our family and our children in trying  
17 to prove that this is bad or the marriage is bad  
18 or just one has fault? Would that take us back  
19 to this if these bills are improved?

20 MR. RASNER: I believe it would. I  
21 believe it would do that unequivocally. I think  
22 that it would inject third parties (the  
23 children, the family members) and we will get  
24 into a contest, again, of who struck John.

25 REP. JAMES: Thank you, Madam Chairman.

1           MADAM CHAIRMAN COHEN: Thank you, Mr.  
2 Rasner. We appreciate your coming out here.

3           MR. RASNER: Thank you.

4           MADAM CHAIRMAN COHEN: The next person  
5 to speak to us today is Frederick Kompass, who  
6 is the President of the Pennsylvania Association  
7 for Marriage and Family Therapy.

8           Dr. Kompass, welcome, and thank you for  
9 coming out here today.

10           DR. KOMPASS: Thank you. My name is  
11 Fred Kompass. I am a marriage and family  
12 therapist, practicing in the State of  
13 Pennsylvania since 1969. I have been a clinical  
14 member of the American Association for Marriage  
15 and Family Therapy since 1972. This is a  
16 national professional association for the  
17 discipline of marriage and family therapy. An  
18 association sets the standards for practice and  
19 its commission on accreditation for marriage and  
20 family therapy education is nationally  
21 recognized as the accrediting body for training  
22 programs in marriage and family therapy  
23 throughout the U.S. and Canada. Marriage and  
24 family therapists are licensed in 37 states and  
25 many in the Canadian provinces. I have been

1 approved as a supervisor since 1979 by the  
2 AAMFT. I am also a teaching clinical member of  
3 the American Family Therapy Academy, which is a  
4 professional association of senior members in  
5 the field who are among the cadre of educators  
6 and trainers in marriage and family therapy. My  
7 education includes a master's degree in pastoral  
8 counseling and a Doctor of Ministry degree,  
9 specializing in family therapy, from Princeton  
10 Theological Seminary. For the second time in a  
11 little more than a decade, I am the President of  
12 the Pennsylvania Association for Marriage and  
13 Family Therapy, which is a state division of the  
14 AAMFT, and we number about a thousand people in  
15 Pennsylvania.

16 I would like to address the issue of  
17 no-fault divorce from the standpoint of one  
18 whose expertise comes from over 25 years'  
19 experience in treating severe mental illness  
20 embedded in dysfunctional family systems, at the  
21 heart of which generally lies troubled  
22 marriages.

23 In 1956, a team of researchers at the  
24 Mental Research Institute in Palo Alto,  
25 California, headed by Gregory Bateson, an

1 anthropologist, and Don Jackson, a psychiatrist,  
2 published their by now classic paper called,  
3 Toward a Theory of Schizophrenia, in which they  
4 posited their theory of the double bind. And  
5 what is significant about that is that for the  
6 first time the beginning of emotional problems  
7 in children was linked to communication patterns  
8 in the family, particularly to the dysfunctional  
9 relationship of the child's parents.

10 Working at the Philadelphia Child  
11 Guidance Clinic, right here in the great state  
12 of Pennsylvania, Salvatore Minuchin, another  
13 psychiatrist, and his colleagues presented the  
14 results of their experience with severe eating  
15 disorders, among other things, in 1978 in a book  
16 called, Psychosomatic Families. And there they  
17 reported scientific evidence pointing to the  
18 deleterious, often life-threatening,  
19 physiological impact on children of overt  
20 escalating conflict between their mothers and  
21 fathers.

22 In 1954, Murray Bowen, yet another  
23 psychiatrist, joined a research project at the  
24 National Institute of Mental Health in Bethesda,  
25 Maryland, treating schizophrenics during the

1 course of which he hospitalized whole families,  
2 not just the patient. And he has built a  
3 scientific, biologically grounded theory which  
4 accounts for his observations that it takes  
5 about three generations of dysfunctional family  
6 patterns, driven by dysfunctional marital  
7 relationships, to produce schizophrenia. As  
8 water seeks its own level, Bowen has  
9 demonstrated that human beings tend to meet and  
10 marry people who possess about the same degree  
11 of maturity, or lack thereof, as they themselves  
12 do.

13 Carl Whitaker, also a psychiatrist  
14 working with schizophrenics, has developed a  
15 concept which is now commonly accepted, that  
16 marriage is a bilateral affair. That is to say,  
17 what happens in a marital relationship is  
18 contributed to in equal proportions by both  
19 spouses. Though it may not often look that way  
20 on the surface, he found that any so-called  
21 craziness in one spouse is matched by an equal  
22 amount of craziness in the other, albeit maybe  
23 of a different shape and form. But if you  
24 scratch the surface, you will discover it  
25 because it is there.

1           Finally, Ivan Boszormenyi-Nagy, a  
2 psychiatrist, and his associates at Eastern  
3 Pennsylvania Psychiatric Institute in  
4 Philadelphia, as with others, working with  
5 schizophrenics, discovered that one of the major  
6 motivators of human behavior is, not instincts  
7 or drives or ugly unconscious impulses as Freud  
8 would have said, but the innate need we all have  
9 to be loyal to those most significant others in  
10 our lives, the members of our biological  
11 families. And Dr. Nagy is internationally known  
12 for his ideas about child custody in cases of  
13 divorce whereby he believes that the parent that  
14 should be given custody ought to be the parent  
15 who is most able to promote in the children a  
16 positive image of the other parent. Children,  
17 he says, have a need to be loyal to both  
18 parents, as was mentioned in an earlier  
19 testimony and that is so true.

20           Though originally from the medical  
21 profession, these men are a part of that group  
22 of pioneers that formed and fashioned what has  
23 become a separate and distinct mental health  
24 discipline known as family therapy. And I cite  
25 these references because they all point to the

1 connection -- or to the hot links as we would  
2 say in this age of the world of wide web --  
3 between the health of the marital relationship  
4 and the health of the kids. While this may  
5 still be controversial in some circles, I can't  
6 imagine anyone in their right mind who would  
7 deny the fact that the emotional adjustment of  
8 children over the years correlates positively  
9 with the level of care, love, harmony in their  
10 parents' relationship. In his study of healthy  
11 families published in 1976 in a book titled No  
12 single Thread, it was found that the most  
13 healthy families had an egalitarian relationship  
14 between husbands and wives, a relationship in  
15 which unresolved conflict does not accumulate  
16 and poison the atmosphere.

17 Now, putting all of this the other way  
18 around, what it amounts to is what is really  
19 harmful to children is overt war between their  
20 parents. Where children are concerned, the fact  
21 is that divorce does not end the relationship  
22 between the spouses; it merely rearranges it.  
23 The mother and the father will go on being  
24 co-parents of their children. Now, don't  
25 misunderstand me. Divorce is not to be



1 glamorized in my eyes or seen as a logical  
2 solution where two people can't seem to get  
3 along. Because too often it amounts to running  
4 away from problems rather than seeking a  
5 solution to them, and that can be a pattern of  
6 how problems are dealt with and that will  
7 continue into the future and it is an  
8 unrealistic pattern and frequently it is an  
9 unhealthy pattern. Again, where children are  
10 involved, often one or more of the kids get  
11 entangled in their parents' struggle and they  
12 then become the glue that keeps the marriage  
13 together and that is an equally unhealthy  
14 pattern. I am not a believer in quick divorce  
15 or easy divorce. But I do believe that where  
16 children are involved, both parents have an  
17 obligation to rise above their differences with  
18 each other and collaborate to do the things that  
19 are best for their children and to do them in a  
20 way that minimizes the impact of their break-up  
21 on the kids and to co-parent in a way, in such a  
22 way as to encourage and enable their offspring  
23 to have a good relationship with both their  
24 mother and their father.

25 And I would hope that the law would not

1 interfere in that process. I believe that an  
2 adversarial divorce or a fault-only divorce does  
3 interfere with that process. These days we have  
4 such things as divorce mediation, as I am sure  
5 you are all aware of, which is a brand new  
6 discipline designed to help separating partners  
7 negotiate the break-up and the distribution of  
8 the assets rather than duke it out in the  
9 courts. It doesn't always work. It cannot work  
10 without both partners wanting it to work. But  
11 the need to affix blame, which no-fault laws  
12 obviate, fans the flames of conflict and  
13 undermines whatever spirit of cooperation-for-  
14 the-sake-of-the-kids remains in the parents.

15 Notice I don't say the spirit of let's-  
16 stay-together-for-the-sake-of-the-kids, but the  
17 spirit of let's-cooperate-for-the-sake-of-the-  
18 kids.

19 To my way of thinking, the concept of  
20 blame is the issue that is at stake here,  
21 whether or not children are involved. And as I  
22 have indicated in the studies I cited above,  
23 when a marriage is broken, finding fault in only  
24 one of the two parties so as to end up with a  
25 victim and a villain belies the facts of how

1 relationships get started and how they evolve.  
2 It is very unrealistic, to put it plainly.  
3 Finding fault in one or the other also  
4 encourages each to focus on the other guy, look  
5 for and discover what is wrong with her or with  
6 him, get angry about that, feel self-righteous,  
7 do battle with that person and/or complain to  
8 your kids about them when children are involved.  
9 Finding fault thus, it seems to me, contributes  
10 to a process that exacerbates whatever  
11 inescapable harm divorce, in and of itself, does  
12 bring upon a divorcing couple's children. And  
13 that to me is the logic from my point of view of  
14 no-fault divorces.

15 Now, I am not an attorney either, but I  
16 say that to the extent that House Bill 2562 and  
17 house Bill 2003 do away with the opportunity for  
18 parents of families that are breaking up, to  
19 break up in a way that mitigates their overt  
20 conflict and minimizes the impact of the break  
21 up on their children and I am opposed to them  
22 and I would hope that you would be, too.

23 Thank you.

24 MADAM CHAIRMAN COHEN: Thank you, Dr.  
25 Kompass. As the Vice Chair of the Board of

1 Directors of the Philadelphia Child Guidance  
2 Center, I thank you for quoting Dr. Minuchin as  
3 one of your authorities.

4 Let me just ask you: is it, therefore,  
5 your opinion that if a couple decides to divorce  
6 and the marriage is irrevocably broken, would  
7 you be saying that the shorter time rather than  
8 longer time and the less expensive rather than  
9 the more costly route is the way to proceed?

10 DR. KOMPASS: Well, I am not as much  
11 concerned with the length of time -- I mean,  
12 these are important factors. But what I am  
13 talking about is the process of divorce. And I  
14 don't mean the legal proceedings. I mean, the  
15 emotional process that takes place between the  
16 two spouses as they go through this. I think to  
17 the extent that the legal proceedings can  
18 encourage them to cool it with each other for  
19 the sake of the kids or at least not provide an  
20 opportunity for them to escalate their battle in  
21 which the kids are going to be involved, that is  
22 the way that I think it should be.

23 MADAM CHAIRMAN COHEN: I thank you very  
24 much for your presentation today.

25 The next person to speak with us will

1 be Sandra Tibbetts Murphy, the Legal Advocacy  
2 Coordinator. And I believe you will be here  
3 with Judy Yupcavage, the Public Policy  
4 Coordinator, Pennsylvania Coalition Against  
5 Domestic Violence.

6 MS. MURPHY: Good morning. Judy did  
7 have a prior obligation and could not be here so  
8 it will just be me today.

9 MADAM CHAIRMAN COHEN: Okay. Thank  
10 you.

11 MS. MURPHY: Good morning, members of  
12 the committee and staff. My name is Sandra  
13 Tibbetts Murphy and I am here today on behalf of  
14 the Pennsylvania Coalition Against Domestic  
15 Violence, the first state domestic violence  
16 coalition in the country, which this year is  
17 celebrating its 20th anniversary as a state and  
18 national leader in the movement to end domestic  
19 violence.

20 It was 20 years ago that a handful of  
21 women joined forces right here in this building  
22 to advocate for passage of the state's first  
23 domestic violence law and to coordinate a  
24 network of services for victims that would  
25 eventually extend to all corners of the

1 Commonwealth. Through the years, this network  
2 has grown from nine to 64 programs and has  
3 provided life-saving services to more than one  
4 million victims of domestic violence and their  
5 children.

6 Over the last two decades, we have had  
7 the great privilege of working with the  
8 progressive legislature that has enacted  
9 significant legal protections and remedies --  
10 including no-fault divorce -- for the citizen of  
11 this state.

12 We are, therefore, justifiably alarmed  
13 that this legislature is now considering a  
14 proposal to eliminate no-fault divorce, and we  
15 are adamantly opposed to any attempt to return  
16 to a completely fault-based system.

17 A return to fault-based divorce will  
18 not necessarily keep more families together or  
19 make them happier or stronger. It will,  
20 however, make it dangerously burdensome or even  
21 impossible to obtain a divorce. It will make  
22 divorce litigation more antagonistic and time-  
23 consuming, and, unfortunately, it would will  
24 create a huge barrier to those who truly need a  
25 divorce from pursuing one.

1           Implementing a solely fault-based  
2 system will not solve the problems which  
3 dependent spouses and battered women and their  
4 children have in Pennsylvania. Divorce in a  
5 fault-based system will only mean time-consuming  
6 acrimonious litigation which will drain the  
7 limited time and resources of the parties and  
8 the courts and provide more fees for the  
9 attorneys. Moreover, the negative effects which  
10 divorce inflicts on children are only  
11 exacerbated by a fault system which creates more  
12 animosity between the parents.

13           For battered women in particular,  
14 fault-based divorce will only bring greater  
15 danger and more opportunities for batterers to  
16 manipulate and inflict abuse. Forcing a  
17 battered woman to allege, and successfully  
18 prove, fault in order to divorce her abuser  
19 often leads to violent retaliation by that  
20 abuser. The additional burden of increased  
21 legal fees also may compel a battered woman to  
22 remain in a violent, possibly lethal,  
23 relationship.

24           The most critical problem confronting  
25 economically dependent spouses and their

1 children is the lack of access to the courts in  
2 order to pursue their economic claims. The  
3 current bifurcated system with its use of  
4 special masters presents tremendous obstacles to  
5 those seeking divorce. Spouses, regardless of  
6 income, must pay for a special master, as well  
7 as an attorney, or forsake any claim to marital  
8 assets, financial equity or alimony. The courts  
9 of this Commonwealth are accessible to  
10 corporations, landlords and people pursuing  
11 damages for vandalism or traffic accidents  
12 without prepayment of adjudicatory costs. This  
13 is not the case in divorce. The courts are not  
14 accessible to dependent spouses, usually women,  
15 who seek economic justice as part of their  
16 divorce if they are unable to pay the requisite  
17 costs.

18           These factors all combine to frustrate  
19 the efforts by dependent spouses to pursue and  
20 protect their economic rights. Dependent  
21 spouses are deterred by the costs of a master  
22 and an attorney and the lack of the economic  
23 ability to fully and fairly litigate. In fact,  
24 the vast majority of dependent spouses, when  
25 faced with these and other obstacles to access



1 and justice, simply give up their efforts to  
2 obtain economic support, allowing the other  
3 spouse to walk away from the financial  
4 responsibilities of the relationship. The  
5 critical issue is thus one of economic  
6 abandonment.

7           The solution, however, is not to return  
8 to a fault-based system. Making it even more  
9 difficult to obtain a divorce does not address  
10 these issues of economic justice. Fault-based  
11 divorce will unjustly close the doors of the  
12 court for numerous parties who find themselves  
13 unable to afford all of the staggering costs  
14 associated with divorce. Divorce, whether we  
15 like it or not, is inevitable.

16           It is not our position that the  
17 legislature should create more barriers to  
18 divorce in order to keep spouses in marriages  
19 that are irretrievably broken. The law cannot  
20 reconstruct marriage. What legislation can do,  
21 however, is better construct the economic  
22 consequences so that dependent spouses are not  
23 financially abandoned.

24           The PCADV supports no-fault divorce,  
25 not because it might make divorce easier for

1 some people. We support no-fault divorce as an  
2 option because it provides a method of greater  
3 access to legal and other economic rights which  
4 otherwise might be beyond the reach of some. We  
5 support no-fault divorce because, for battered  
6 women, it represents a safer and more efficient  
7 way to try to escape a violent relationship. As  
8 stated before, the critical issue is the lack of  
9 access to economic justice for dependent  
10 spouses. A return to fault divorce would  
11 further limit this access.

12 For all of these reasons, the PCADV  
13 firmly believes that no-fault divorce absolutely  
14 must remain a vital option for divorcing adults  
15 in Pennsylvania.

16 Thank you for this opportunity.

17 MADAM CHAIRMAN COHEN: Thank you, Miss  
18 Murphy.

19 Do any of the panel members have any  
20 questions?

21 Representative Manderino.

22 REP. MANDERINO: Thank you.

23 This is, I guess less a question than a  
24 comment, not only to you, because I know that  
25 this is not necessarily your area of expertise.

1 But actually your testimony raised an important  
2 issue in my mind and that is the issue of  
3 economic abandonment, as you called it. And I  
4 am wondering whether or not there is any  
5 evidence out there, substantive type of evidence  
6 that would show, commonly accepted that in most  
7 cases women and children or if anyone is hurt  
8 economically it is usually the women and  
9 children.

10 And I am wondering if there is anything  
11 that has looked at whether or not that is  
12 predominantly women and children who couldn't  
13 afford to go through the whole process to the  
14 end of economic justice and more and more people  
15 who just abandon the process because they didn't  
16 have the resources to stay in it? I don't know  
17 if you feel comfortable commenting on that, but  
18 if anyone who is here has some information about  
19 that, that they can share with us afterwards, I  
20 would appreciate it.

21 MS. MURPHY: The only information which  
22 I have on that point, and, unfortunately, I  
23 can't be very precise as to the correct  
24 citation, but there is some research that's been  
25 done, at least nationally, about how often

1 parties pursue their economic claims upon the  
2 divorce settlement. And statistics have shown  
3 that less than 20 percent of the economically  
4 dependent spouses, which are almost always women  
5 and children, and their children, only -- excuse  
6 me, less than 20 percent actually go through  
7 their economic claims and receive any form of  
8 support at the end. And then there is also the  
9 issue of how many of those supports which are  
10 ordered are actually paid.

11 REP. MANDERINO: Thank you.

12 MADAM CHAIRMAN COHEN: Thank you.

13 Representative Boscola.

14 REP. BOSCOLA: Hi, Sandi.

15 Thank you for coming here today. In my capacity  
16 before I was elected, I was a deputy court  
17 administrator and one of my jobs was to help  
18 victims of domestic violence. Kind of like the  
19 liaison between the courts and filing and so  
20 forth. But one of your concerns is that the how  
21 this will effect battered women. But there are  
22 also other women in this Commonwealth who have a  
23 host of other problems and feel that they have  
24 been economically abandoned and their children  
25 are being as well; so, where I appreciate your

1 comments toward battered women, there are a  
2 whole host of other women in divorce situations,  
3 and men, that are not battered.

4 But I would also, and what I wanted to  
5 ask you was, there is a bill and I think it is  
6 -- I forget which number it is. But,  
7 specifically, do you have any opposition to  
8 House Bill 2003 which does not get rid of  
9 no-fault divorce but establishes the judicial  
10 option for hearings in no-fault divorce?

11 MS. MURPHY: Well, the opposition that  
12 we have is to eliminating no-fault as an option.  
13 We think that has to remain a viable option for  
14 the parties to choose.

15 As we read 2003, if I get the number  
16 correct, allowing the court to order hearings in  
17 and of itself doesn't seem on its face to have  
18 difficult problems. The only issue that we see  
19 with it is time delay. That for, speaking from  
20 the area that we know, for battered women and  
21 their children, time is of the essence and  
22 anything that creates delays also means more  
23 costs which they cannot afford so that would be  
24 our concern with that.

25 REP. BOSCOLA: And then lastly, I know,

1 Sandi, one of the things in the court system, it  
2 is very costly, whether you are a civil litigant  
3 or if you are going through an ARD program or  
4 filing for divorce and it goes from county to  
5 county. So in some counties, you can obtain a  
6 divorce for maybe \$500, but, in another county,  
7 it might be a thousand dollars and I think  
8 something has to be done, again, to make things  
9 more equitable in the Commonwealth. And that's  
10 probably for another day. But I appreciate your  
11 comments. Thank you.

12 MADAM CHAIRMAN COHEN: Thank you,  
13 Representative Boscola.

14 Miss Murphy, thank you very much.

15 MS. MURPHY: Thank you.

16 MADAM CHAIRMAN COHEN: We appreciate  
17 your being here.

18 The next person to speak with us will  
19 be Dory Zatuschni. And we have already received  
20 your written statement. Thank you. You may  
21 begin.

22 MS. ZATUSCHNI: In June 1990, my husband  
23 walked out on me. For the 17 years of our  
24 marriage, I devoted myself to his, our  
25 children's, and his business' best interests.

1 Therefore, my ex-husband, while refusing a  
2 divorce, promised to support me and our children  
3 until our youngest graduated college.

4 Our first year of separation was  
5 difficult. I was made to feel as if our  
6 marriage had never existed. Although my former  
7 husband did provide some financial support, his  
8 visits to his children were rare. He was coping  
9 with his own demons and found that dealing with  
10 his children was too psychologically burdensome.  
11 Thus did I become the sole provider of social  
12 and emotional support for our three children,  
13 then-aged 10, 12 and 17. Money, too, was  
14 becoming a significant problem.

15 My attorney recommended I not seek  
16 employment. He stated my husband was  
17 responsible for the financial support of me and  
18 the family, and not working would look better in  
19 court. I was not in a position to heed my  
20 attorney's advice.

21 I found a job as a social worker. This  
22 position utilized my education, an MSW earned 12  
23 years earlier. I was paid \$25,000 annually;  
24 less than 13 percent of my ex-husband's average  
25 annual income of \$200,000.

1           Eleven months later, my ex-husband  
2           agreed to a divorce. He unilaterally reduced my  
3           financial support from \$5,000 per month to less  
4           than 2,000 per month. Our eldest daughter had  
5           enrolled in college. Our middle child was still  
6           attending private school. My ex-husband stopped  
7           paying our children's tuitions. There was no  
8           discussion as to what was best for our children,  
9           and he did not seek any of the financial  
10          compromises offered by our daughters' schools.

11                 He also cashed in our retirement plan.  
12          He stopped paying the mortgage, utility bills,  
13          and insurance and medical bills. Collection  
14          agencies called me. He refused to speak with  
15          them, instead referring them back to me. The  
16          net income I earned was sufficient for food,  
17          transportation, and utilities only. I was  
18          forced to rely upon personal loans from my  
19          family.

20                 This went against the terms of our  
21          verbal divorce agreement. I was to get 30  
22          percent of my ex-husband's gross annual income,  
23          which averaged \$200,000 for each of the past  
24          five years. He was to keep his business, and I  
25          was to keep the house. He was also to keep all



1 rental income from our joint properties,  
2 although he would split the proceeds when he  
3 determined they should be sold. We were also  
4 supposed to equally divide our retirement  
5 savings, which he took for his own use.

6 I filed the hearing. In May 1992, my  
7 ex-husband made a verbal claim before the court  
8 that his net income was \$72,000 per year. My  
9 net was \$16,608. The court based an interim  
10 order on Pennsylvania guidelines and awarded me  
11 \$1,114 per month, effective April 1992. The  
12 case was also listed for court on August 6,  
13 1992, before a master.

14 In August, the court appearance was  
15 rescheduled until December 10, 1992. In  
16 December, it was pushed back until January. At  
17 that time, before another master, I was awarded  
18 \$4,600 per month based upon my ex-husband's tax  
19 return which showed a net income of \$12,416 per  
20 month, almost exactly twice what he previously  
21 claimed before the court. My ex-husband also  
22 specified to the court that he promised his  
23 eldest daughter he would pay a hundred percent  
24 of her college tuition.

25 My ex-husband changed his mind. He

1 appealed and offered me a reduced settlement.  
2 In April of 1993, we submitted an amended  
3 agreement to the court under still another  
4 master. This agreement was handwritten,  
5 publicly read to the court, initialed in each of  
6 its parts and signed in whole before the court.

7 Four months later, my ex-husband was  
8 back in court with another plea to reduce his  
9 own handwritten agreement. The following week,  
10 we went before another master because of my  
11 ex-husband's failure to comply. His petition to  
12 reduce the settlement was dismissed. The master  
13 ordered my ex-husband to pay me \$28,000.

14 My husband paid. My attorney took  
15 \$15,000 off the top as the payment for her  
16 continued representation. My husband did not  
17 pay any accruing charges. By the time he signed  
18 the final decree, he was more than \$60,000 in  
19 arrears. My legal fees had exceeded \$40,000.  
20 My ex-husband again appealed. He ran up another  
21 \$33,000 in missed child support since this  
22 agreement.

23 The following year he filed for  
24 personal bankruptcy. According to his tax  
25 returns, he earned more than \$150,000 that year.

1 We went to court six times that year, and to the  
2 bankruptcy court four times.

3 On the stand, my ex-husband admitted he  
4 never intended to honor his contracts. He  
5 claimed poverty. My attorney demonstrated he  
6 received, in 1995, \$17,000 her month. He now  
7 gets at least \$6,000 per month in payment of  
8 previously earned commissions.

9 In August 1996, a judge eliminated  
10 everything he owed, eliminated child support for  
11 the daughter who had come of age during these  
12 proceedings, and ordered child support one-third  
13 the previously agreed to amount. No alimony has  
14 ever been received. I am still in my  
15 ex-husband's bankruptcy trying to get some  
16 percentage of the property he promised me and  
17 had legally agreed upon. He has not paid any  
18 money for our second child's tuition. He has  
19 paid his own attorneys and accountants more than  
20 \$25,000 this year alone. I cannot pay my own  
21 legal fees, which are still climbing.

22 What this proves is that the current  
23 system does not work. Our legal system is  
24 abused by those with enough money to stretch,  
25 distort and confuse it. Therefore, despite the

1 best legislative intent, Pennsylvania imposes no  
2 negative consequence for behavior that is  
3 clearly wrong. It imposes no responsibility for  
4 one's own children. It takes no regard for  
5 spouses who sacrifice their economic lives for  
6 the sake of a family which the other spouse may  
7 unilaterally dissolve.

8 Marriage is a commitment. If the  
9 marriage ends, certain commitments must  
10 continue. No fault does not mean no strings.

11 MADAM CHAIRMAN COHEN: Thank you very  
12 much, Dory. We appreciate your courage to come  
13 out here today and tell your story.

14 Do any members of the Task Force or the  
15 Committee have any questions?

16 (No response.)

17 MADAM CHAIRMAN COHEN: Thank you very.

18 MS. ZATUCHNI: Can I just ask  
19 something? Is anyone curious to know what has  
20 happened since it was, the court was denied,  
21 when my husband was owed something, that  
22 everything was abolished? Or that doesn't  
23 matter?

24 MADAM CHAIRMAN COHEN: You are telling  
25 your story. We have time, if you want to

1 continue, that's fine.

2 MS. ZATUCHNI: I just want to tell you  
3 what was set up in Delaware County. For the  
4 last year, I received free legal aid for child  
5 support. When someone is in arrears for child  
6 support, you get free legal services. And I am  
7 very grateful for Delaware County because they  
8 gave me a wonderful attorney. That didn't cover  
9 bankruptcy. But I had to hire another attorney.

10 What has happened is because of an  
11 order, I think it is Curtis V. Kline, where the  
12 parents don't have to pay for college, my  
13 children, I have to go to a different court. I  
14 cannot be in child support court anymore. I  
15 have to hire another attorney to go into divorce  
16 court to get money for my children. And as the  
17 professional before who spoke, there is no more  
18 money.

19 So what has significantly happened  
20 since we originally divorced, which was six  
21 years ago, I have received a minimal amount of  
22 the child support that was promised. He has not  
23 paid for the senior year of my eldest daughter  
24 in college. He has not paid for any of the two  
25 years that my other daughter has been in

1 college. He has paid no alimony. And I don't  
2 think that there is any -- What you find out,  
3 when you are a divorced woman, is that you are  
4 very much alone. And in the system that we  
5 thought, the legal system would help -- I truly  
6 believe in the legal system -- it just isn't  
7 there, and I am not the only one.

8 MADAM CHAIRMAN COHEN: Thank you very  
9 much. Thank you.

10 (Applause.)

11 MADAM CHAIRMAN COHEN: The next person  
12 to speak before us is Leslee Silverman Tabas,  
13 Esquire, a Matrimonial Practitioner and Fellow  
14 with the American Academy of Matrimonial  
15 Lawyers, and a new mother.

16 MS. TABAS: Thank you very much.

17 MADAM CHAIRMAN COHEN: You are welcome.

18 MS. TABAS: Thank you for allowing me  
19 the honor of speaking to you today and  
20 expressing my thoughts and professional opinion  
21 regarding the house bills.

22 Briefly, let me state that I have  
23 devoted my practice exclusively to matrimonial  
24 law for over 15 years. My offices are in  
25 Narberth, Montgomery County, though I practice

1 in the metropolitan Philadelphia area. I am a  
2 Fellow of the American Academy of Matrimonial  
3 Lawyers and have been trained by the Academy to  
4 serve as a Matrimonial Arbitrator and Mediator  
5 as well. I have planned and taught many courses  
6 for the Pennsylvania Bar Institute on a broad  
7 range of family law topics.

8 I guess I must state that I am moved at  
9 this time, having heard what I just heard about  
10 our system. I sat and I listened about the  
11 story we just heard, and to some extent I hear  
12 and feel that our system may not be working. I  
13 don't -- not necessarily believe that it is  
14 because of fault and no-fault grounds. I think,  
15 perhaps, there is a broad range of issues that  
16 needs to be looked at in reforming the system,  
17 not eliminating no-fault as grounds.

18 I am here today in the hopes of  
19 impressing upon each of you the strength of my  
20 conviction to the opinion which I am about to  
21 set forth - that the proposed bills represent a  
22 giant step backward for all of mankind - but  
23 most importantly for the children of this  
24 Commonwealth.

25 Pennsylvania was one of the last states

1 to adopt no-fault grounds as a mean of obtaining  
2 a divorce and did so under the Divorce Code.  
3 Now, it is among the first to consider amending,  
4 even repealing no-fault grounds. This current  
5 movement is being waged under the popular rubric  
6 of the 1990's. That being family values.

7 With all due respect, it is my professional  
8 position as a family practitioner and as a  
9 Fellow of the American Academy of Matrimonial  
10 Lawyers that such proposed amendments to the  
11 current law would be a giant step backward in  
12 human rights, specifically those of life,  
13 liberty and the pursuit of happiness for all  
14 individuals, especially the children of a  
15 marriage. Forcing parties to remain married by  
16 making the divorce process more difficult or  
17 even impossible, clearly does not encourage  
18 family values per se. There is so very much  
19 more which ought to be considered. It is this  
20 practitioner's opinion that a system allowing  
21 for a divorce with dignity promotes the concept  
22 of family values.

23 Our current law provides for something  
24 which prior divorce laws did not, that is  
25 economic justice for a dependent spouse. As you



1 know, before the 1980 Divorce Code, as amended  
2 in 1988, assets were transferred in accordance  
3 to title and the concept of equitable  
4 distribution and alimony did not exist by court  
5 order. In other words, it had to be bargoned  
6 for in exchange for a release from the bonds of  
7 matrimony. Somehow, that does not seem like  
8 justice to me. The 1980 Divorce Code  
9 established court ordered economic benefits as  
10 well as fault and no-fault grounds for divorce.

11 As you are currently aware, the House  
12 Bills 2003 and 2562 are pending. House Bill  
13 2003 proposes that evidence of marital misdeeds  
14 are to be heard by a judge in no-fault cases and  
15 House Bill 2562 proposes the repeal of the  
16 entire no-fault statute. Query, if these bills  
17 were to be enacted, would they be applied  
18 retroactively or only prospectively? Would a  
19 person who married under one law, now have to be  
20 subject to other standards? What about those  
21 cases presently pending, how would they be  
22 affected?

23 It is this practitioner's position that  
24 such amendments would further destroy family  
25 values, perhaps even discourage the concept of

1 marriage for many individuals, especially those  
2 children who are forced to live as part of an  
3 unhappy family unit. The proponents of the  
4 bills are citing family values as their  
5 motivation, yet you have heard from one of my  
6 esteemed colleagues, David Rasner, that both  
7 national and Pennsylvania divorce rates have  
8 barely budged since no-fault laws have gone into  
9 effect. If the primary aim is to strengthen  
10 family values and protect our children,  
11 shouldn't that be accomplished through a system  
12 of divorce with dignity instead of one which  
13 promote decay? Forcing parties to remain  
14 married or to buy their way out of a bad  
15 marriage does not promote a sense of family  
16 values.

17           One thing which I have learned during  
18 my years as a matrimonial lawyer is that it is  
19 the children who suffer the most in the  
20 protracted, contested, litigious situations.  
21 The scars can follow them for life, if the  
22 parents selfishly focus on their own needs,  
23 instead of those of the children. This can be  
24 evidenced in cases where a parent allows their  
25 own animosity to poison a child against the

1 other parent, or by forcing a child to live as  
2 part of a marriage which is a sham as the  
3 proposed legislation would provide no means out  
4 short of blackmail. To me, to subject a child  
5 to an unhappy family life is a crime. It can be  
6 more damaging than allowing for a divorce with  
7 dignity as a child often learns what they live.  
8 In fact, I just heard of a fact released by the  
9 American Sociological Association yesterday  
10 stating that the divorce rate for children from  
11 divorced homes had dropped. It is my personal  
12 belief that this may be attributed in part, to  
13 no-fault divorce laws and the mitigation of  
14 damage to the children which such laws promote.  
15 I certainly hope so.

16 Numerous articles and authors focus on  
17 the effects of divorce on children. I propose  
18 that the effects can be minimized by keeping our  
19 current system in place rather than returning to  
20 the days of private detectives and middling the  
21 children in order to ascertain the activities of  
22 their parents so that fault grounds could be  
23 established. Children are entitled to so very  
24 much more than even the current system offers,  
25 but the proposed legislation is clearly not the

1 answer.

2 Another possible effect of the proposed  
3 bills is the potential to increase the current  
4 statistics of domestic violence. If couples are  
5 forced to remain intact when a marriage is  
6 clearly over, the physical and emotional effects  
7 could be devastating, thereby increasing the  
8 incidents of domestic violence.

9 House Bill 2003 proposes language that  
10 would allow evidence of marital misconduct to be  
11 heard by a judge in no-fault cases. It is this  
12 practitioner's belief that this would place an  
13 undue burden on our judges and further backlog  
14 our court system with evidence of this nature.  
15 To subject this type of sensitive testimony to  
16 the courts could encourage a level of forum  
17 shopping by a litigant in the hopes of obtaining  
18 a particular judge with preconceived concepts  
19 and values. Clearly, this is not justice. As  
20 it is, our courts are often reluctant to hear  
21 evidence in divorce cases due to time  
22 constraints. To further broaden their  
23 responsibility in divorce matters only serves to  
24 further exacerbate the problem.

25 Lastly, one area which is critical in

1 matrimonial law is that of counsel fees. Often,  
2 the economically dependent spouse cannot compete  
3 in divorce litigation due to his or her  
4 inability to keep up with the financially  
5 independent spouse's ability to pay his or her  
6 attorney on a regular basis. To add yet another  
7 element to the court fight causes further harm  
8 to the economically dependent spouse where funds  
9 are unavailable. To dissipate marital assets to  
10 promote the battle is also not the answer. Once  
11 again, it is the children who are hurt by the  
12 expenditure of these funds as less funds are  
13 available to meet their needs. It is the  
14 lawyers who benefit.

15           As can be seen, for the many reasons  
16 which I set forth above, I feel very strongly  
17 that these bills should not be enacted and that  
18 no-fault divorce in the State of Pennsylvania  
19 should not be modified. Most importantly, when  
20 reviewing the bills, I ask you to remember our  
21 children.

22           Thank you for the honor of asking me to  
23 participate today and allowing me to express my  
24 strong feelings on this most urgent issue. Once  
25 again, an apology for my emotions in the start

1 because I do see that there are certain flaws in  
2 our system that do need to be addressed so that  
3 these cases don't go on and on and on and on for  
4 years destroying families, churning the fees and  
5 causing tremendous harm to our children. Thank  
6 you.

7 MADAM CHAIRMAN COHEN: Thank you. I  
8 think that bringing your emotions and personal  
9 sensitivity to these issues, I can only speak  
10 personally because you are a neighbor, certainly  
11 speaks well of your fine reputation because you  
12 do care and I thank you very much. Don't leave  
13 yet because I believe we have some members who  
14 would like to ask you some questions.

15 MS. TABAS: Certainly. Thank you.

16 MADAM CHAIRMAN COHEN: Representative  
17 Manderino.

18 REP. MANDERINO: Thank you.

19 What in the current no-fault divorce  
20 statutes that whether these two bills are  
21 addressing them or not, what, if anything, do  
22 you see that could or should be adjusted to  
23 address the concerns that you expressed, meaning  
24 the time delay and the impact that that has  
25 either emotionally or economically on the

1 parties involved?

2 MS. TABAS: It is not actually the  
3 no-fault statutes. It is the cases where:

4 \* fault grounds are enacted upon;

5 \* where one of the two parties tries to  
6 argue against a no-fault statute;

7 \* where the inherent delays in the  
8 court system, even when you qualify for a two-  
9 year separation, you have to wait a year to get  
10 a hearing;

11 \* and then there is the issue of  
12 support and alimony pendente lite in the interim  
13 and all of the problems that come along with  
14 that.

15 It is not the actual language of the  
16 current legislation, the current law, that  
17 causes that problem. It is the system. It is  
18 the backlog of the system. We need more judges.  
19 We need more judges receptive to family law  
20 related issues, to put more of a burden on them  
21 to hear further evidence that they already don't  
22 want to hear now as to emotionally sensitive  
23 topics. They don't want know what went on  
24 inside somebody's house. They don't want to  
25 know what went on in somebody's bedroom. They

1 want, as much as possible, for no-fault divorces  
2 to come through their doors.

3 And to put a further burden on them to  
4 hear evidence in no-fault cases, in my opinion,  
5 would further promote the kind of emotions which  
6 I have expressed here today and which I have  
7 heard from the person who spoke before me here  
8 today. I didn't ascertain from her speech as to  
9 whether hers was a fault or no-fault. But the  
10 way I understood it to be, I think that they  
11 agreed to a no-fault divorce based on a  
12 financial settlement. Maybe I am wrong.

13 Then has to come the court's back-up in  
14 the enforcement of the settlements. That's a  
15 whole other day. That's a whole other bill.  
16 That's a whole other aspect of matrimonial law.

17 It is why I mentioned in my opening, I  
18 have recently been trained in matrimonial  
19 arbitration and mediation by the American  
20 Academy. Major matrimonial lawyers from the  
21 entire Philadelphia area, including Mr. Rasner,  
22 by the way, is opting with his clients to come  
23 out of the system and to submit their cases to  
24 private, trained matrimonial arbitrators and pay  
25 them -- where they don't pay a judge -- but they



1 pay them, to finalize a case.

2 They reach a point where they are tired  
3 of the delays and the inherent problems in the  
4 system and they, two parties, reach a point  
5 where they say it is time and we want closure,  
6 we want finality. And they, with their counsel,  
7 choose one person. And they schedule mutually  
8 convenient days over a period of a month,  
9 instead of a year, because you can try an  
10 equitable distribution case over a period of a  
11 year in our Court of Common Pleas by the time  
12 you get a day here, a day there and a day here  
13 and a day there.

14 And it is horribly costly because the  
15 attorney has to brief and then rebrief and then  
16 rebrief and then rebrief. But with a system of  
17 opting out, it can be done in a much more  
18 concise way and the parties can have their  
19 closure and their lives can go on.

20 I see the problem with our system right  
21 now in that lives don't go on. And, as I said,  
22 the whole pitch of my presentation today is that  
23 the children are the ones who suffer.

24 REP. MANDERINO: One final question.  
25 What impact, if any, in your opinion, would the

1 introduction of fault have on the economic, not  
2 moral or emotional, but economic determination  
3 when it comes to whether it is property  
4 settlement or alimony or others?

5 MS. TABAS: Well, fault is one of the  
6 factors looked at in an alimony determination at  
7 this point. It is not when property settlement,  
8 when looking at property settlement; and, in my  
9 opinion, it should not be. All it will do is  
10 encourage further fault in establishing the  
11 situation that is about to separate. It will  
12 become more of a who struck John, it will go  
13 back to the old days of creating fault, and it  
14 will be a step backward in the ugliness of a  
15 marital home.

16 REP. MANDERINO: I am just not sure I  
17 heard you correctly. Fault is considered in  
18 alimony?

19 MS. TABAS: Fault is currently -- Yes.

20 REP. MANDERINO: Okay. But in property  
21 settlement it is not and it should not ...

22 MS. TABAS: It should not be  
23 considered.

24 REP. MANDERINO: ... from your opinion?

25 MS. TABAS: In my opinion.

1           REP. MANDERINO: Okay. And I do  
2 understand the reasons that you espoused. Thank  
3 you.

4           MADAM CHAIRMAN COHEN: Thank you. We  
5 have no questions. I just have to stand for a  
6 while and I am sorry but I am having disk  
7 problems. Representative Boscola has some  
8 questions.

9           REP. BOSCOLA: Leslee, I just wanted to  
10 say thank you because I have been a big advocate  
11 of the judge's bill that is languishing in the  
12 House and the Senate. We need more judges out  
13 there. So I appreciate your comments for that  
14 regard.

15           But I also wanted to come in defense of  
16 some of our judges here in the Commonwealth. I  
17 have worked in the Court Administrator's Office  
18 and I know very well that sometimes we have our  
19 judges just sit there awaiting for cases and a  
20 lot of times it is not because they don't have  
21 the time to hear the cases, it is because the  
22 attorneys aren't ready as well or the clients  
23 aren't ready. And I think if we are trying to  
24 talk about the the court system, we have to  
25 realize that there is all people at fault,

1 judges, attorneys, clients. And in some  
2 instances, I think attorneys try to prolong a  
3 case because of their fees.

4 MS. TABAS: You are absolutely right.  
5 I will be the first to say it. I see it all the  
6 time and I find it disgusting. There are enough  
7 cases, unfortunately, out there in the divorce  
8 arena that divorce attorneys can get in and out,  
9 make their fees and move on to their next case  
10 instead of promoting it and promoting it and  
11 promoting it. I believe it to be very wrong.

12 REP. BOSCOLA: Thank you.

13 MADAM CHAIRMAN COHEN: Thank you.  
14 Representative Horsey.

15 REP. HORSEY: Thank you very much,  
16 Madam Chairperson.

17 I have been married 27 years.

18 MS. TABAS: God bless you.

19 REP. HORSEY: And family values are  
20 extremely important to me. But individual  
21 dignity is more important in each relationship.

22 And you brought the issue of economic  
23 justice to me here today and I would like to ask  
24 you a question.

25 MS. TABAS: Certainly.

1           REP. HORSEY: Is there any way for us  
2 to get through divorce and have the issue of  
3 alimony and property settlement separate and  
4 apart? Can we get a balancing act in there? I  
5 know that's been the effort for years through  
6 this whole process. But can we do it in an  
7 equitable manner, could we do it in a fair  
8 manner, can we get through this process without  
9 having to destroy people?

10           Because I happen to believe that the  
11 process of -- it does leave women at a clear  
12 disadvantage in a divorce process through no  
13 blame of anyone but society. Men worked, women  
14 used to stay home and as a result of them  
15 separating, men continue to work and women have  
16 to work. But is there any way that we can  
17 create a system that will address this question  
18 in a fair and equitable manner for all parties  
19 involved? And, if so, can you recommend such a  
20 system?

21           MS. TABAS: The system being ...? What  
22 are you asking? I don't quite understand the  
23 question.

24           REP. HORSEY: The system of economic  
25 development -- excuse me, economic justice for

1 the parties, and, the divorce on the left hand,  
2 individuals that want divorced but at the same  
3 time we have got to consider economic justice.

4 MS. TABAS: Well, I believe that the  
5 intention of the 1980 Divorce Code and its  
6 amendments in 1988 were intended to do that. In  
7 other words, they established grounds for  
8 divorce and they created court ordered economic  
9 justice that was never there before then.

10 Equitable distribution didn't exist  
11 prior to then unless it was agreed to.

12 Alimony did not exist until that time  
13 by court order.

14 And now, when a person wants a divorce,  
15 they can't just get a divorce unless their  
16 spouse receives what they are equitably --  
17 careful, there is a catch-all -- entitled to,  
18 and the issue of alimony gets examined.

19 The question is the advocates involved,  
20 the attorneys involved and the positions that  
21 they are taking on behalf of their respective  
22 clients, the length of the marriage and many  
23 other factors that are set forth in the Divorce  
24 Code of which you are all well-aware, the  
25 history of the marriage, the income of the

1 party, the assets of the party, and, yes, I  
2 mean, nobody can deny the fact that,  
3 traditionally, it is the woman who goes backward  
4 after the divorce because the husband is  
5 traditionally the one with the higher income,  
6 the ability to acquire more in the way of assets  
7 and the wife is traditionally the one who is  
8 provided for under equitable distribution and  
9 alimony, but at a fixed level and only for a  
10 period of time usually unless it is a very  
11 long-term marriage. I don't see long-term  
12 alimony. And there are those who say, is that  
13 justice?

14 REP. HORSEY: That is my question to  
15 you.

16 MS. TABAS: Is that justice? It  
17 depends on many of the different factors. In a  
18 short-term marriage, with no children, it is  
19 justice. In a long-term marriage, with children  
20 and no skills and no other assets on behalf of  
21 the dependent spouse, perhaps different  
22 standards need to be looked at. These are the  
23 discretions that the Code do give to the court.  
24 The question is, are our courts utilizing the  
25 ability given to them by the current laws? And

1 that's where it lies. They have the ability to  
2 do so under the language of the Code. Are they  
3 doing so?

4 REP. HORSEY: One quick question. Are  
5 you satisfied with that process?

6 MS. TABAS: I am satisfied with the  
7 process.

8 REP. HORSEY: I mean, of the judges  
9 taking so long to litigate these?

10 MS. TABAS: Well, I am not satisfied  
11 with that aspect of it. I am satisfied with the  
12 inherent language in the Code as to what can and  
13 cannot be reviewed and ordered and things like  
14 that. As I said, I do believe that the process  
15 takes too long. I don't think it is solely the  
16 judges. I think the lawyers are involved. I  
17 think the clients are involved.

18 I have many clients who want to drag  
19 cases out for years and years and years and  
20 years. They are happy with the amount of  
21 support that they are getting. They figure  
22 they'll take that support for a period of time,  
23 drag out the divorce as long as they can until  
24 they have to accept closure and finality.

25 My big hang up with all of this, is how



1 my started my whole presentation, what happens  
2 to the kids in in the interim? Because they are  
3 usually the ones who are the ponds and they are  
4 usually the ones who have the scars.

5 REP. HORSEY: Thank you.

6 Thank you very much, Madam Chairman.

7 MADAM CHAIRMAN COHEN: Thank you.

8 Thank you, again, Leslee. Thank you  
9 very much.

10 MS. TABAS: You are welcome.

11 MADAM CHAIRMAN COHEN: I appreciated  
12 that.

13 The next person to speak before us is  
14 Ned Hark, who is the Chair of the Family Law  
15 Section of the Philadelphia Bar Association.

16 I am sorry, Representative James, do  
17 you have a question?

18 REP. JAMES: No, no question. I just  
19 wanted to make a -- ask that -- you can go ahead  
20 and sit down -- I just wanted to ask that that  
21 testimony for the record be submitted.

22 MADAM CHAIRMAN COHEN: Yes, I did  
23 mention that in my introductory comments. That  
24 there were many people who wanted to testify  
25 today, but because of all the constraints that

1 are inherent in these hearings, we have accepted  
2 written testimony from many people and we will  
3 leave the record open for anyone who wants to  
4 submit written testimony to be not only part of  
5 the record but also part of our deliberations.

6 REP. JAMES: Okay. And in that light,  
7 Madam Chair, I just want to apologize for: I  
8 just received the Fax from the Barrister's  
9 Association of Philadelphia, in conversation  
10 with them yesterday evening, wanted to present  
11 some testimony which I gave to you; but,  
12 however, I thought they would have put your name  
13 down. They incorrectly put my -- addressed it  
14 to me and I just wanted to apologize for that.

15 MADAM CHAIRMAN COHEN: That is fine.  
16 There are no egos here. Thank you,  
17 Representative James. And we will obviously  
18 read it and study it and accept it as part of  
19 the record here. Thank you.

20 REP. JAMES: Thank you.

21 MADAM CHAIRMAN COHEN: Ned, you may  
22 begin.

23 MR. HARK: Good morning. Thank you for  
24 having me this morning. My name is Ned Hark. I  
25 am an attorney with the law firm of Howard M.

1 Goldsmith, P.C., in Philadelphia. I am the  
2 Chair of the Philadelphia County Bar Association  
3 Section on Family Law. I am also a member of a  
4 newly formed group which has been named the  
5 South Eastern Pennsylvania Family Law Council.  
6 This is a group comprised of the chairs of the  
7 five-county South Eastern Pennsylvania Family  
8 Law Section Bar Associations.

9 I have submitted my written testimony  
10 today. I have also appended to that testimony  
11 which has been submitted, and on behalf of that  
12 organization as well. And I ask you to consider  
13 that testimony.

14 Rather than read my entire testimony  
15 this morning, since many of the points that I  
16 touch on in my written testimony have been  
17 touched upon by previous presenters and my  
18 colleagues, I will just highlight some of those  
19 points which I think are most important.

20 I am proud to say that I am an  
21 attorney, I am proud to say that I am an  
22 attorney practicing in Philadelphia County and  
23 the surrounding counties. About 75 percent of  
24 my practice is devoted to family law. I have  
25 been practicing since 1985. I have no

1 experience under the Divorce Code or the lack of  
2 Divorce Code as existed prior to 1980.

3 My organization, the Philadelphia Bar  
4 Association Family Law Section, opposes both of  
5 these bills. I have been authorized by our  
6 executive committee. We are drafting a  
7 resolution which will be submitted to the Board  
8 of Governors of the Bar Association, and I  
9 anticipate that it will be supported. And we  
10 will submit that accordingly as soon as that is  
11 voted on.

12 You have heard from practicing  
13 attorneys, members of the Fellows in the  
14 American Academy of Matrimonial Lawyers, both of  
15 whom this morning have opposed this legislation.  
16 As I said, I oppose both bills.

17 In an era where lawyers take abuse and  
18 our profession has taken abuse, this is one time  
19 where we can say that we oppose legislation that  
20 would, in effect, increase our fees and increase  
21 our income. The reason we do so is because we  
22 look at the realities of what we are dealing  
23 with.

24 The crux of the matter here this  
25 morning, and we have heard from people who have

1       been aggrieved by the process and have suffered  
2       greatly as a result of the process, but the net  
3       issue and the overriding concern here is the  
4       economic justice that is served.

5               If, in fact, we are, become subject to  
6       having to prove fault grounds, in Philadelphia  
7       County alone, the 4,000 divorce decrees that  
8       were granted last year, each of which would  
9       require a hearing, we would then have 4,000  
10       additional hearings on our court docket. Last  
11       year, about 98 percent of the cases which were  
12       filed were filed under 3301 (c) or 3301 (d), and  
13       the remainder of the cases as late as last night  
14       I got the information that there were only six  
15       fault hearings. So, therefore, we would have an  
16       increase of about 4,000 hearings on an already  
17       overcrowded court docket.

18               What effect will that have? The only  
19       effect it will have is to hurt the children. As  
20       Miss Tabas said, testified earlier, just prior  
21       to my testimony, who are we hurting here? We  
22       are going to hurt the children. Because when we  
23       have to have 4,000 additional cases heard in  
24       Philadelphia County, we are going to have to  
25       either additional master or masters appointed or

1 additional judges or existing judges, for that  
2 matter, hear those cases.

3           What will that do? That will take away  
4 from the child support matters that are heard by  
5 the court, take away from the enforcement of  
6 child support matters which are heard by the  
7 court, it will increase the time it takes to get  
8 divorced, it will increase the animosity between  
9 the individuals, it will reduce the chance for  
10 settlement once they get to our permanent  
11 divorce master.

12           In 1995, I don't have the --

13           I am sorry, 1994 -- I don't have the  
14 '95 statistics -- 87.6 percent of the cases that  
15 went before the permanent master in divorce in  
16 Philadelphia County on economic grounds were  
17 settled. Thirteen percent went on trial de  
18 novos. And out of those hearings, out of those,  
19 only 50 percent of those were actually heard by  
20 a judge or a trial commenced.

21           What I am alluding to is we are going  
22 to increase the amount of cases in an already  
23 overloaded court system, we are going to  
24 increase the animosity between the parties.

25           We heard that these two individuals who

1 are Fellows in the American Academy of  
2 Matrimonial Lawyers have spent time, and money,  
3 to be trained as arbitrators, and have taken  
4 cases of their own to arbitrators. This will  
5 break down.

6           What we have and the Bar and the Bench  
7 and the court system, we have been working  
8 towards systems for alternative resolution,  
9 alternative dispute resolution. We have been  
10 working towards mediation. If, in fact, you are  
11 going to have to fight the battle of fault, how  
12 are you going to get people of the presence of  
13 mind to want to mediate or to want to settle  
14 their cases? You are going to increase the time  
15 it takes to get the divorce final. When that  
16 occurs, when that occurs, you increase the  
17 animosity between the individuals.

18           My firm, about eight years ago in 1988,  
19 experienced a tragedy in which our client was  
20 killed by her husband. No lawyer, no family, no  
21 individual should ever have to experience what  
22 we felt. The reason why that occurred was  
23 because of the animosity that was driven between  
24 the people.

25           At that time, we could not, in

1 Philadelphia County, get cases through the  
2 system for resolution quickly enough. It is  
3 before the imposition and of our permanent  
4 master system. We can't go back in time, we  
5 can't go back to a system in which we have  
6 animosity and acrimony.

7 The cases that we heard about today are  
8 tragic, but they come in the enforcement aspect  
9 of it. If you take away judicial time, if you  
10 take away the resources of the court and apply  
11 them to fighting this battle, to fighting these  
12 battles on the front end, you are not going to  
13 be able to enforce those orders, you are not  
14 going to be able to protect the children, you  
15 are not going to be able to protect what's left  
16 of the family, you are not going to be able to  
17 let the two individuals and the remainder of the  
18 family get on with their lives.

19 As I previously said, the Bar  
20 Association, the Family Law Section in the  
21 Philadelphia Bar Association, by its executive  
22 committee, opposes this legislation. Thank you.

23 MADAM CHAIRMAN COHEN: Thank you very  
24 much. I did want to introduce Representative  
25 Chris Wogan, who is also a member of this



1 committee. Thank you for being here.

2 REP. WOGAN: Good morning, Madam Acting  
3 Chairperson.

4 MADAM CHAIRMAN COHEN: Thank you.

5 I also wanted to tell the people that  
6 are still in the room, we representatives  
7 utilized this summer when we are not in session  
8 to hold hearings such as this and there are  
9 several hearings being held today so that our  
10 members, as you have noticed, are coming in and  
11 going out. It is not a reflection upon the  
12 importance of this hearing or your testimony in  
13 particular, that many of the members have left.  
14 It is merely that there are conflicts.  
15 Naturally, we all consider this hearing of vital  
16 importance and the dealing with this issue of  
17 tremendous value and it certainly will affect,  
18 whatever we decide, will affect the citizens,  
19 all of the citizens of this Commonwealth. So we  
20 certainly appreciate your being here and please  
21 understand why there is some movement up at this  
22 end.

23 Representative Horsey.

24 REP. HORSEY: Just real quick. You are  
25 saying you are opposed to House Bill 2003?

1 MR. HARK: We are opposed to both  
2 bills, right.

3 REP. HORSEY: And maybe I didn't hear  
4 it, but primarily because, as lawyers, you guys  
5 are working out a system and you are getting the  
6 jobs?

7 MR. HARK: I am not saying that, that  
8 the system works perfectly.

9 REP. HORSEY: No, no, you are improving  
10 the system, you are constantly working on  
11 improving it?

12 MR. HARK: We are working to improve  
13 the system so that individuals can resolve their  
14 differences in a more expedient, more efficient  
15 manner so that it costs them less so that they  
16 -- and the animosity between one another -- so  
17 that they end the bickering and they get on with  
18 their lives; and, the case is moved out of the  
19 court system so that the cases that, once they  
20 do resolve, they are moved out of the court  
21 system and the resources of the court system are  
22 used more adequately in other areas.

23 REP. HORSEY: Okay. Thank you. That's  
24 it.

25 MADAM CHAIRMAN COHEN: Representative

1       Boscola.

2                   REP. BOSCOIA: I need to follow up.  
3       Because I am not sure why you are opposing 2003  
4       myself. If it is just allowing an option about  
5       holding a hearing with regard to fault, I mean,  
6       I keep hearing throughout this, throughout many  
7       people that have spoken today that there is a  
8       lot of animosity when there is dispute involved  
9       in a divorce.

10                   But for a lot of women, and a lot of  
11       men, the party who has left and who has no  
12       obligation toward the children or the spouse,  
13       they are the ones -- they are not experiencing  
14       animosity. It is the person that is seeking to  
15       be a -- you know, she or he needs support from  
16       that other spouse or support for their children  
17       and they are not getting it so they are the ones  
18       that are aggrieved at this point.

19                   The person that has left and has  
20       abandoned his family and his children or her has  
21       abandoned the family and children, they are not,  
22       there is no animosity. Where the animosity  
23       comes in --

24                   And when you try to get them to the  
25       table and say, listen, you are at fault for this

1 divorce and maybe there is something that you  
2 should be doing to help your family stay  
3 together. And I don't buy the fact that there  
4 is a lot of people that are, that the animosity  
5 really affects the children because there had to  
6 have been decay prior to the family, prior in  
7 the family prior to the divorce proceedings.

8           And in the divorce proceedings, yes,  
9 maybe the children are going through difficulty  
10 where their parents are bickering and fighting,  
11 but they have been, probably been bickering or  
12 fighting prior to the divorce. And I don't, you  
13 know, I just don't buy this argument. Because  
14 now this, a person that wants the fault hearing.  
15 Their children will be saved from embarrassment.  
16 Because the children are emotionally distressed  
17 anyway because the mother or the father who  
18 hasn't been economically relieved is not going  
19 through a good, they are not, they are not --  
20 they are distressed. And it is not only  
21 economic, it is emotional, because the marriage  
22 has been abandoned.

23           MR. HARK: I think what you are asking  
24 me is: don't I think that the aggrieved spouse  
25 in such a situation deserves a right to air his

1 or her grievances and concerns at a fault  
2 hearing? And what impact does that have?  
3 Should they -- In other words, shouldn't the  
4 spouse who walks away from the marriage in some  
5 way be put out there so that the story can be  
6 told? Is that what I am hearing?

7 REP. BOSCOLA: Right.

8 MR. HARK: Because there are other  
9 means of assuring financial stability regardless  
10 of fault in a divorce. If a spouse leaves a  
11 marital home and leaves behind a spouse and  
12 three children, there are support guidelines,  
13 there are rules, laws and procedures for  
14 enforcement of that.

15 The point I am trying to make is that  
16 if a spouse leaves the home and there is a  
17 support order imposed on that spouse and that  
18 spouse is not happy about the amount that is  
19 being paid but eventually through the contempt  
20 process or whatever enforcement procedure that  
21 is brought to bear upon that individual, he or  
22 she, one way or another, will become accustomed  
23 to paying that support order. That's what the  
24 hope is and that's what our laws and our  
25 statutes are designed to accomplish.

1           If, in fact, you are going to continue  
2 with finger pointing, that spouse, the spouse  
3 that is supposed to be paying the support order,  
4 may, and I am not saying it is universal, but  
5 they may just say I am not going to pay it  
6 because I am sick of going through this. Now,  
7 that's not, that's not universal.

8           And the fact that the fight continues  
9 leads to the prolonging of the other economic  
10 issues which delays that family, the aggrieved  
11 spouse, from getting on with his or her life.  
12 So they continue to fight and they continue to  
13 -- the case is held in limbo.

14           When the two parties are at that point,  
15 are at each other, and if they are split, even  
16 if they are separated, there is still going to  
17 be a custody situation. Somewhere along the  
18 line, that filters back, that comes back to the  
19 children. In one way or another, that comes  
20 back. That hostility between the parents, even  
21 if they are not together, comes back to the  
22 children.

23           I did understand your point. But the  
24 point I am trying to make is that there are  
25 other ways to effectuate that justice for that

1 spouse who feels that he or she has been a  
2 aggrieved and wants to have those fault grounds  
3 heard.

4 And maybe, maybe we should, in the  
5 context of reform, seek to reform the other  
6 statutes and laws which seek to provide that  
7 sense of security and seek to make sure that  
8 support orders are complied with and that  
9 equitable distribution orders are complied with  
10 and that alimony orders are complied with.

11 REP. BOSCOLA: It is not that of  
12 compliance, that is the problem in why we are  
13 having the hearing here. This is a concern  
14 before the compliance part, but before there is  
15 a court order.

16 I am just trying to get a handle on why  
17 a lot of the individuals have testified, and you  
18 are on the same wave length, of why they are  
19 opposed to 2003.

20 It just allows for an additional  
21 hearing, and it is only if the one party wants  
22 it, all right? It is not like all of these  
23 4,000 cases all of a sudden are going to request  
24 a hearing.

25 So if there is an aggrieved party,

1 allowing them the option of having that hearing  
2 is a good idea if they feel that they were  
3 faulted. Because in many instances, in  
4 Pennsylvania, these people feel that they are  
5 not at fault and that the other party was at  
6 fault.

7 And I know you can say that there is  
8 all of these reasons why somebody might have  
9 left a marriage, but in some instances, there is  
10 no sane reason for a person leaving a marriage  
11 except they want to get out of the marriage and  
12 do whatever they want to do and abandon their  
13 children and their family. It is occurring. It  
14 is occurring in my own district.

15 You know, like I said about, I have had  
16 almost 10 calls when this was in the paper from  
17 people that feel that something is wrong with  
18 our current divorce law.

19 MR. HARK: And the point is that they,  
20 and the question is, don't they, I think you are  
21 asking, don't they deserve to have their  
22 concerns heard by a court?

23 REP. BOSCOLA: Correct.

24 MR. HARK: The point is that if there  
25 is going to be a divorce, there is going to be a



1 divorce. It is not going to be, there is no  
2 financial remuneration except for alimony, and  
3 that issue will be dealt with in alimony. They  
4 will get their opportunity to air that concern  
5 at the alimony stage when the alimony is heard.

6 REP. BOSCOLA: But they are not. That  
7 is the problem. I mean, yes, that is the way it  
8 is supposed to work, but it is not occurring.  
9 But anyway, I have taken up enough time.

10 Thank you.

11 MADAM CHAIRMAN COHEN: And I think we  
12 are straying from, again, what I had mentioned  
13 at the beginning of this hearing, is the limited  
14 focus of this particular Task Force. And the  
15 focus is neither alimony nor child support nor  
16 the way the court system works or may not work.  
17 We are specifically dealing with these two house  
18 bills that are before us.

19 Mr. Hark, thank you very much.

20 MR. HARK: Thank you.

21 MADAM CHAIRMAN COHEN: Again, we  
22 appreciate it.

23 The next person to speak before us is  
24 Barbara DiTullio, who is the President of the  
25 Pennsylvania NOW. Welcome.

1 MS. DITULLIO: Hi. I want to thank  
2 you, Chairwoman Cohen, and members of the Task  
3 Force, for inviting me to present testimony  
4 regarding Pennsylvania's no-fault divorce laws  
5 and more specifically to comment on House Bill  
6 2562 and House Bill 2003.

7 In 1987, Deborah A. Sieger, President  
8 of Pennsylvania NOW, presented testimony before  
9 the Senate Judiciary Committee on Senate Bill  
10 409 amending the Divorce Act of 1980.

11 At that time, Dr. Sieger said, the  
12 No-Fault Divorce Law in the Commonwealth of  
13 Pennsylvania was a major step forward in  
14 reducing the acrimony and hostility in the legal  
15 process of divorce. But because it did not  
16 provide guaranteed economic protection for  
17 children and their mothers, it failed to achieve  
18 its loftier goals of fairness, justice and  
19 economically-based equality. We should not lose  
20 sight of the fact that it is the means that need  
21 correcting more than the law itself in no-fault  
22 divorce. We need to shore-up the process, not  
23 throw out the law as some would advocate.

24 As I prepared my testimony today, I  
25 realized that what my predecessor said before

1 the Senate Judiciary Committee in 1987 is still  
2 true nine years later. We need to refine or  
3 shore-up the process, not return to a time when  
4 the courts are mandated to fix blame on one  
5 spouse in order to end a broken marriage.

6           Returning to a system that must  
7 establish fault will add to the already  
8 adversarial nature of divorce and increase legal  
9 costs in drawn-out court battles. A return to  
10 that system would obviously benefit the person  
11 who was more financially secure and in most  
12 cases that is the man.

13           Proponents of HB 2562 and HB 2003  
14 believe, by making divorce more difficult, it  
15 will reduce the number of divorces. In fact,  
16 about half of first marriages now end in  
17 divorce, roughly the same percentage as in the  
18 late '60s before the no-fault laws were enacted.  
19 Prior to no-fault divorce in Pennsylvania, it is  
20 well-known that individuals will perjure  
21 themselves in order to meet the criteria for  
22 divorce. Is this what we want to do, encourage  
23 lying and deception? Are these the family  
24 values that are being touted?

25           HB 2562 and HB 2003 do not address any

1 of the real problems with divorce in  
2 Pennsylvania. The real issues of adequate child  
3 support orders and enforcement of those awards,  
4 fair distribution of marital property, possibly  
5 by revisiting the definition used for equitable  
6 distribution, and child custody without women  
7 giving away financial security in order to keep  
8 their children. In general, we need to look at  
9 the economic hardship faced by many women after  
10 divorce.

11           According to sociologist Demie Kurz of  
12 the University of Pennsylvania, an astonishing  
13 39 percent of divorced women with children live  
14 in poverty. Families with an employed single  
15 mother suffer at poverty rate 8.5 times that of  
16 families with two employed parents. Life for  
17 single mothers is very difficult and there are  
18 insufficient social supports for them. We  
19 organize our family policies around the idea  
20 that a family has two parents, with the male as  
21 primary breadwinner and with mothers and  
22 children dependent on his wages.

23           In creating new laws and public  
24 policies, we can no longer ignore single parent  
25 families. They must be factored into public

1 policies and given equal consideration along  
2 with two parent families.

3 Another area that is receiving public  
4 attention is child support enforcement and  
5 apprehending deadbeat parents, most of which are  
6 fathers. These efforts should be applauded, but  
7 the lack of child support is still epidemic. In  
8 a recent study by Demie Kurz, she concluded that  
9 of those women with child support orders, 56  
10 percent received child support regularly; 23  
11 percent received partial support; and 21 percent  
12 received none at all. Including both women who  
13 did and did not receive a child support order,  
14 40 percent received child support on a regular  
15 basis, 16 percent on a partial basis, and 44  
16 percent not at all.

17 The house bills before you today fix  
18 none of the problems I address. And they would,  
19 unfortunately, create some new ones.

20 What may be needed instead of new laws  
21 are programs that would educate lawyers and  
22 judges about the needs of divorced families.  
23 But sometimes it is difficult to change  
24 attitudes unless it is legislated.

25 According to Lenore Weitzman, the

1 pervasive pattern of judicial attitudes and  
2 practices observed, the judges' open disregard  
3 of the law requiring them to order wage  
4 attachments for fathers who are not paying child  
5 support, their willingness to forgive the  
6 arrearage on past due child support because it  
7 unfairly burdens the father, their readiness to  
8 attribute earnings capacity to an older  
9 housewife, and their assumption that it is fair  
10 to divide family income so that the wife and  
11 child share one-third while the husband keeps  
12 the other two-thirds for himself, make one  
13 hesitate to rely on any prescription that seeks  
14 to change judges instead of changing the law  
15 itself.

16           As a leader of the largest feminist  
17 organization in the Commonwealth of  
18 Pennsylvania, and speaking on behalf of my  
19 membership, we strongly oppose HB 2562 and HB  
20 2003. However, I would be delighted to  
21 participate in any discussion or any hearings  
22 that would address some of the issues that I  
23 have raised here today, and would be pleased to  
24 share my resources with members of the House  
25 Judiciary Committee.

1           Before I go to your questions and also  
2 looking at some other people that might be  
3 coming forward, I would like to just read, this  
4 is not in my testimony, but it is from the  
5 future of children and it is the journal called  
6 Children and Divorce. And I have a copy here  
7 that I can give a few copies to you.

8           MADAM CHAIRMAN COHEN: Please, yes.

9           MS. DITUILLIO: Okay. It is by Paul R.  
10 Amato (phonetic) and the title is called  
11 Lifespan Adjustments of Children to Their  
12 Parents' Divorce.

13           Those who delve into the published  
14 literature on this topic may experience some  
15 frustration as the results vary a good deal from  
16 study to study. Many studies show that children  
17 of divorce have some problems or have more  
18 problems than do children in continuously intact  
19 two families. But other studies show no  
20 difference, and few show that children in  
21 divorced families are better off in certain  
22 respects than children in two parent families.  
23 This inconsistency results from the fact that  
24 studies vary in their sampling strategies,  
25 choice of what outcomes to measure, methods of

1 obtaining information and techniques for  
2 analyzing data. A technique known as  
3 meta-analysis was recently developed to deal  
4 with this very situation.

5           And they also talk in this report,  
6 which I am going to turn over to you, about the  
7 fact that a lot of these children actually live  
8 in families that already have a great deal of  
9 conflict or dysfunction. And it goes on to say  
10 that ... as such, children in high conflict  
11 families may not have opportunities to learn  
12 alternative ways to manage disagreements such as  
13 negotiating and reaching compromises. Failure  
14 to acquire these social skills may interfere  
15 with children's ability to form and maintain  
16 friendships.

17           Not surprisingly, numerous studies show  
18 that children living in high conflict, two  
19 parent families are at increased risk for a  
20 variety of problems. It seems likely,  
21 therefore, that many of the problems observed  
22 among children of divorce are actually caused by  
23 the conflict between parents that precedes and  
24 accompanies marital dissolution.

25           I think this is a very interesting



1 article and just wanted to point this out  
2 because I was looking at who may be testifying  
3 after me and I thought I would like to make a  
4 few additional points.

5           What I have also heard from people who  
6 have testified before me today is that it looks  
7 to me like the law is fine, but the courts are  
8 not working. I wanted to ask you, is it not  
9 contempt of court when these orders are not  
10 complied with? Should not some of these people  
11 be arrested and in jail? I mean, I know that it  
12 happened in Delaware County a number of times  
13 where dads came up with the money awfully  
14 quickly once they were locked up.

15           MADAM CHAIRMAN COHEN: I will treat  
16 your question as a rhetorical question --

17           MS. DITULLIO: That's fine.

18           MADAM CHAIRMAN COHEN: -- and answer in  
19 this way. You are correct. And if it were a  
20 perfect world, etc. There are other areas of  
21 marital family law that I think it incumbent  
22 upon the legislature to examine and, indeed, we  
23 are doing it now and we shall continue to do  
24 that. Fortunately, or unfortunately, our charge  
25 today, and this Task Force, as I mentioned in my

1 opening statement, is exceedingly limited.

2 I say fortunately it is limited because  
3 we cannot open up Pandora's Box today. And I do  
4 believe that if each one of these task forces  
5 deals in a specific area, we might conclude  
6 something reasonable, workable, efficient,  
7 rational and fair and equitable.

8 Having said that, I agree with you,  
9 there are many holes in the system. To  
10 paraphrase Churchill, it's a cumbersome system  
11 but there is none better. But that does not  
12 mean that we shouldn't continue to try to  
13 improve the system for all of the reasons that I  
14 just mentioned.

15 We are limited today. The questions  
16 that you have raised have been dealt with in the  
17 past and hopefully will be dealt with in the  
18 future. I think as Attorney Tabas had mentioned  
19 and many others had mentioned, I think our  
20 primary focus is on the children who suffer more  
21 than anyone, as well as many of you have  
22 mentioned abandoned spouses, victims of domestic  
23 violence, etc. We will continue to look into  
24 these issues. Today, we are specifically a  
25 narrow focus. But you are correct and I thank

1 you.

2 Are there any questions?

3 Representative Boscola.

4 REP. BOSCOLA: I read your testimony  
5 and you said that you do not want to return to a  
6 system that must establish fault, and I agree  
7 with you a hundred percent on that. I do. And  
8 I guess that's what 2562 does.

9 But I want to know why you are opposed  
10 to 2003. Because it would just allow -- I mean,  
11 it is feeling aggrieved to allow the court to  
12 decide whether or not there has been fault or  
13 not.

14 MS. DITULLIO: Representative Boscola,  
15 it doesn't appear to me that this would really  
16 benefit, when I look at my constituency: women.  
17 Men can still afford the attorneys, and I think  
18 that we would be getting into, again, costly  
19 legal battles, in trying to establish fault.

20 And what would prevent what used to  
21 happen before from happening again where the  
22 person that is accused of blame would all of a  
23 sudden come up with something that the other  
24 partner has done, therefore, you both have blame  
25 and you have no divorce?

1           REP. BOSCOLA: But it is mostly women  
2 that are, at least that want this process, that  
3 they want the fault process to be established so  
4 that if your constituency is women and they are  
5 the ones that want this, I don't understand  
6 that.

7           MS. DITULLIO: I don't think that my  
8 constituency -- I am sorry.

9           REP. BOSCOLA: Well, I do. I mean, in  
10 my capacity, I receive these phone calls from  
11 individuals and I must admit they all are, all  
12 are from women --

13          MS. DITULLIO: Right.

14          REP. BOSCOLA: -- who feel that there  
15 was some fault involved with the husbands  
16 leaving and abandoning her and the children and  
17 the court system is failing them even before we  
18 get to the court order, alimony and child  
19 support. This is before the court even  
20 establishes that, but they are feeling that they  
21 are not being handled correctly or their case is  
22 not being handled correctly and they point to  
23 this no-fault law as part of the reason.

24                 So, yes, your constituency is women, so  
25 is mine. I have men and women as a constituency

1 as well. But part of your constituency wants  
2 this law reworked a little bit.

3 Like you said, maybe what we need to do  
4 is shore-up the process, maybe refine it a  
5 little bit, and that's why I don't understand  
6 why you are opposed to 2003. It will draw out  
7 the process a little bit. But it is usually the  
8 woman who is aggrieved, wants this to be drawn  
9 out. Because in the long run, she benefits from  
10 whatever economic or package she can get for her  
11 children and herself.

12 MS. DITULLIO: I believe in the ways  
13 that shoring up the process or at least my  
14 intent in writing this piece was to look at the  
15 area around master's hearings and things of this  
16 sort and actually enforcement of the orders and  
17 laws that exist or a shortening of the time in  
18 order to get the women and the children the  
19 support they need.

20 I understand the problems that you are  
21 talking about. I am not sure that allowing  
22 fault to be established is really going to  
23 change anything at all, except to make it more  
24 costly and that we get into a more adversarial  
25 nature. It looks like this, that most of the

1 things that we are talking about are economic  
2 issues and I think that has to be decided in a  
3 different way, not with the establishment of  
4 fault.

5 REP. BOSCOLA: I appreciate your  
6 comments.

7 MS. DITULLIO: Okay.

8 REP. BOSCOLA: I do.

9 MS. DITULLIO: Very good. There may be  
10 other questions, but I know Representative  
11 Manderino had asked earlier about any studies  
12 done. And Demie Kurz from the University of  
13 Pennsylvania has published a book called, For  
14 Richer, For Poorer: Mothers Confront Divorce.  
15 This was published in 1995. There is a lot of  
16 stuff that is studied in Pennsylvania and in the  
17 city area and I think it is worth reading. It  
18 puts a lot of statistics in about what happens  
19 to women through divorce and their children.

20 REP. BOSCOLA: I want to ask one other  
21 question because a couple other people, women  
22 who have been going through this process, have  
23 said that they only get to see the divorce  
24 master. Or, sometimes not even the divorce  
25 master, they only go through their attorney.

1 And this, this bill, would allow at least for a  
2 woman to have that access to a judge that she  
3 wants. I mean, that's another part of the  
4 problem: they are not getting before a judge.

5 And I know there is people out there  
6 shaking their heads. You have to talk to the  
7 individuals who are going through this process.

8 MS. DITULLIO: I know.

9 REP. BOSCOLA: And there is numerous  
10 women that have called me and said they never  
11 even got to see a judge. They never even got to  
12 see the divorce master.

13 MS. DITULLIO: Yes, I went through the  
14 process.

15 REP. BOSCOLA: I am just saying that  
16 there are --

17 MS. DITULLIO: And it worked for me.

18 REP. BOSCOLA: -- things that need to  
19 happen and need to be shored up, like you said,  
20 and maybe this is one option.

21 MS. DITULLIO: Thank you.

22 MADAM CHAIRMAN COHEN: Thank you very  
23 much. I appreciate it. Thank you.

24 Are David Blakenhorn or Michael Geer in  
25 the room?

1 (No response.)

2 MADAM CHAIRMAN COHEN: No. Okay. I  
3 know they are flying in and we are a little bit  
4 ahead of schedule. We will then adjust the  
5 schedule and call the next person, Larry  
6 Frankel, Esquire, who is the Executive Director  
7 of the American Civil Liberties Union.

8 (Brief recess taken.)

9 MADAM CHAIRMAN COHEN: I would like to  
10 reassemble and start the hearing again. Before,  
11 I introduced Larry Frankel, but you are an  
12 important person so I will introduce you again,  
13 as the Executive Director of the American Civil  
14 Liberties Union.

15 MR. FRANKEL: Thank you, Chairwoman  
16 Cohen and the other members of the Judiciary  
17 Committee that have continued to sit through the  
18 hearing. I also want to express my appreciation  
19 for your running the hearing in an expeditious  
20 manner. Since I find that I am usually one of  
21 the clean-up witnesses, it is definitely a  
22 benefit to see the time schedule adhered to.

23 I am not going to read my testimony. I  
24 will submit it for the record.

25 In my testimony, I attempted to



1 summarise the reasons that I could find either  
2 in legislative history or court decisions as to  
3 why no-fault was adopted. Most of the reasons  
4 you have heard here today and that that, we  
5 believe there is no evidence that those reasons  
6 do not remain compelling.

7 But rather than just read testimony,  
8 which all of you are capable of reading, I would  
9 like to address some of the matters that have at  
10 least come to my mind as I have sat and listened  
11 today. And I will draw somewhat on my prior  
12 experience as an attorney who did practice  
13 domestic relations law. And I certainly want to  
14 thank whoever is responsible for me no longer  
15 having to practice law because domestic  
16 relations law meant that your Fridays and  
17 Mondays were usually -- you at least were in  
18 fear that someone was going to call about a  
19 problem with visitation over the weekend, either  
20 before it happened or after it happened.

21 MADAM CHAIRMAN COHEN: Does that mean  
22 that you are running for the legislature to  
23 replace Representative Masland?

24 MR. FRANKEL: No, I am quite happy  
25 doing what I have to do as a lobbyist. Because

1 I don't have to raise money.

2 REP. MASLAND: There are probably  
3 several ways of getting out of doing domestic  
4 work. I just chose this one.

5 MR. FRANKEL: And I want the public or  
6 all of those aspiring young lawyers out there to  
7 know that there is another way without having to  
8 run for office.

9 I do have some comments on 2003 and I  
10 will wait to see if Representative Boscola  
11 returns, so, about the questions that she  
12 raised, specifically to address the issue she  
13 raised.

14 But, in general, I would want to note  
15 that if we were to go back to a system where  
16 divorces could only be granted upon a finding of  
17 fault or would allow a party to demand a hearing  
18 on fault even though there were the no-fault  
19 grounds available, we believe that would take up  
20 too much time and would not allow us to conserve  
21 judicial resources for the adjudication of the  
22 difficult issues that have to be resolved where  
23 there are children or property.

24 There is no indication under either  
25 bill that where there are no children and no

1 property that these bills would have no impact.  
2 I mean, if you go ahead and eliminate no-fault  
3 divorce, even if you have two adults who  
4 mutually consent that they no longer want to  
5 live together, they don't own any property, they  
6 don't have any children, they are going to have  
7 to go through a fault proceeding which will use  
8 up valuable court time. For what purpose?

9           Even in the situation where there is a  
10 settlement agreement -- unfortunately, I think  
11 that is occurring more and more so all the time  
12 through mediation services or whatever -- where  
13 parties have agreed on the economic issues, on  
14 the child custody, on the child support and can  
15 have the appropriate orders entered by the  
16 court, there does not seem to be a need to  
17 relegate them to some type of fault proceeding.  
18 Particularly in light of the recent Supreme  
19 Court decision, which may distress some, if not  
20 all of the legislators, about court funding. I  
21 think it's become even more incumbent upon the  
22 legislators to consider how we can reduce some  
23 of the backlog in court.

24           And I am saying this even in  
25 anticipation of next week's hearing on prison

1 litigation reform, where I think those issues  
2 will be raised also that the legislature has a  
3 responsibility at this time not only to think  
4 about how to fund the court system but how to  
5 relieve the court systems of proceedings it does  
6 not need to entertain. And I think that is  
7 important to keep in mind.

8 But it is also important that we focus  
9 the parties, the lawyers and the judges on  
10 deciding the issues that do need adjudication,  
11 where parties cannot agree on how to divide the  
12 property, the proper amount of child support,  
13 whether there will be alimony, how custody and  
14 visitation will be structured; that is where  
15 court resources may be necessary because the  
16 parties cannot agree.

17 We should focus on the need of both the  
18 dependent spouse and the one who may have the  
19 resources to not be dependent, the needs of the  
20 children, and the proper distribution of  
21 sometimes complex property arrangements.

22 In doing research to prepare for the  
23 hearing and reading some of the case law, I  
24 mean, sometimes one of the parties is in  
25 business for himself or herself, has all sorts

1 of assets that are difficult to understand. A  
2 couple of cases involved attorneys who had  
3 contingency fees out there. How do you evaluate  
4 the value of those cases? These are the kinds  
5 of things we may need to have the courts do and  
6 focus in on.

7 An additional problem occurs if you get  
8 rid of no-fault divorce for situations that I,  
9 because of the nature of my practice,  
10 encountered. One of those, what if the parties  
11 have been separated for many years and the one  
12 party has no idea where the other party is? Now  
13 you might be able to bring an abandonment claim  
14 but why for that party to go all the way through  
15 that if they have been separated for five years  
16 and don't even have an address for the person  
17 they used to live with? You start removing the  
18 no-fault provisions, you are going to create a  
19 situation that is going to be time consuming for  
20 them.

21 Another situation I had which is where  
22 a party did want to contest the divorce -- and I  
23 remember the woman coming in -- they had been  
24 separated for quite a number of years, all of  
25 the children were grown up and out of the home,

1 there was no property to be divided, but she  
2 didn't want to grant her husband a divorce. She  
3 had no economic claim, she didn't really want to  
4 go in claims through fault grounds, but because  
5 of her moral or religious belief, she did not  
6 want to grant him the divorce.

7 The question becomes, why, you know,  
8 granted that people are entitled to have their  
9 moral or religious objections to divorce, but  
10 where there is nothing for the court to decide  
11 because there are no economic issues there,  
12 there may be a finding of fault, what benefit is  
13 that going to be if it doesn't affect the  
14 alimony or equitable distribution claims? This  
15 type of law will interfere with the ability for  
16 them to go ahead and get the divorce. And maybe  
17 in the days when I was as ethical or more  
18 ethical than I am now, I refused to represent  
19 that woman. I gave her suggestions as to  
20 lawyers who might, but there was no claim to go  
21 into court for. I wasn't going to take her  
22 money. She didn't need to go into court.

23 I will now address the question of  
24 2003, even though Representative Boscola is not  
25 here, why we oppose that. And part of it has to

1 do with just the mere drafting of it. All 2003  
2 does is eliminate a provision that was added the  
3 last time the Divorce Code was amended which  
4 said no hearing would be required in certain  
5 cases. If you eliminate that paragraph, you are  
6 not giving any guidance whatsoever to our  
7 courts, to attorneys, to parties about when  
8 hearings are appropriate.

9           It doesn't say hearings will only be  
10 held when fault grounds are alleged. It doesn't  
11 say hearings will only be held upon a request of  
12 the party. I mean, it occurs to me that we very  
13 well might have judges in this Commonwealth who  
14 may start ordering hearings sua sponte, on their  
15 own. This doesn't preclude that. It merely  
16 allows for hearings to occur without any  
17 guidance, without any kind of direction from the  
18 General Assembly as to where they are  
19 appropriate and I find that particularly  
20 problematic. If we are going to go back to a  
21 system that allows hearings, we should at least  
22 start saying why we want to have hearings.

23           And then I will further add that if  
24 there are claims to be raised about equitable  
25 distribution and alimony, there is, the court,

1 either through masters or some process, there  
2 will be a hearing and an opportunity to present  
3 evidence.

4 There is an anomaly in the law, or  
5 maybe not an anomaly, that allows for fault to  
6 be introduced on the question of alimony but not  
7 on the question of equitable distribution of  
8 property.

9 It would be that equitable distribution  
10 of property is seen as how to arrange for the  
11 needs of all of the parties after the divorce is  
12 completed, and alimony can focus on any fault  
13 basis. But if a party wants to raise one of  
14 those two issues and they are not going to reach  
15 any kind of agreement and they properly present  
16 them to the court, there will be hearings. So,  
17 I question, again, if we are going to allow  
18 hearings to be heard, what issues can be raised  
19 that cannot be raised now? And, why would we  
20 have them? Do we want the courts getting back  
21 into determination of who's at fault when it is  
22 unrelated from any kind of economic issue?

23 And even though I haven't read my  
24 testimony, my testimony does refer to both  
25 decisions by the courts before the no-fault law



1 when they expressed their frustration of having  
2 to determine who was more at fault and having to  
3 listen to all of the degrees of evidence in  
4 trying to sort it out where there was a contest  
5 on fault and their real relief after the  
6 no-fault law was passed that this issue was at  
7 least not there when it came to determining  
8 whether a divorce should be granted or not.

9 Further testimony from other witnesses,  
10 and I know it is beyond the perview of today's  
11 hearing, with regard to economic issues that  
12 probably are changes that could be made that  
13 would be worth looking into and we would  
14 certainly be willing to provide any assistance  
15 we could if that is something that this panel  
16 decides to move on to next. But with regard to  
17 the issues raised by these two bills, we think  
18 it would be an inappropriate return to a system  
19 that really didn't advance the resolution of  
20 issues that need to be resolved by the courts so  
21 that the welfare of all of the members of the  
22 family can be protected.

23 Thank you very much for inviting me  
24 here today. I will attempt to answer any  
25 questions any of you may have.

1 MADAM CHAIRMAN COHEN: Thank you very  
2 much.

3 Representative Masland.

4 REP. MASLAND: Thank you, Madam  
5 Chairman.

6 Larry, you have been here all morning  
7 so far so you have heard Representative  
8 Manderino ask on a couple of different occasions  
9 about adding testimony or a factor relating to  
10 fault to equitable distribution. I know you are  
11 not a practitioner any more, but I would  
12 appreciate your thoughts on that.

13 It strikes me that if you do have  
14 testimony on fault in alimony cases that it,  
15 maybe it is appropriate to have some testimony  
16 on fault and equitable distribution cases  
17 because it certainly comes in, whether  
18 explicitly or not. That is something that  
19 having held a few master's hearings, I don't  
20 know how a master can totally divorce himself  
21 from the testimony regarding fault when  
22 considering equitable distribution and then only  
23 consider it under alimony; so, what are your  
24 thoughts on that?

25 MR. FRANKEL: Well, my most compelling

1 thought, I think, is it would be helpful to hear  
2 from masters and judges who have to apply these  
3 provisions. Are they sorting them out? Are  
4 they not sorting them out? Is this itself a  
5 legal fiction that exists? What would be the  
6 benefits? What would be the harm?

7 But I also think that rather than  
8 necessarily even getting into fault, because  
9 some of the fault is what occurs after the  
10 divorce and after the decree, at least based on  
11 what I heard here today, I think questions  
12 should be raised and looked at in to: are there  
13 enough enforcement powers that exist under the  
14 existing law? Is there some lack of an ability  
15 to assess fault after the decree is entered and  
16 punish somebody for that kind of fault as  
17 opposed to getting into a lot of he said/she  
18 said as to why the marriage may have failed?

19 But I would, again, submit that the  
20 people to be asking are those who have had to  
21 apply the law, in practice.

22 We have had a lot of attorneys here  
23 today. I don't know that we have had many  
24 people who served that often as masters, and,  
25 certainly, it would be interesting to know what

1 the judges would think of those kinds of  
2 changes.

3 REP. MASLAND: That's a good point. I  
4 think maybe we can look into that somehow.  
5 Thank you.

6 MADAM CHAIRMAN COHEN: Thank you. Any  
7 other questions?

8 Thank you again, Larry.

9 REP. HORSEY: Hold on.

10 MADAM CHAIRMAN COHEN: Representative  
11 Horsey.

12 REP. HORSEY: Larry, I thank you very  
13 much for clearing the air on 2003. Thank you.

14 MR. FRANKEL: Thank you.

15 MADAM CHAIRMAN COHEN: I believe David  
16 Blankenhorn and Michael Geer have arrived. Yes.  
17 David Blankenhorn is from the Institute for  
18 American Values and Michael Geer is the  
19 President of the Pennsylvania Family Institute.  
20 Welcome, gentlemen.

21 MR. BLANKENHORN: Thank you.

22 MR. GEER: Thank you very much.

23 MADAM CHAIRMAN COHEN: I am assuming  
24 that between the two of you, your testimony will  
25 not be longer than 10 minutes?

1 MR. GEER: Good afternoon.

2 MADAM CHAIRMAN COHEN: Good afternoon.

3 Could you identify yourself so we know which is  
4 which.

5 MR. GEER: Yes, my name is Michael  
6 Geer. I am President of the Pennsylvania Family  
7 Institute. And Madam Chairman and members of  
8 the committee, I want to thank you for the  
9 opportunity to testify to you this afternoon.  
10 As I said, I am Michale Geer, President of the  
11 Pennsylvania Family Institute, a non-profit,  
12 non-partisan research and education organization  
13 that focuses on policies and cultural trends  
14 that impact families.

15 Earlier this year, we published the  
16 report, Breaking Up Is Easy To Do: A Look at  
17 No-Fault Divorce In Pennsylvania. We are  
18 advocates of change regarding unilateral  
19 no-fault divorce because it significantly  
20 impacts families, children and society for the  
21 worse.

22 Prior to no-fault, in divorce  
23 proceedings, there was the party at fault, and  
24 then there was the innocent and injured spouse.  
25 Under unilateral no-fault, the law suddenly says

1       there is no party at fault and, as would follow  
2       then, there is no innocent and injured spouse.  
3       But that change in legal status does not  
4       eliminate the fact that in these cases there  
5       remains an innocent and injured spouse, and  
6       under no-fault here in Pennsylvania, in most  
7       cases, they are only further injured.

8               Whether or not reforming no-fault  
9       divorce will reduce the divorce rate, we do not  
10       know. What we do know is that unilateral  
11       no-fault divorce is unjust and that each year  
12       further injures thousands of innocent spouses  
13       and children. It is because of that injustice  
14       that the law must be changed.

15              I am now pleased to introduce to you  
16       Mr. David Blankenhorn, President of the American  
17       Institute for Family Values.

18              MR. BLANKENHORN: Thank you, Madam  
19       Chairman, members of the Task Force. It is a  
20       pleasure to be with you today. I want to speak  
21       to you very briefly about the basic rationale as  
22       I see it for reform of no-fault divorce laws.  
23       And I want to present this rationale in the form  
24       of three questions that you will obviously be  
25       considering as you investigate this matter.

1           Question number one, a simple one: Is  
2 our divorce rate too high? And, therefore, is  
3 lowering the divorce rate a legitimate goal of  
4 public policy?

5           Now, as you know, some people say, no,  
6 that divorce is a basic right, just like the  
7 right to free speech, and, therefore, whatever  
8 the divorce rate is is the right rate because it  
9 is a freedom that we have as Americans and it  
10 should not be infringed upon by government.

11           More and more people, based in part on  
12 scholarly research of the last decade, based in  
13 part upon the experiences that we all see around  
14 us, more and more people are saying, yes, our  
15 divorce rate is too high. We have the highest  
16 divorce rate in the world. We have probably the  
17 Western World's weakest family system. More  
18 than half of all new marriages today are likely  
19 to end in divorce.

20           And the evidence is increasingly clear  
21 from the social science reports across the  
22 disciplines, across the human sciences, that the  
23 divorce revolution has been harmful. It has  
24 been harmful to adults, it has been harmful to  
25 children, it has been harmful to our society.

1 It has not delivered the promises that it was  
2 based on.

3 So I think that it -- my answer to this  
4 first sort of threshold question is our divorce  
5 rate is too high and it is harmful to our  
6 children and to our society and therefore  
7 lowering the divorce rate is an important and  
8 legitimate goal of public policy.

9 Question number two: do divorce laws  
10 affect divorce rates? Here, again, you are  
11 going to hear both sides of this question. Some  
12 people are going to tell you that the law really  
13 does not have much impact on behavior, that  
14 people kind of do what they want to do, and that  
15 they are going to say, well, you know, the real  
16 problem is elsewhere and the laws don't have  
17 much impact one way or another.

18 You know, think about this logically.  
19 Do you know of any institution in our society  
20 that is unaffected by the laws that define it  
21 and surround it?

22 Think of an economic institution, for  
23 example, that is unaffected by corporate law.  
24 Think of a contract that we make that is  
25 unaffected by contract law.



1           I really think that it is not very  
2           logical for people to say that the divorce laws  
3           don't affect the divorce rates because there is  
4           no other example that I can think of where  
5           people say that laws, regarding an institution,  
6           don't have any effect on the behavior of people  
7           within that institution.

8           And if you want to just not trust your  
9           common sense, look at the evidence that we are  
10          getting in from the social sciences. The best  
11          work that we have, it is not conclusive, but, it  
12          suggests that no-fault divorce has had an  
13          independent effect in increasing the divorce  
14          rate of about 15 to 20 percent. So that of the  
15          increase in divorce that we have seen in the  
16          last 30 years, the best scholarship we have  
17          suggests that some small but important fraction  
18          of that increase, call it 15 to 20 percent, is  
19          attributable to the independent effect of  
20          switching to a no-fault system.

21          The converse of that, obviously, or it  
22          is not obvious, but, at least the converse idea  
23          is that a prudent reform of existing laws might  
24          have a modest but measurable effect in lowering  
25          the divorce rate. And if you believe that is a

1 legitimate and a desirable objective of public  
2 policy, this is something to consider.

3 So, secondly, do divorce laws affect  
4 divorce rates? I really believe that the answer  
5 is that they do.

6 The final question and the most  
7 important question that you would have to ask if  
8 you sort of are following the logic of these  
9 questions is: is no-fault divorce fair, is it a  
10 good way to think about getting divorced? Does  
11 it embody the principle of justice?

12 And, again, you are going to hear on  
13 both sides of this issue. And I just want to be  
14 very brief in telling you that having looked at  
15 this issue, not as a specialist in the laws of  
16 this Commonwealth -- I am visiting you today, I  
17 am an outside visitor -- but having looked at  
18 the issue of no-fault divorce across the  
19 country, I want to suggest to you today that  
20 there is an inherent injustice at the heart of  
21 the idea. There is a divorce bias built into  
22 the structure of the idea. And here is the  
23 basic proposition: it is that in cases of  
24 contested divorce, the law automatically,  
25 without any other consideration, sides with

1       whoever wants the divorce. That's the essence  
2       of the idea.

3               Now, you know, in the cases of mutually  
4       desired divorce, that system works fairly well  
5       because most -- if both spouses want the  
6       divorce, let them proceed ahead. And the  
7       reformers of 30 years ago, who introduced  
8       no-fault divorce, held this up as their model.  
9       The levelist marriage where both spouses want  
10      out and, my goodness, shouldn't we just let them  
11      get along with their business without making  
12      them engage in hypocrisy and perjury and so on?

13              And Governor Ronald Reagan signed the  
14      first no-fault divorce law in 1969. This is  
15      what he talked about in his speech. And that's  
16      true enough. And very few people want to go  
17      back to repeal or change that element of the  
18      reform of 30 years ago. But what about those  
19      cases which happen to be the majority of  
20      divorces where there is a conflict of what is  
21      desired, where one spouse wants the divorce and  
22      the other spouse doesn't? The essential moral  
23      and legal principle at the heart of no-fault is  
24      that the law is blind to the circumstances and  
25      that there is a built-in bias in favor, an

1 automatic decision in favor of whoever wants the  
2 divorce, irrespective of circumstances, and,  
3 therefore, at a very simple and fundamental  
4 level.

5           And you will hear this played out. You  
6 will hear this argument played out in testimony  
7 before you. But I just want to suggest to you,  
8 at the simplest, easy to understand level,  
9 whenever a law says that, in a dispute, the law,  
10 the society will automatically take the part,  
11 the side of whoever wants to break the contract,  
12 irrespective of circumstances, we have a  
13 problem. We have a problem of basic justice,  
14 and, therefore, I think that a prudent, modest  
15 reform of no-fault divorce is in order. Justice  
16 requires it. And I think it won't change the  
17 world, but it will have a modest and measurable  
18 good effect on the divorce rate and on the  
19 happiness of the well-being of the marital  
20 institution.

21           Finally, let me just say what are the  
22 bases of reform. Very briefly. Three points.

23           One, the research evidence suggests  
24 that the single most important reform that can  
25 be introduced is to extend the waiting periods.

1 If you combine that with incentives for  
2 counseling and in some cases requirements for  
3 counseling, you will do some good.

4 You know, think of marriage is like  
5 three categories. Think of it, one end, you  
6 have very few blissfully happily marriages: they  
7 hold hands every day, they don't need any laws  
8 to tell them to stay married, we don't have to  
9 worry about them. But, the other end, you are  
10 going to have 10 or 15 percent of marriages  
11 where there is such dysfunction and abuse,  
12 alcoholism, so on, you are going to have such  
13 problems that surely they will and ought to end  
14 in divorce. But, in the middle, you have about  
15 70 percent to 80 percent of all marriages that  
16 are not perfect marriages and are not  
17 pathological marriages. I mean, I am in that  
18 category. They are just kind of middle range  
19 marriages. Most of those marriages today end in  
20 divorce. Most of them. That middle range.

21 It would be a far better society for us  
22 and our children if most of them did not end in  
23 divorce. In this improvement at the margins, in  
24 that middle range of saveable but now drifting  
25 toward disillusioned marriages, it is in that

1 middle ground that you can make a change. Not a  
2 revolutionary change, a modest change that will  
3 lower the divorce rate modestly and save some  
4 marriages. With just waiting periods, pauses,  
5 get some counseling, take a second look and very  
6 importantly give a bit more dignity and leverage  
7 to the spouse that is remaining true to the  
8 marriage contract, give them a little more  
9 bargaining power, a little more leverage, a  
10 little more dignity, this can be done without  
11 going back to a completely fault based system.  
12 The result, I believe -- We don't know. We  
13 don't know what the unintended, unexpected  
14 results of any change is going to be.

15 But, in conclusion, let me say that I  
16 believe, I think and I hope based on the best  
17 analysis that I am able to do that if a state,  
18 this state, this Commonwealth, were able to have  
19 these prudent reforms of the basic no-fault  
20 system, two good things would happen: one, you  
21 may have a modest but important reduction in the  
22 divorce rate, and secondly, and perhaps  
23 ultimately more important in the long run, you  
24 would send a better message to young people  
25 about what it means to get married. And you

1 would be communicating to young people that when  
2 you say I do, you are making a serious  
3 commitment. And that there is a difference  
4 between getting married and simply just living  
5 together. And that the society thinks of  
6 marriage as an important institution which  
7 should not be dissolved in the way that it is  
8 dissolvable now.

9 So thank you for your attention and  
10 kindness in inviting me here today.

11 MADAM CHAIRMAN COHEN: Thank you, Mr.  
12 Blankenhorn. Thank you both.

13 I would like to make just a few  
14 comments. It is the Chair's prerogative to ask  
15 the first questions. I have deferred my  
16 questions throughout the day to the other  
17 members of the panel and other members of the  
18 Judiciary Committee that had been present, but  
19 since you are, at least the next to the last and  
20 possibly the last person to make a presentation  
21 to us today, I would like to just make a few  
22 comments and also ask you some questions.

23 My comment is, I am sorry that you were  
24 not here to hear the other people that did make  
25 presentations because, obviously, we have heard

1 the gamut, the comments today have run the gamut  
2 on this particular issue.

3 MR. BLANKENHORN: Sure.

4 MADAM CHAIRMAN COHEN: And I would hope  
5 that before you leave, you will at least avow  
6 yourselves of the materials that are on the  
7 table and read those comments.

8 Specifically, Mr. Blankenhorn, you have  
9 asked several questions and answered them from  
10 your own viewpoint and some of the things you  
11 have asked, is the divorce rate too high and is  
12 it desired a legitimate public policy to lower  
13 those divorce rate and you have concluded yes.  
14 Do you have information, statistics, etc., that  
15 you could provide to this Task Force how you  
16 have reached those conclusions?

17 MR. BLANKENHORN: Yes, the basic  
18 framework that I am arguing from, I think is  
19 based in large part upon the social science  
20 research that has occurred over the past decade  
21 or so, and much of it is summarised in a report  
22 of a bipartisan scholarly council of family  
23 scholars and they released a report last year  
24 called, Marriage in America, Report to the  
25 Nation. And it not only makes the argument



1 about the issue of the role of marriage in our  
2 society and the negative effects of a divorce  
3 oriented culture, but also provides the  
4 footnotes for the scholarly follow-ups and the  
5 data that this argument is based on, so I would  
6 be happy to make that available to you.

7 MADAM CHAIRMAN COHEN: That would be  
8 fine. I would appreciate it. I have to say to  
9 you, and for the record, that it is my belief  
10 that the members of this Task Force did not  
11 approach this issue with any bias, and that was  
12 one of the reasons why we are holding this  
13 hearing, is to learn and to hear all viewpoints.

14 A question, another question is: you  
15 have stated that the divorce rate is too high  
16 and therefore harmful to children. Now, you did  
17 talk about extremes of marital situations and  
18 the bulk in the middle, but that statement of  
19 yours jolted me.

20 If you have a marital situation, for  
21 whatever reason, where two people vehemently  
22 despise each other, you are saying a divorce is  
23 harmful to the children? Rather than having the  
24 children taken away from such a friction  
25 situation where two people hate each other, you

1 are saying that a divorce is more harmful to  
2 children?

3 MR. BLANKENHORN: No. You can think of  
4 examples and we probably all know examples in  
5 our own lives of situations that are so horrible  
6 where there is such pathology and such, in some  
7 cases violence, and so on, that obviously those  
8 marriages should and almost always do end in  
9 divorce.

10 And I mention that in my testimony and  
11 nothing about these reforms that I am suggesting  
12 would change that situation.

13 One of the principle areas of scholarly  
14 investigation of past decades has been in  
15 precisely the area that you are raising.  
16 Because one of the things that was said 30 years  
17 ago at the dawn of the divorce revolution was  
18 that not only is divorce often better for the  
19 adults involved, but it is actually better for  
20 the children because my children won't be happy  
21 unless I am happy and, therefore, really to  
22 follow my own is, as an adult desires,  
23 ultimately best for the children.

24 This assertion that a 50-plus percent  
25 divorce rate is somehow better for children or

1 that the alternatives are worse, has been, I  
2 believe, decisively contradicted by the evidence  
3 in the social science research of the past three  
4 decades. Specifically if you -- One of the  
5 specific findings, for example, of Dr. Judith  
6 Wallerstein, has lodged, through national  
7 studies, the impact of divorce on children. One  
8 of the revealing impacts of this study, one of  
9 the central ones is that children have often a  
10 far higher tolerance for a parental unhappiness  
11 than do parents; that is, situations that to the  
12 parents seem unhappy are actually much more  
13 beneficial for the children than would be a  
14 divorce.

15           Now, that doesn't solve the problem  
16 because you still have two unhappy parents, but  
17 it -- the evidence is clear that, except in  
18 rather extreme cases, really children do much  
19 better when they live with their mothers and  
20 fathers.

21           And we have, the divorce revolution,  
22 you know, has gone to such an extreme that 40  
23 percent of the children in our nation today do  
24 not live with their fathers. This trend of  
25 father absence is one of the trends that is

1 ripping through our society and hurting our  
2 children.

3           The generator of father absence in  
4 America today, well, the one case is increase of  
5 out of wedlock childbearing, but the second is  
6 the area of divorce. So the goal of reform,  
7 from my point of view, is not to try to make  
8 these terrible marriages stay together but to  
9 try to look at that middle range where perhaps  
10 some counseling, perhaps a waiting period.

11           Another one of the findings -- and I  
12 will stop here, I won't ramble -- but just one  
13 of the major findings: within three years after  
14 divorce, a significant number of people believe  
15 that it was a terrible mistake. They wished  
16 they hadn't got the divorce.

17           So in some of those cases, not a  
18 majority but in some of those cases, simple  
19 modest reform such as a pause, a waiting period,  
20 some counseling, a little more equality of  
21 bargaining position between the spouse that  
22 wants out and the spouse that wants to save the  
23 marriage would not have any effect on the  
24 outcome of these terrible cases, but would have,  
25 would save some marriages in that middle range,

1       which, if the social science research of the  
2       last decade tells us anything, anything at all,  
3       would have a dramatic impact in improving the  
4       life conditions of children.

5               MADAM CHAIRMAN COHEN: Thank you.

6               Again, I have one more question, but my  
7       comment is you are throwing forth statistics and  
8       I think that it would be very beneficial for  
9       this Task Force to see some of those --

10              MR. BLANKENHORN: Certainly, certainly.

11              MADAM CHAIRMAN COHEN: -- those items,  
12       and where you are getting this information.

13              MR. BLANKENHORN: Sure.

14              MADAM CHAIRMAN COHEN: I hope that you  
15       would be consistent. You seem to be emphasizing  
16       this middle ground and the middle group, yet you  
17       use exams from extreme circumstances. So I  
18       would hope in your presentation and follow-up to  
19       us that you would be consistent in where you are  
20       getting these particular numbers.

21              MR. BLANKENHORN: As I said, in extreme  
22       cases, 15 to 20 percent of pathology and extreme  
23       breakdown, it would be unwise and, to some large  
24       degree, impossible to prevent that.

25              MADAM CHAIRMAN COHEN: Right.

1           MR. BLANKENHORN: But I was not being  
2 inconsistent.

3           I consistently said that the object of  
4 reform is -- in marriages, like most marriages  
5 that go through troubled spots -- in prudent,  
6 modest reforms, would lower the divorce rate  
7 within that group. That was very consistent.

8           MADAM CHAIRMAN COHEN: Thank you. My  
9 last question, if you could just answer within  
10 the parameters, please. And, again, many people  
11 who have made presentations this morning have  
12 talked about lowering the waiting period because  
13 of the damage done to the institution of the  
14 marriage, the family, the children particularly,  
15 but you have talked about the reason why you  
16 would extend the waiting period and hopefully  
17 require counseling. Obviously, you are aware of  
18 Pennsylvania law where the judge can, indeed,  
19 require counseling. Who would pay for this  
20 counseling and the extended waiting period?

21           MR. BLANKENHORN: Who would pay for the  
22 counseling sessions?

23           MADAM CHAIRMAN COHEN: Who would pay  
24 for all of the things that need to be paid for  
25 during this extended waiting period? Who would

1 pay for this mandatory counseling which you have  
2 suggested?

3 MR. BLANKENHORN: Well, waiting periods  
4 would be essentially what would be governed by  
5 the same procedures that govern separations now.

6 MADAM CHAIRMAN COHEN: Would they be --

7 MR. BLANKENHORN: Well, you are the  
8 lawmaker so you could change this if you wanted  
9 to.

10 MADAM CHAIRMAN COHEN: I am asking for  
11 your suggestion.

12 MR. BLANKENHORN: My suggestion would  
13 be that if that waiting period in cases where  
14 there is no longer a physical co-residence,  
15 would be largely like we treat separations now.

16 Would be largely that we require, I  
17 believe that in certain classes, particularly  
18 where there are minor children and particularly  
19 where it is a contested divorce, the counseling,  
20 either incentive or in some cases requirements  
21 for counseling. Not state. You know, it could  
22 be privately based. You know, you choose your  
23 counselor. You don't have to go to one type of  
24 counselor. But I believe it could have an  
25 impact.

1           As far as who pays for it? That, there  
2 are any number of ways to solve that problem.  
3 And it would be, you know, some kind of, I  
4 imagine some kind of combination system would be  
5 most desirable.

6           MADAM CHAIRMAN COHEN: Thank you.  
7 Thank you. Any questions from the  
8 panel?

9           MR. GEER: This won't be testimony. I  
10 just simply want to say that many of the  
11 statistics that have been quoted by Mr.  
12 Blankenhorn are in the study that the  
13 Pennsylvania Family Institute has done so they  
14 are available to the committee through there.

15           MADAM CHAIRMAN COHEN: Thank you.  
16 Thank you.

17           Representative Boscola.

18           REP. BOSCOLA: Thank you, David and  
19 Michael. I just want to let you know that there  
20 is a bill, Representative Corpora introduced a  
21 bill that would say if individuals are going  
22 through a divorce and they have children, they  
23 must go through counseling and they would pay  
24 for the counseling. A good bill in my opinion.

25           MADAM CHAIRMAN COHEN: Thank you.



1 Representative Manderino.

2 I haven't forgotten, Representative  
3 Horsey.

4 REP. HORSEY: Don't worry.

5 REP. MANDERINO: Thank you. I just  
6 have one follow-up question on the waiting  
7 period that you espoused and if I wrote it down  
8 correctly, you were advocating a waiting period  
9 as a way to, among other things, increase the  
10 quality of the bargaining position?

11 MR. BLANKENHORN: (Nods head  
12 affirmatively.)

13 REP. MANDERINO: That was a quote from  
14 you?

15 MR. BLANKENHORN: That's right.

16 REP. MANDERINO: Prior testimony from  
17 many other people suggested the opposite, that  
18 the longer the waiting period, the more the  
19 person with the economic resources can hold out  
20 --

21 MR. BLANKENHORN: (Nods head  
22 affirmatively.)

23 REP. MANDERINO: -- and to the  
24 disadvantage of the partner without the economic  
25 resources. So since you have reached a

1 different conclusion, I would like to know the  
2 basis on which you have reached the conclusion  
3 that an increased waiting period will increase  
4 the equality of the bargaining position.

5 MR. BLANKENHORN: Well, it is a good  
6 point you raise and it is worth thinking about  
7 carefully. I understand the point you are  
8 making.

9 The point I was making was really a  
10 very basic one. If I want to divorce my wife,  
11 under a no-fault regime, I can do so and I can  
12 do so rather quickly. It depends on the length  
13 of the waiting period. I wake up one morning.  
14 I say, I am sorry, Honey, I am out of here and  
15 there is nothing she can do about it. And if I  
16 wait -- in some states six months, in some  
17 states a year, in some states two years -- I  
18 wait a period of months and I am divorced and  
19 her opinion about it matters not even a little.

20 The goal of extending the waiting  
21 period is to -- for her to be able to say to me,  
22 basically, not so fast, pal. Either she could  
23 say, I think this marriage can be saved, you are  
24 a schmuck, but I think if we got some  
25 counseling, we might, could work something out.

1 Or, she could say, if you want this divorce,  
2 without having to wait X period of time, you  
3 have to come to terms with me over X, Y and Z.  
4 It depends on her opinion, obviously.

5 But the point is that denying me what I  
6 want, which is the immediate divorce, increases  
7 her bargaining position in relationship to me.  
8 It seems rather obvious that denying me what I  
9 -- giving her the tools to deny me what I want,  
10 which is an instant divorce, diminishes my  
11 authority to impose my wishes unilaterally. It  
12 increases her ability to either force me to have  
13 counseling, force me to come to terms with her  
14 in some way.

15 And maybe, in some cases, I will change  
16 my mind. Because, perhaps I am acting  
17 impulsively and perhaps the infatuation with my  
18 secretary wears off and I decide that I really  
19 shouldn't leave this marriage after all. That  
20 happens, too, on occasion.

21 But, in general, extending the waiting  
22 period increases the leverage in the situation  
23 of the spouse who is being left.

24 REP. MANDERINO: Thank you.

25 MADAM CHAIRMAN COHEN: Thank you,

1 Representative Manderino.

2 Representative Masland.

3 REP. MASLAND: Thank you, Madam  
4 Chairman. I am not going to get philosophical.  
5 I did that before you got here. And I  
6 appreciate your philosophical and theoretical  
7 comments. But I would like to get a little  
8 practical here. And I don't expect you, from  
9 being out of state, to be intimately aware of  
10 what our provisions in the Divorce Code are, but  
11 I would appreciate it if, Michael, if you would  
12 take these provisions back and look at it and  
13 then give us a recommendation, some specifics,  
14 with respect to waiting periods.

15 We have a 90-day waiting period for  
16 mutual consent. There is a two-year waiting  
17 period for living separate and apart. It used  
18 to be three.

19 For the first several years of my  
20 practice, it was three years that I would  
21 explain to people as they came into my office.

22 When it was changed to two, I had to  
23 sit back and think, well, you know, if a  
24 marriage is irretrievably broken, if you have  
25 been separated for two years, is it going to get

1 any better between the second and third year?

2 So I don't know what your thoughts are  
3 on what an optimum period for separation is, if  
4 you have any specific thoughts in that kind of a  
5 divorce, or, what your thoughts are for what the  
6 waiting period should be.

7 There are provisions, and I think as  
8 Representative Cohen did mention, there are  
9 provisions for counseling in the Divorce Code.  
10 I would like your thought on that.

11 Are they, are they sufficient? Should  
12 there be more incentives?

13 I have actually -- I always advise  
14 people that they could go to counseling and  
15 require the other person to counseling, but it  
16 is a situation where you can lead a horse to  
17 water but can you make it drink it.

18 Lo and behold, one time, they did  
19 resolve it through that, but that is the  
20 exception.

21 So what are your thoughts on some  
22 specific provisions? If you don't have them  
23 now, I would appreciate receiving that later on,  
24 as to where specifically in our Divorce Code we  
25 could go.

1           Because the sense I get is you are not  
2 saying do away completely with no-fault divorce.

3           MR. BLAKENHORN: Not in the cases. In  
4 my opinion, I know one of the bills that's been  
5 introduced is a bit different, but in my view it  
6 would be inprudent to do away with the basic  
7 system that we have now under no-fault in the  
8 case of mutually desired divorces, but the  
9 research shows fairly convincingly in my view  
10 that the single factor that will have an impact  
11 in lowering the divorce rate is longer waiting  
12 periods in the cases of contested divorces.

13           Now, most Western nations have waiting  
14 periods of five to seven years. If you get a  
15 divorce in Germany or France or any, you know,  
16 they, the general rule among Western nations in  
17 the cases of contested divorces is a five to  
18 seven year waiting period. President Clinton's  
19 former Domestic Policy Adviser, until recently,  
20 Bill Galston, a professor at the University of  
21 Maryland, recently wrote an article in a major  
22 magazine where he recommended a five year  
23 waiting period in cases of contested divorces,  
24 citing all the scholarly evidence.

25           Now, you can say that, you know, it is

1 by definition, arbitrary? So you look at the  
2 experience of other nations that have  
3 significantly lower divorce rates than we do and  
4 you pick your number. But longer than they are  
5 now, is my answer.

6 And as for counseling, I know that, to  
7 me, again, it is no panacea, but the stronger  
8 and clearer that can be the incentives and  
9 requirements for counseling in the cases of  
10 troubled and contested marriages, you are not  
11 going to save all or even most of them but it  
12 will have some improvement.

13 And I know that you are making a firm  
14 distinction between practice and philosophy.  
15 But let me just say that this really does get to  
16 the heart of the kind of message that we are  
17 sending to future generations about what it  
18 means to get married in the first place and it  
19 will have an impact in that area as well.

20 REP. MASLAND: And I have no problem  
21 with philosophy. But, ultimately, we deal with  
22 practical matters here. When we shape a bill,  
23 we have to try to figure out what is best. And  
24 I am sure you have that philosophical  
25 background. But what I was asking and what I

1 still would like, if you can give me anything  
2 with more detail, is to look at the various  
3 aspects of --

4 MR. BLANKENHORN: Well, I mentioned the  
5 five years, that's --

6 REP. MASLAND: -- Section 3302 under  
7 counseling.

8 MR. BLANKENHORN: Yes.

9 REP. MASLAND: And tell us or recommend  
10 to us how we could change that to give the  
11 counseling more teeth or to give it a  
12 possibility of working, so if there are any  
13 suggestions like that. I am not discounting  
14 your philosophical statements. I am just saying  
15 it is getting near the end of the day and any  
16 practical, specific tips would be helpful.

17 MADAM CHAIRMAN COHEN: Perhaps you  
18 could give that to us when you submit the other  
19 statistics to us.

20 MR. GEER: If I may address a point  
21 that you made, Representative Masland, regarding  
22 those that came into your office two years down  
23 the line towards the three year waiting period  
24 and that the extra year didn't seem to make that  
25 much difference to them.



1           With the longer waiting period and  
2 those types of efforts really make the most  
3 differences before anyone ever enters the  
4 waiting period.

5           REP. MASLAND: Right.

6           MR. GEER: When they are contemplating  
7 a divorce and they think it is going to be five  
8 years before I get one, maybe I won't go for it.  
9 So to look at it and just say that three or four  
10 years into it, the extra year does not make that  
11 much difference, it certainly does make a  
12 significant difference when the state says to  
13 someone that we recognize the marriage vow is  
14 solemn and important and that we are not going  
15 to create an easy way and a quick way for  
16 someone to get out of it and that will change  
17 people's behavior.

18           REP. MASLAND: Very quickly. My  
19 concern is if you make it too long, then you get  
20 yourself right back into the perjurious  
21 situation where you have people saying, well,  
22 let's just go in there and you say this or you  
23 say that. I don't know. But what is the  
24 eventual optimal year, what is the optimal date?  
25 I don't know whether it is three, two, three,

1 six. That's a problem.

2 MADAM CHAIRMAN COHEN: Thank you.

3 Representative Horsey, I believe you  
4 had a question.

5 REP. HORSEY: Just one quick question.  
6 You gave us a statistical showing on children  
7 that grow up with their fathers.

8 MR. BLANKENHORN: Yes.

9 REP. HORSEY: What was the statistic?

10 MR. BLANKENHORN: Forty percent of the  
11 children do not live in the same residence with  
12 their fathers.

13 REP. HORSEY: Are you familiar with any  
14 additional figures on the number of fathers who  
15 file for custody at the time of divorce? I  
16 don't know, I am saying.

17 MR. BLANKENHORN: Well, approximately  
18 90 some percent of cases of divorces, the  
19 physical custody remains with the mother.

20 REP. HORSEY: No, the question is --

21 MR. BLANKENHORN: How many file for  
22 custody?

23 REP. HORSEY: -- are you familiar with  
24 the number of fathers who actually file for  
25 custody of their children at the time of

1 divorce?

2 MR. BLANKENHORN: No, sir, I am not.

3 REP. HORSEY: Thank you.

4 MADAM CHAIRMAN COHEN: Thank you very  
5 much, gentlemen. We certainly do appreciate  
6 your being here.

7 I don't see her, but, for the record, I  
8 will call Lynne Gold-Bikin who is -- just  
9 arrived.

10 I will introduce, for the record, Lynne  
11 Gold-Bikin, who is an attorney in Philadelphia  
12 and practices family law.

13 MS. GOLD-BIKIN: Thank you. Good  
14 afternoon. Thank you for the privilege of  
15 addressing this committee on this most important  
16 issue. I am Lynne Gold-Bikin. I am a former  
17 Chair of the American Bar Association Family Law  
18 Section, which is the largest group of Divorce  
19 Lawyers in the world. As a member of the  
20 Pennsylvania Bar Association Family Law Section,  
21 I speak to you today on behalf of that section  
22 to oppose the potential removal of the current  
23 no-fault grounds for divorce.

24 In my 20 years of practice as a divorce  
25 lawyer, I have practiced under both the existing

1 Divorce Code and the prior Act in which there  
2 were no grounds permitting a no-fault divorce.  
3 Let me take you back to life before July 1,  
4 1980. Unhappy couples, couples in which there  
5 is an abusive partner, marriages in which one  
6 partner had had a girlfriend or a boyfriend on  
7 the side, had all separated and were living in  
8 separate households. Spouses were leaving  
9 Pennsylvania for a friendly environment to get  
10 an out-of-state divorce decree. Chiuaua,  
11 Mexico; the Dominican Republic; Reno, Nevada:  
12 are those names familiar to you? They are to me  
13 because that's where people fled, established  
14 their domicile, and got their divorce, even over  
15 the objections of the remaining Pennsylvania  
16 husband or wife.

17 Abandoned wives and children were left  
18 with no property, no support, basically in  
19 limbo. The children had little or no  
20 relationship with the absent parent. The fact  
21 that there were no grounds permitting a no-fault  
22 divorce did not keep these couples together, nor  
23 were their children protected.

24 Who are we kidding? Unhappy people do  
25 not stay together regardless of the law. There

1 is no scarlet letter in the 1990s. If a partner  
2 falls in love with someone else, they leave the  
3 marriage and move across town to move in with  
4 their lover. There is no societal disgrace. If  
5 a woman is abused today, she will get a  
6 Protection from Abuse Order and put the abuser  
7 out of the home. If one partner is gay, this  
8 partner may relocate or, worse yet, begin to  
9 bring their partner home. If one partner is a  
10 philanderer with what I call a zipper problem  
11 should the other party maintain this empty  
12 marriage or risk herpes or AIDS? If one partner  
13 is emotionally abusing this other, is this  
14 something he or she should have to live with?  
15 Or worse, should the children be exposed to  
16 this? What are we talking about here? By  
17 forcing couples to litigate their grounds for  
18 divorce, this will not save marriages. People  
19 did not work harder to save their marriages  
20 before the Divorce Code of 1980 and they will  
21 not work harder to save bad marriages if these  
22 sections are deleted from the Code.

23 Let me explain the potential results of  
24 this well-meaning but misguided adventure.  
25 Taking no-fault divorce out of the Code or even

1 making it more difficult to get will result in  
2 forcing couples to litigate their grounds, a  
3 process that not only could take days in court  
4 but sometimes weeks. The cost of litigation, of  
5 course, falls on the clients. But what does it  
6 do to the judicial system? If masters are to  
7 hear these matters, how much will we have to pay  
8 them if we decide to allow them to hear the  
9 litigation? Ultimately, the cases will reach  
10 the judges. How many more judges is this  
11 legislature willing to appoint and to pay to  
12 handle this overload of judicial time?

13           You might wonder why the divorce  
14 lawyers are so opposed to this legislation.  
15 This will make us potentially rich. Each case  
16 will now take on additional weeks of trial,  
17 which only benefits the lawyers and certainly  
18 does not benefit the families.

19           And, keep in mind, this litigation  
20 requires that a record be made. Do we want the  
21 children to ultimately have access to this  
22 testimony? Do we want the children to hear the  
23 negative things that each parent says about the  
24 other? Does anyone really believe that one or  
25 the other of these parents will not tell the

1 children their side of the story to get them  
2 aligned on their side and get their loyalty?  
3 These are the very same children we are  
4 ostensibly trying to protect.

5           Additionally, since there is no  
6 equitable distribution without the grounds being  
7 first established for divorce, this will leave  
8 the partner without the property in limbo. The  
9 partner with the property can leave, taking the  
10 property, and there is no judicial intervention  
11 possible to protect the spouse who opposed the  
12 divorce but cannot now get a distribution of  
13 this very same property. If we force people to  
14 flee the state to find happiness or at least in  
15 their own minds, peace, we have done more damage  
16 to this so-called dysfunctional family than  
17 allowing the one who wishes to leave to get that  
18 divorce.

19           If the concern of this committee and  
20 this legislature is with the impact of divorce  
21 on children, let me share a few things with you:  
22 divorce does not end a family -- it reorganizes  
23 it -- to mother and children; and father and  
24 children. But divorce is not what harms the  
25 children -- it is the parents who harm the

1 children; by putting them in the middle of the  
2 process, parents will tell their lawyers that of  
3 course they share the letters from their lawyers  
4 with the children because it involves the  
5 children; this is their life. Parents use the  
6 children as message carriers (you tell your  
7 father if I don't get your check this week, he  
8 is not going to see you this weekend) or as  
9 spies (was your mother's boyfriend over there  
10 this weekend?) or worse, parents attempt to turn  
11 the children against the other parent. How does  
12 forcing parents to air their dirty linen in  
13 public, ever benefit the children?

14           So what should we be doing? We all  
15 agree that divorce is not good for children,  
16 parents, society or the legislative budget. But  
17 I respectfully suggest that the answer is not  
18 looking at the end of the unhappy marriage but  
19 at the beginning, or even at the beginning, of  
20 the marriage. As I am fond of saying, we are  
21 looking at the wrong end of the animal with this  
22 legislation. So let me share with you some  
23 solutions that may contribute to the answer that  
24 I believe we all seek and that may permit  
25 legislative intervention:



1           1. The Maryland Legislature has been  
2 discussing a longer waiting period to receive a  
3 marriage license, perhaps a 60 day wait, unless  
4 there is proof of a good pre-marital counseling  
5 program. And, why not? We require training and  
6 education before we allow people to drive;  
7 should we demand less before we allow them to  
8 marry?

9           2. The American Bar Association has  
10 been concerned with the large percentage of  
11 marriages that end in divorce and has also  
12 sought a solution. We believe that the proper  
13 focus must be before people make their lifetime  
14 choices, not after, and we have developed such a  
15 course to be taught to high school juniors and  
16 seniors. This course is called PARTNERS.

17           Why do I feel like I am doing a  
18 commercial here?

19           3. I am attaching a copy of the  
20 overview and the first lesson in this program to  
21 my written testimony, along with a brochure so  
22 that this committee can see what is possible.  
23 This course is a joint effort between lawyers  
24 across the country and the teachers in the high  
25 schools and people who teach communication

1 skills. It is purchased by the lawyers who give  
2 four hours of their time to help teach students  
3 about family law. The course itself teaches  
4 students about proper ways to communicate to  
5 enhance relationships, rather than destroy them.

6 You know, by the time they get to our  
7 offices, so many tapes have been played, you  
8 know, so much anger and hate has gone into the  
9 relationship that it is very, very difficult to  
10 pull them back from the brink.

11 But if we teach them before they make  
12 their choices, to communicate in a positive way  
13 to build their relationship, rather than destroy  
14 it, we have a chance to save these marriages.  
15 Teaching them about family law as well as  
16 budgeting, caring for children and factors that  
17 they should consider before choosing their  
18 lifetime mate adds to their knowledge about  
19 marriage before they pick this mate.

20 PARTNERS is now in high schools across  
21 the country, including Pennsylvania, Delaware,  
22 Florida and California, just to name a few.  
23 Broward County, Florida has adopted the program  
24 for every high school in that county. It  
25 happens to be 25 high schools. The Tennessee

1 Bar Association, as well as the Pennsylvania Bar  
2 Association, has approved the program for its  
3 members. Fort Worth, Texas now has five high  
4 schools teaching the course. This course has  
5 been successfully taught to hundreds of students  
6 in 25 states for the last three years. Many  
7 students believe it is the best thing they have  
8 learned in their school year. We believe that  
9 the skills that we are teaching these students  
10 will help them form better marriages and,  
11 therefore, ultimately cut down on the divorce  
12 rate. This seems a more positive solution than  
13 forcing unhappy people to stay together.

14 These are some of the positive actions  
15 that we consider the appropriate way to solve  
16 the divorce problem. We do not approve of  
17 eliminating no-fault divorce from the Statute.

18 For those who say that divorce is easy,  
19 we suggest that you sit in our offices and watch  
20 how painful and difficult the process is.

21 People spend a large percentage of what they  
22 have accumulated during their lives together to  
23 battle over equitable distribution, alimony,  
24 alimony pendente lite, child and spousal  
25 support, and custody. The divorce process

1       itself can take years to complete in court, but  
2       a lifetime to emotionally withstand. Let's not  
3       add to the pain and trauma of this personal  
4       decision by forcing a spouse who wants a divorce  
5       from what may appear to be a legally-faultless  
6       spouse, to stay in an abusive, loveless  
7       situation or, leave Pennsylvania and family.  
8       The choices are difficult enough; but to require  
9       people to pay thousands of dollars in the court  
10      system to end a loveless marriage does not seem  
11      the appropriate way to go. It certainly does  
12      not help the children.

13                 Please, don't send us back to the 1970s  
14      -- before the state enabled people to divorce  
15      with dignity. This potential legislation is not  
16      a solution -- it recreates the problem.

17                 Thank you for the opportunity to share  
18      these thoughts with you.

19                 MADAM CHAIRMAN COHEN: Thank you very  
20      much for being here. There is just one question  
21      from Representative Manderino.

22                 REP. MANDERINO: Hi, Lynne.

23                 MS. GOLD-BICKIN: Hi.

24                 REP. MANDERINO: One of the issues that  
25      we have asked numerous presenters before you

1 were here, deals with not the bill that would  
2 totally eliminate no-fault but the 2003, that  
3 provides for a hearing on fault if it is wanted.  
4 And the question really is: it has been  
5 suggested that having fault enter into the  
6 record, enter into the proceeding, not from an  
7 emotional or moral point of view but from an  
8 economic point of view and its affect on  
9 economic distribution of assets may be a  
10 causative or worthwhile thing; others have  
11 disagreed. I would be interested in your  
12 opinion and the reason for it.

13 MS. GOLD-BIKIN: Well, I was around  
14 when we passed the original 1980 Divorce  
15 Statute, and one of the things that we thought  
16 about then was whether there should be fault at  
17 all.

18 You know, we are not a no-fault state.  
19 We are a fault state with no-fault grounds.  
20 Although, I think you can ask any of my  
21 colleagues here whol will tell you that, since  
22 1980, it is very rare to see a fault divorce;  
23 but, when people have fault divorces, sometimes  
24 their thinking is that it will poison the  
25 process and maybe give them a bigger chunk of

1 equitable distribution.

2 We did put fault in the alimony  
3 section; but, I am often peeked to understand  
4 why, if somebody commits adultery, it means they  
5 have less of an appetite to eat.

6 The fact that after 20 years somebody  
7 may be guilty of a fault is not really looking  
8 at the total picture; and, if you want to put  
9 fault back in and let people start litigating  
10 fault, you are the same position you were in  
11 terms of the grounds because now you allow them  
12 to spend two weeks telling every little teenie  
13 thing that has ever happened in their lives with  
14 this person.

15 For example, I am of the firm belief  
16 that there is no such thing as an innocent and  
17 injured spouse in any marriage, at least people  
18 who have been married more than five minutes,  
19 because you can always find somebody who has  
20 done something to you that has made you unhappy.  
21 So when you come in on fault, you say, well, we  
22 will talk about fault on economic grounds.  
23 Well, fault is, he screamed an obscenity at me in  
24 front of the split pea soup in the A&P; that's a  
25 fault. He wouldn't let me talk to my sisters as

1 often as I wanted to talk to her. He dragged me  
2 off the dance floor by my hair because he didn't  
3 like the fact that I was dancing with this  
4 partner. Those are faults.

5 I mean, we put a lot of emphasis on  
6 adultery as a fault, but there are many, many  
7 faults. He wanted sex with me six times a  
8 night. He wouldn't sleep with me for a year.  
9 Those are faults. He told me about all the  
10 women to whom he was attracted, or, she knew  
11 that I liked full clothes but she persisted in  
12 wearing sexy clothes and got me upset. I mean,  
13 all of these things are faults. We all hear  
14 them.

15 Before 1980, when we used to put  
16 together that little, little charade that we had  
17 to use to get divorced and we put together this  
18 whole list of faults, this list of cumulative  
19 things; that's the kind of stuff we saw. She  
20 wouldn't let me put the baby to bed at night.  
21 She insisted that she was the only one who could  
22 do it; that's a fault because it gets someone  
23 upset, it treats them in a way that is not  
24 appropriate to treat someone you ostensibly  
25 love.

1           Do we want to do this, really? I mean,  
2 do we want to spend weeks litigating over every  
3 little teenie thing that people have done to  
4 each other in the marriage? Because, believe  
5 me, we could make lists. All you are doing is  
6 adding to the costs.

7           And in terms of fault, in terms of  
8 adding fault to equitable distribution, it is  
9 another factor to consider. Right now, the  
10 judges decide on which ones they think are the  
11 weightiest of the factors. As a practical  
12 matter, they use, usually, the length of the  
13 marriage and the ability of each one of them to  
14 live a decent life afterwards. But after 20  
15 years of marriage because he had an affair one  
16 night or because she had an affair one  
17 afternoon, is that any reason to cut them off  
18 from the contributions they have made for the 19  
19 years before that? I don't think so. But, on  
20 the other hand, it will put up my billing.

21           REP. MANDERINO: Thank you.

22           MADAM CHAIRMAN COHEN: Thank you.

23           Again, this will draw this hearing to a close.  
24 I want to thank everyone who has participated,  
25 particularly the members of the Task Force, as



1 well as the members of the Judiciary Committee.

2 Let me just tell you what my plan is  
3 following today's hearing. Anyone else who  
4 wants to submit written testimony, it is more  
5 than welcome, feel free to do so.

6 We come back into formal session at the  
7 end of September; at that point, the members of  
8 this Task Force will be meeting to discuss all  
9 of the testimony that has been presented to us.  
10 We will then reach, hopefully, some brilliant  
11 conclusions and make, at that point, file a  
12 written report.

13 Whether it will be unanimous or not, I  
14 don't know, because, as I mentioned earlier,  
15 none of us has come to this position today with  
16 any preconceived attitudes.

17 We may have one report. There may be a  
18 majority and minority report. And I think when  
19 I say majority and minority, I don't mean along  
20 party lines, but rather, legal/intellectual/  
21 philosophical lines as well; that is the feeling  
22 that I am grasping from the questions that have  
23 been asked today.

24 At that point, when we make our report,  
25 or report, we will forward that report on to Mr.

1 Gannon, Representative Gannon, who is the  
2 Chairman of the Judiciary Committee. It will  
3 then be up to him as to how he wants to proceed  
4 with these two bills and what will be the future  
5 of these two bills.

6 Again, my thanks to everyone. This has  
7 certainly been very enlightening. We appreciate  
8 your effort. Thank you.

9 (Whereupon, the following written  
10 testimonies were submitted for the record:)

11 \* Kevin Sheahen, Local Chapter  
12 President of National Congress for Fathers and  
13 Children;

14 \* Carol Tracy, Women's Law Project,  
15 Pennsylvania;

16 \* Law Firm of Ladov & Bernbaum,  
17 Plymouth Meeting, PA: Joel B. Bernbaum, Esquire,  
18 Family Law Council of South Eastern  
19 Pennsylvania;

20 \* Milton S. Savage, Jr., The  
21 Barristers' Association of Philadelphia, Inc.;

22 \* Carolee A. Medico, Legal Focus,  
23 Scranton, PA;

24 \* Charlotte H. Bogart, Mechanicsburg,  
25 PA;

1                   \* Reproduced testimonies offered by  
2       Mary Sue Johnston, before House Judiciary  
3       Committee's Subcommittee on Courts, dated  
4       9/13/91 and 11/18/94.

5                   (Whereupon, the public hearing was  
6       adjourned at 1:25 p.m.)

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1           I hereby certify that the proceedings  
2 are contained fully and accurately in the notes  
3 taken by me on the within proceedings, to the  
4 best of my ability, and that this copy is a  
5 correct transcript of the same.

6  
7  
8  
9  
10           *Roxy Cressler*  
11           -----

12           Roxy Cressler, Reporter

13           Notary Public  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25