

HOUSE OF REPRESENTATIVES
COMMONWEALTH OF PENNSYLVANIA

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Domestic Relations Task Force

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House Judiciary Committee
Task Force on Domestic Relations

Allegheny County Courthouse
Pittsburgh, Pennsylvania

Tuesday, July 15, 1997 - 9:00 a.m.

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BEFORE:

Honorable Lita Indzel Cohen, Majority Chairman
Honorable Albert Masland
Honorable Joseph Petrarca
Honorable Don Walko

KEY REPORTERS

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1 **ALSO PRESENT:**

2 Honorable Jane Orie

3 Honorable Craig Dally

4 Honorable Harold James

5
6 Karen Dalton, Esquire
7 Majority Counsel to Judiciary Committee

8 Chuck Hafer
9 Majority Legislative Asstistant to
 Representative Stevenson

10 Galina Milohov
11 Minority Research Analyst

12 Daniel Staughn
13 Minority Staff of Representative Itkin

14 Julie Jarbeck-Boyle
15 Minority Administrative Assistant to
16 Representative Walko

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1 CHAIRWOMAN COHEN: Good morning.
2 Welcome to the Pennsylvania House of
3 Representatives Judiciary Committee Task Force
4 on Domestic Relations. First, I'd like to
5 thank Representative Don Walko and the City of
6 Pittsburgh and so many of the folks associated
7 with the courts here in Pittsburgh. Thank you
8 for your hospitality. We certainly enjoy your
9 city.

10 We are here today as an outgrowth of
11 a Domestic Relations Task Force project from
12 the last term in the House. Last term we
13 studied and analyzed the issue of no-fault
14 divorce. We had a very limited objective and a
15 very limited charge, and that was, as I said,
16 merely to examine the issue of no-fault in
17 Pennsylvania, no-fault divorce.

18 However, in doing our limited study,
19 we heard from hundreds and hundreds and
20 hundreds of citizens across the state. Many of
21 them were simply heart-breaking stories of
22 personal experiences concerning their views and
23 their intimate experience with the judicial
24 system and what they had experienced during the
25 divorce process.

1 We realized at that point that we
2 needed to further examine many other issues,
3 but there are three areas of concern that this
4 task force is dealing with.

5 First, we are dealing with the
6 matters of child custody. Secondly, we are
7 dealing with areas concerning finances;
8 support, equitable distribution, et cetera.
9 The third area that we'll be examining is the
10 courts and uniform administration of the
11 courts, and all of the areas where the courts
12 are involved in divorce matters.

13 We did a report last term. We
14 believe it to have been a very thorough report
15 concerning no-fault divorce. As I said, this
16 task force this term is an outgrowth of our
17 conclusions reached last term.

18 Yesterday we came to Pittsburgh and
19 studied the domestic relations court system and
20 how it worked. We were most impressed with the
21 one family-one judge procedure that's been
22 instituted here in Pittsburgh. We examined
23 many areas of mediation and how the City of
24 Pittsburgh and the County of Allegheny deals
25 with the custody and support matters. We are

1 here further to examine and to take testimony
2 from people involved in the system here in
3 Pittsburgh and Allegheny County.

4 We have a full agenda today. We will
5 stick to the time on the agenda and we will
6 stick to it very carefully. Anyone who is not
7 listed to speak today is welcome to submit any
8 kind of testimony, anything in writing to any
9 member of the House of Representatives or any
10 of us on the task force.

11 So, please, you are not restricted
12 today from making your views known. We would
13 be more than happy to hear from you. As I
14 said, today's hearings and this term's Domestic
15 Relations Task Force is, indeed, an outgrowth
16 of hearing from citizens last term.

17 I would like to introduce the members
18 of the panel that are here today. Then we'll
19 hear from our witnesses. I'm Lita Cohen,
20 Representative from Montgomery County, and I'm
21 Chairman of the Task Force. To my left is
22 Representative Don Walko who has been our most
23 hospitable host here in Pittsburgh.
24 Representative Walko will be chairing these
25 hearings.

1 To Representative Walko's left is
2 Representative Jane Orie from Allegheny County.
3 To my right is Karen Dalton who is counsel to
4 the Judiciary Committee and Chief Counsel to
5 the task force. To Counsel Dalton's right is
6 Representative Masland from Carlisle. To
7 Representative Masland's right is
8 Representative Petrarca, also from Westmoreland
9 County. We welcome you.

10 At this point I will turn the hearing
11 over to Representative Walko. Again, our
12 thanks to you.

13 ACTING CHAIRMAN WALKO: Thank you,
14 Representative Cohen. I really would like to
15 thank the Chairman of the committee,
16 Representative Cohen, for coming to Western
17 Pennsylvania and all the people, including
18 Representative Petrarca and Representative
19 Masland from outside of Allegheny County and,
20 of course, Jane Orie for being here.

21 I'd also like to note that Chuck
22 Hafer from Thomas Stevenson's office is here
23 and Daniel Straughn from Representative Ikin's
24 office. Finally, I'd like to note that this
25 hearing was put together by my assistant, Julie

1 Jarbeck, who is back there. She contacted the
2 witnesses. Anyone who expressed interest she
3 talked with them. I think we have a nice
4 agenda today. I'm glad you all would come and
5 spend the time to go over these important
6 issues.

7 Also, we have from Representative Tom
8 Caltagirone, the Democratic Chairman, Galina,
9 right over here and, of course, Karen Dalton
10 who was introduced earlier.

11 First of all, we want to give our
12 family courts throughout Pennsylvania the tools
13 they need to move into the 21st century. I
14 just want to make one note. We learned so very
15 clearly yesterday on our tour that the Court of
16 Allegheny County has made tremendous
17 improvements in the way they operate. We would
18 like to know, for Allegheny County, if we could
19 work to maybe even improve upon those
20 improvements. Our basic bottom-line goal is to
21 help modernize the courts so we could ease the
22 burdens on families who are going through
23 difficult times.

24 Without anymore talk, I'd like to
25 call Attorney Carol McCarthy. Carol McCarthy

1 is a prominent attorney in Allegheny County,
2 very active in family practice and very well
3 respected; also the Vice Chair of the Family
4 Division of the Allegheny County Bar
5 Association. Thank you for being here and
6 taking time out from your extremely busy
7 schedule.

8 MS. McCARTHY: Thank you.

9 Representative Cohen, Representative Walko,
10 members of the Judiciary Committee: I'd like
11 to thank you very much for inviting the
12 Allegheny County Bar Association Family Law
13 Section to be here today. I particularly am
14 happy to have this opportunity to substitute
15 for our chair Ken Horoho.

16 As has been stated, my name is Carol
17 McCarthy. I have been practicing in family
18 court for nearly 22 years. It will be 22 years
19 this November. The last 12 years my practice
20 has been exclusively in family law. I practice
21 in the surrounding counties as well as in
22 Allegheny County.

23 I'm an officer of the Family Law
24 Section of the Allegheny County Bar
25 Association. I also chair the Children's

1 Issues Committee of that organization. I'm a
2 member of the Pennsylvania Bar Association
3 Family Law Council and I chair its gender bias
4 issue. In other words, I have a lot of
5 familiarity with this area of the law.

6 In contemplating the issues that I
7 wanted to address today, I felt that it might
8 be a good idea to start with looking at what I
9 think we do right and what we do not need to
10 reform, despite the fact that a lot of people
11 might cry for reform. I've watched a lot of
12 reform over my 22 years starting with the
13 change from fault to no-fault. I hope if you
14 have questions of anything that you saw over
15 the last couple days you'll ask them of me
16 freely. I'm used to being interrupted all the
17 time.

18 I also think that in many of the
19 reform issues I have seen over the years, many
20 times the complaints come from a bad experience
21 with family court which, if you take that bad
22 experience and look at it on an individual
23 basis, it can sound like a grave injustice. If
24 you apply it to the picture as a whole, it's
25 perhaps not such a grave injustice. I think

1 that's where we need to look at this system.

2 I have a few areas that I'd like to
3 address regarding, let's not reform, and I have
4 a few areas that I'd like to address of, let's
5 reform.

6 Let me start with what you were
7 talking about earlier in relationship to let's
8 not reform. Let us not reform the no-fault
9 system.

10 Would you like me to break now for
11 His Honor Judge Baer? No problem.

12 CHAIRWOMAN COHEN: Please. That's a
13 perfect segue. Good morning, Your Honor.

14 ACTING CHAIRMAN WALKO: I would like
15 to, first of all, thank Judge Baer for the
16 wonderful tour we were given yesterday by the
17 Family Division. We saw a lot of interesting
18 programs, and in a county with 1.3 million and
19 many complexities, you certainly are taking
20 great strides. We thank you for taking time
21 out from your busy schedule. Judge Baer is in
22 charge of the Family Division of the Court of
23 Common Pleas of Allegheny County. We are
24 really honored to have you here.

25 HONORABLE BAER: I'm glad to be here.

1 I apologize for being a couple minutes late. I
2 actually came from an 8 o'clock meeting with
3 our court administration that we try to do
4 every Tuesday to stem the tide and keep the
5 operation running.

6 I had the chance yesterday to speak
7 very briefly with the committee. I appreciate
8 the opportunity to be here. I appreciate very
9 much the committee meeting dealing with
10 domestic relations, coming to Pittsburgh to be
11 part of this. It is among the most challenging
12 and difficult social policy conundrums in the
13 country today. We try to deal with it on a
14 policy level and a pragmatic level on a daily
15 basis to do what's best for the citizens, for
16 the persons of our county. We need
17 Harrisburg's understanding and we need
18 Harrisburg's help. We appreciate your being
19 here.

20 You explained to me yesterday that,
21 and I think it was Representative Cohen who did
22 this and I appreciate it, that the committee
23 had looked hard at the issue of whether
24 no-fault divorce should be eliminated. Had
25 decided that it should not be eliminated, and

1 then moved on to the economic issues, the
2 custody issues and the procedural issues.

3 What I thought I would do is talk for
4 a minute about why I believe your decision to
5 not eliminate no-fault divorce is a correct
6 one, and then use that as a segue to explain to
7 you why I think some other things need to be
8 changed because of distinctions between these
9 kinds of issues.

10 The proponents of the elimination of
11 no-fault assume that that would eliminate so
12 many of the problems that have arisen in
13 today's age of regular divorce. They assume
14 that if you eliminate no-fault that you would
15 reduce domestic violence; that if you eliminate
16 no-fault that you would reduce the custody
17 battles which is the vein of our existence. If
18 you eliminate no-fault that you would have the
19 independent spouse supporting the dependent
20 spouse, so that you would reduce the economic
21 difficulties.

22 That's all not so. If those were so,
23 I think it would be a very good idea to
24 eliminate no-fault; if you can eliminate
25 domestic violence, custody battles, economic

1 deprivation and the like. I think you do not
2 do that. I think all that happens is that,
3 people remain married, but nevertheless
4 separate; nevertheless continue to batter one
5 another; nevertheless continue to fight about
6 their kids, continue to refuse to provide their
7 spouses with economic support, et cetera. So,
8 you would not achieve your goal through your
9 means. That's why the elimination of no-fault
10 is not a good idea.

11 I think, however, that the real issue
12 there is, to what extent should we close the
13 courthouse door to certain classifications of
14 cases, because that is a good idea. I have two
15 issues that I want to raise with you today
16 where we could desperately use your help.

17 The first is bifurcation.
18 Bifurcation refers to the splitting of the
19 economic issues, equitable distribution,
20 alimony, attorneys fees and costs from the
21 divorce itself. As you all are very well
22 aware, in Pennsylvania when we first passed our
23 divorce code you had to wait three years to get
24 a no-fault divorce, and then, without your
25 spouse's consent. That's been changed to two

1 years. There it sits.

2 I know that there are bills
3 introduced in the legislature every year to
4 reduce that period. You would help us and you
5 would help the people of Pennsylvania immensely
6 if you would reduce that period from two years
7 to one year. My understanding is that the
8 people, the lobbying groups against that are
9 philosophically against anything that makes
10 divorce, quote, easier, end of quote. They
11 hope that there will be reconciliation, I
12 suppose.

13 I'm here to tell you that I do not
14 think anybody reconciles in the statistically
15 significant numbers anyway between the end of
16 the first year and the end of the second year
17 after they've been separate and apart. What
18 they do is, they continue to live under the
19 same roof without talking to each other, in
20 what looks very much like the old movie War of
21 the Roses.

22 They won't move out because, to move
23 out it gives the other an edge on who's going
24 to get the house at the moment of divorce.
25 They won't move out because it gives the other

1 an edge on who gets the kids. So, they stay
2 there. Tensions are unimaginably high. They
3 also stay there because nobody wants to assume
4 the costs of moving out. That does not help
5 things. That makes them angrier at each other.
6 It keeps their kids in the middle of this war
7 zone. It stops us from going forward because
8 the law is, you don't do the economic issues
9 until you are divorced. The reason you don't
10 do the economic issues until you're divorce is
11 because there are no economic issues absent
12 divorce.

13 If you could reduce that from two
14 years to one year, you would just help the
15 citizens immensely. It would allow us to get
16 the litigation over; get it straightened out
17 where the kids are going to live and when; get
18 it straightened out who's going to have the
19 house. Let them get on with their lives, which
20 is what they desperately need to do. You're
21 not going to facilitate divorce.

22 I'm not suggesting that you go to
23 no-fault divorce in 30 or 60 or 90 days. I
24 think that the cooling-off period of 3301(c) in
25 the mutual divorce of 90 days is a correct

1 period. I think that one year is also a
2 correct period. You would do other things that
3 I need not get into legally which would help
4 us. That would help immensely.

5 The other place where you can help us
6 immensely is involving custody. I mentioned
7 that to the committee yesterday. If you would
8 come to our motions court, and in Allegheny
9 County in Family Division we think justice
10 delayed is justice denied. We are open every
11 day at 1:30 for all comers. If you have a
12 problem, you walk in, and we'll hear it and
13 we'll decide it.

14 We hear 4, 5, 7 emergency, in quote,
15 custody cases every day, every day. Some of
16 them are true emergencies. Some of them are,
17 one of the parents snatched the kids and moved
18 out of state, and we need to deal with that.
19 Some are that a parent came home from work not
20 knowing he or she was going to be separated;
21 the house was empty; the kids were gone. We
22 need to deal with that. But most are not.

23 I was told last night about six
24 o'clock by someone asking me for help that they
25 had a case as to mother complaining because

1 father insist that the child cut the lawn at
2 father's house and mother says the child is too
3 young to cut the lawn. They want an order
4 preventing them from cutting the lawn.

5 I had a case not very long ago which
6 they tried to bring before me--I threw them
7 out--over whether or not a coat was a spring
8 coat or a winter coat. We've had cases as to
9 whether kids should wear open sandals or tennis
10 shoes to summer camp. What's happening in
11 these cases is that parents want us to parent
12 their kids. They want us to make the decisions
13 that they need to make.

14 Our Supreme Court about 5 years ago
15 in a footnote said that because custody is so
16 important, courts should always be open to
17 decide custody. Therefore, you can bring a
18 custody action at anytime without having any
19 threshold criteria to speak of. Prior to that
20 you had to show there was a substantial and
21 continuing change of circumstance before you
22 could bring a custody action.

23 Well, that makes sense. The Supreme
24 Court did make sense in a philosophical way.
25 Custody is important. Courts want to be open

1 to handle important issues. But in a pragmatic
2 way what it does, it says to parents you can
3 abrogate your responsibility to talk to one
4 another, to parent your kids in a post-divorce
5 situation to the courts. That's an illusion.
6 You cannot do that.

7 As Don said, there's 1.3 million
8 people here. Our Family Division is hearing
9 35,000 cases a year. We have 6 judges. We
10 cannot parent their kids. First, we don't know
11 their kids. We don't love their kids. Second,
12 we don't have an army to send out, an army of
13 police officers to send out to live with them
14 to enforce our orders, so we can't parent their
15 kids.

16 What do we do in that situation?
17 What we do is, we try to facilitate their
18 parenting of their kids. How do we do that?
19 We do that by trying to insist that they sit
20 down across from one another at a table and
21 talk to each other. We do that by using
22 skilled mediators who we've been involved in
23 the training with to do this mediation; to say
24 to them that your children are at risk to grow
25 up with significant behavioral adjustment

1 problems if you can't parent them.

2 You need to minimally communicate
3 with each other. You don't need to go to the
4 ballgame together. You don't need to go out to
5 dinner, but you need to be able to talk when
6 your kids are sick. You need to be able to
7 talk when they are matriculating from one
8 school to the next. You need to be able to
9 talk in terms of what your vacation schedule is
10 going to be or if there's a family event. You
11 need to be able to talk to each other. You
12 need to be able to minimally communicate with
13 each other, cooperate with each other. You
14 need to communicate and to cooperate. Until
15 you do that, your kids are in trouble because
16 we can't do that for you.

17 We started a mediation orientation
18 program in Allegheny County to try to do that.
19 There's already been a legal challenge to the
20 constitutionality and the lawfulness of that
21 type of program in Beaver County and that is
22 now pending in our Superior Court.

23 It is the nature of the legal system
24 that when you pass a law somebody will say it's
25 unconstitutional. Of course, we'll have to

1 decide. Our program is pretty aggressive in
2 terms of its interpretation of mediation
3 orientation. We believe what we are doing is
4 orientation and we follow the law. It's pretty
5 aggressive. You could help us immensely if you
6 would go rather from mediation orientation to
7 mandatory mediation. It would help us
8 immensely. You would help the people of
9 Pennsylvania immensely.

10 What we have found in our mediation
11 program is that, we are having -- It's a
12 challenge, let us say, to get the people into
13 the room. We have people that haven't spoken
14 to each other in 5 years. They can't even
15 stand the idea of being in a room of this size
16 together with one here and one in the back of
17 the room, which we insist they do because how
18 are they going to parent the kids if they can't
19 sit in the same room?

20 When we put them in a room face to
21 face with a skilled mediator, and we do it for
22 2 and a half hours which is all we do because
23 it's orientation. We don't do it for 5 or 6
24 sessions or for 10 hours. We find for the
25 first time in 5 years they begin to talk to

1 each other, and they are shocked that they have
2 some commonality. Of course they have
3 commonality. They have kids, but they've
4 forgotten that because they won't speak to each
5 other.

6 They then go from there to some
7 minimal agreement; perhaps, on a summer or a
8 weekend or pick up or drop off or whether the
9 kid should cut the lawn or not. When they talk
10 to each other it's not insurmountable for them
11 to resolve these problems because they both
12 love their kids, and they move from there and
13 they have some success.

14 Does everybody have success? No. Do
15 we have hopeless cases and hopeless causes?
16 Yes. If we can take a quarter of those kids
17 whose parents don't talk and get them to talk
18 to each other, we have done a wonderful thing
19 for those kids. I think we can do that through
20 mediation.

21 I'm here to tell you we can't do
22 that through traditional dispute resolution.
23 We can decide whether that child should cut the
24 grass or not. We can decide whether the child
25 should wear the tennis shoes or hard shoes if

1 we want to. My view is, we should not do that.
2 We should tell them that those are not the
3 kinds of issues courts decide. But we can do
4 that if we so choose. That, however, is not
5 the issue. The issue is an inability to talk
6 to each other and an inability to cooperate
7 with each other. Until somebody attacks the
8 disease, the symptoms will also continue to
9 crop up. That's what we are trying to do.

10 You can help us immensely if we can
11 go to a full-blown mandatory mediation program
12 as an alternative dispute resolution in
13 custody. I do not advocate that for the
14 economic interests. I don't think it's
15 necessary. I think we deal with them just fine
16 in a traditional dispute resolution setting.
17 But, I do believe that that is best for the
18 kids, and I think if we do not protect kids,
19 then all of us as members of two of the three
20 branches of government are not doing our job.

21 I will be glad to answer questions.
22 I intentionally left some time. I also
23 intentionally thought that I would limit my
24 remarks to the two issues where I think you can
25 help us most, which is the bifurcation area and

1 the mandatory mediation area. I'd be glad to
2 discuss other issues if you want.

3 ACTING CHAIRMAN WALKO: I'd like to
4 take this opportunity to introduce another
5 representative, Craig Dally, who has joined us.
6 Thanks for being here.

7 CHAIRWOMAN COHEN: Thank you, Judge
8 Baer. We appreciate you being here and
9 certainly for the guidance that you have given
10 to us.

11 You mentioned that there's a
12 challenge to mandatory mediation in Beaver
13 County.

14 HONORABLE BAER: Yes.

15 CHAIRWOMAN COHEN: On what grounds?
16 On what basis?

17 HONORABLE BAER: The case has some
18 factual specific issues that are bothersome and
19 interesting. However, the statement of matters
20 complained of on appeal by the lawyer
21 representing the appellant challenges the
22 constitutionality of the mediation orientation
23 statute; and also challenges whether or not, I
24 believe, whether or not the Beaver County
25 program is in fact a mediation-orientation

1 program.

2 The first issue is that -- I believe
3 we have 67 counties in Pennsylvania, is that
4 right?

5 CHAIRWOMAN COHEN: Yes.

6 HONORABLE BAER: I believe that
7 two-thirds of them now run some sort of custody
8 education or mediation-orientation program.
9 Most of these programs today are parenting
10 education programs, where a live educator
11 facilitator meets with parents to explain to
12 them what's occurring at the time of divorce
13 and separation and talks to them about what
14 their kids are going through to try to set the
15 stage for custody. More and more, however, are
16 going to the next step, which is the actual
17 mediation.

18 If none of those programs are
19 constitutional or none of them fall within
20 mediation orientation, they all fall by the
21 wayside. That's what the challenge is about.
22 My belief obviously is it's constitutional, but
23 just as obviously, I don't sit on the Superior
24 Courts so it's not my decision.

25 The actual case going up involves

1 some other difficult facts, but the rest of us
2 who are concerned with the policy are not
3 concerned with that specific case, but rather
4 the constitutional issues and the broad public
5 policy issues. I can talk about the facts of
6 the case if you want. They are interesting,
7 but they are not necessarily of statewide
8 significance.

9 CHAIRWOMAN COHEN: In my introduction
10 one of the things that I mentioned was hearing
11 from so many hundreds of citizens concerning
12 the entire issue of divorce, not just no-fault,
13 during the last term, which is what the impetus
14 was for this task force. Some of the
15 complaints we've had and you haven't dealt with
16 that today, but I know you can, is uniformity.

17 We did mention this morning the one
18 family-one judge rule which you have instituted
19 here in Allegheny County. But, we're concerned
20 and so many of our citizens are concerned about
21 uniformity of administration and, indeed, one
22 judge-one family as we go countywide. Forget
23 about, even as you mentioned, somebody picks up
24 and takes the kid to another state, another
25 jurisdiction.

1 But, many of the problems that have
2 existed is, in judicial enforcement from one
3 county to the next and even intra-county where
4 you don't have one family, one judge. Can you
5 just address that issue as to how we can assist
6 in that?

7 HONORABLE BAER: Yes. I'm not sure
8 how you can assist, but let me address the
9 issue. First of all, of our 67 counties,
10 probably two-thirds only have one judge. Some
11 of them have one judge for two counties. In
12 those counties there's not a problem.

13 In the counties such as ours and
14 Philadelphia County where you have family
15 divisions there should not be a problem. If
16 there is, then, respectfully, the
17 administrators in those counties, and it's more
18 than Philadelphia and us, it's the counties
19 with family divisions aren't doing their job.

20 In some of the medium-size counties
21 is where I think the problem exists. They
22 rotate judges through their divisions and some
23 rotate judges every 3 months and every 6
24 months. If a custody case--since we are
25 talking custody today, but it could be an

1 alimony case or an equitable distribution or
2 domestic violence case--begins with one judge.
3 It should stay with that judge, in my judgment,
4 and it should conclude with that judge.

5 Just as when you go to a doctor for
6 the treatment of a particular malady, every
7 doctor would take a different course of
8 treatment for you. Some would use this
9 prescription and some would use that
10 prescription. Some would operate, some would
11 not.

12 Every judge comes with her or his
13 own inherent biases. The lawyers understand
14 that and the lawyers listen to the judge, talk
15 to their clients about how the judge feels
16 about this particular case and they proceed
17 accordingly. If you change judges in the
18 middle of a case, you change biases in the
19 middle of a case. Then you send unclear
20 messages to the parents. If you send unclear
21 messages to the parents, you put the children
22 in the middle again of a very high-stressed
23 situation. That's not fair and that's bad.
24 So, you need one judge and you need that judge
25 to be consistent from the beginning of a case

1 to the end of a case.

2 If you have a situation where judges
3 rotate in and out of a Family Division, then my
4 view is that, a case that begins with that
5 judge should follow that judge through its
6 fruition regardless whether the judge leaves
7 the Family Division and goes upstairs or
8 downstairs or down the hall to the civil or
9 criminal courtroom. I think that would help
10 immensely.

11 I do not think that that should be
12 limited to custody. As I said, judges have
13 biases. Some judge will look at a situation
14 and say, I see permanent alimony. Another
15 judge would look and say, I see 10 years
16 alimony. There's a very subtle factual
17 distinction there which would be appropriate,
18 10 years or permanent. Obviously, if one says
19 permanent and one says no alimony, we have a
20 problem, but hopefully that's not happening.
21 One judge should handle the case all the way
22 through.

23 Let me comment on something else real
24 quickly if I might, Representative Cohen. We
25 have a saying on our floor. If we sent

1 everybody home angry, we have a good result.
2 That's very sad, but I think it's true. I know
3 you get hundreds of letters and phone calls
4 that are outraged. I do too, 5 or 6 a day. I
5 know that that the newspapers get 5 and 6 or 7
6 phone calls and letters, and I know that
7 Senators and the United States President get
8 letters to take action concerning these cases.

9 We cannot clone children. Wouldn't
10 it be nice if we could clone a child and give
11 each parent one?--an identical copy like
12 multiplicity. Mom and dad both love their
13 kids. That's something we don't doubt. They
14 both have an absolute right to a full and fair
15 relationship with their kids. That does not
16 mean that you take the kids' time and split it
17 mathematically down the middle because that's,
18 oftentimes, not best for kids when the parents
19 can't cooperate with each other and communicate
20 with each other. How do you get homework done?
21 How do you set bedtimes?

22 We have many, many, many cases where
23 mom takes the child to the doctor; dad takes
24 the child to another doctor for a second
25 opinion, where they use different optometrists

1 or ophthalmologists, where they use different
2 dentists. Think of the poor child who sees 2
3 doctors, 2 dentists, 2 eye doctors in every
4 case.

5 As I explained the biases of doctors
6 and of judges, the one doctor says the child
7 doesn't need glasses and the other doctor says
8 the child could use reading glasses. They're
9 both right. These are subjective fields. Now
10 the parents are before me, should we get
11 glasses are not? It's best for that child to
12 let one parent make that decision, which is
13 what we do.

14 You can't take that decision making
15 and give it to one side without the other being
16 angry. You can't take the child's time and
17 divide it between the two parents without them
18 both being unhappy. You give dad weekends and
19 mom weekdays. Mom says I never get to see the
20 kids because I work weekdays. Dad says I never
21 get to be a real parent because I'm only a
22 weekend parent. They are both unhappy.

23 The same thing is true of the
24 economic issues. You take the average family
25 in Allegheny County that's living on 1,250 or

1 \$1,300 a month. They're paying their mortgage
2 or their rent of 4 or \$500 and they're buying
3 their food and they have minimal disposable
4 income. Now you divide it into 2. They have 2
5 rents, 2 sets of utility bills, 2 sets of
6 staples. Not only is there no disposal
7 interest, neither one has enough money.

8 Let's assume, without stereotyping,
9 the father is the working spouse and mom is
10 home with 3 little kids. Father says, judge,
11 what are you doing to me? I can't live on 750
12 a month. Every month I'm \$300 in the hole.
13 You're bankrupting me. He's right. Mom says,
14 judge, what are you doing to me? I can't
15 support myself and these 3 little children on
16 750 a month. Every month I'm \$500 in the hole.
17 She's right. What are we to do? Say one of
18 them should live with disposal income and the
19 other should live on zero? We do the best we
20 can.

21 But the inherent nature of the field
22 is, you can't divide the kids and you can't
23 divide the money and make anybody happy. So,
24 if dad leaves that situation happy, I made a
25 mistake. He's got too much money or too much

1 time with the kids. If mom leaves that
2 situation happy, I made a mistake and she has
3 too much of one or the another. The nature of
4 the beast is, if I'm doing a good job, you're
5 going to be receiving complaints letters, as am
6 I, as is everybody else. That's tragic but
7 it's so.

8 CHAIRWOMAN COHEN: Thank you.

9 HONORABLE BAER: You're welcome.

10 ACTING CHAIRMAN WALKO: Thank you
11 Representative Cohen. Judge Baer, I was
12 wondering about the Generations Program. Is
13 there a filing fee for parties to participate
14 in that? Also, given that the time of a family
15 and stress is often a financially difficult
16 time, is that -- I know it's only been in
17 existence since February of this year. Do you
18 anticipate it resulting in substantial savings
19 to families in stress?

20 HONORABLE BAER: Let me answer that.
21 One of the favorite things for us to dialogue
22 about is your unfunded mandates, but we won't
23 get into that right now. We are dealing with
24 that in juvenile court with parent and child
25 advocacy which we try to pay for, but that's

1 not today's hearing.

2 There is a filing fee to establish
3 custody, to file a custody complaint or a
4 divorce complaint when there's a child for
5 custody. There is a filing fee for
6 modification of custody and there's a filing
7 fee for contempt of custody. The latter two
8 fees we added very recently. Our prothonotary
9 at our request asked for it and our President
10 Judge at our request approved it. We did that
11 because we are inundated with enforcement
12 petitions being filed by the same party twice a
13 month. We thought that a minimal filing fee of
14 \$30 would, perhaps, slow that down.

15 We were also being inundated with
16 modifications because you don't have any legal
17 threshold as I discussed earlier. We have a
18 filing fee of \$50 for that. The filling fee to
19 establish custody, a custody complaint is about
20 a hundred dollars. Maybe it's a hundred and
21 three dollars. We did not set that. We didn't
22 establish that. I'm not even sure exactly why
23 it's so much but that's what it is.

24 None of that has anything to do with
25 Generations. If there were no Generations

1 Program, you would pay those fees to the
2 Prothonotary to file your action. The
3 Generations Program does have costs. The costs
4 subsidize the program. They by no means pay
5 for the program. The county is spending a
6 great deal of money on the program.

7 The adult educational aspect, which
8 we call Lighthouse, costs forty dollars and a
9 dollar to go. This is the cost to the
10 litigants. The Sand Castle Program, which is
11 the child interactive group sessions which are
12 marvelous, costs \$30 a child. Again, that's
13 paid for by the litigants.

14 Then the mediation orientation
15 itself, which is the Generations aspect and the
16 whole program has come to be known as
17 Generations, which is two and a half hours,
18 father, mom with the private mediator in a
19 closed mediation session, which is never
20 reported to the court, is \$200 or a hundred
21 dollars a side.

22 What that means is that, if you are a
23 family of four, dad, mom and 2 kids, your cost,
24 your total cost is \$340.00. Forty dollars
25 times 2 is 80; 60 dollars times 2, I'm sorry.

1 Thirty dollars times 2 is 60, which is 140,
2 plus the \$200 for the mediation is \$340.00.
3 For your \$340 you get 4 hours of live education
4 for the adults. You get 4 hours of interactive
5 group sessions for your kids and you get two
6 and a half hours of the mediation orientation
7 with the mediator. So, the cost is \$160 a
8 side.

9 If you go and see a lawyer for an
10 hour of consultation, it will cost you in
11 excess of 160 for the hour of consultation with
12 the lawyer. If you file a motion, it will cost
13 you twice that. We are providing you with 10
14 and a half hours of individualized service.

15 My view is, if you do not believe
16 that your children are sufficiently at risk to
17 spend that amount of money to try to correct
18 the problem, you do not belong in the court
19 system. We do not mandate mediation for
20 everybody. Let me make that clear. You must
21 file, you must ask the state to become involved
22 in your family in order to be involved in
23 mediation.

24 If you are getting along just fine,
25 don't file a child for custody in your divorce

1 complaint. Don't file a complaint for custody.
2 Don't ask for modification or contempt of
3 custody. Go out and parent your kids and we'll
4 applaud you. We will not bring you into the
5 program. We don't want to fix what's not
6 broken. You only come into the program if
7 you're saying, state, we need your assistance
8 in parenting our kids.

9 ACTING CHAIRMAN WALKO: Thank you,
10 Judge. I have one more question. Then we'll
11 move onto Representative Masland. The Renewal
12 Program, we've all heard the stories about all
13 those horrible parents who are not paying their
14 support. Obviously, just incarceration is
15 futile in many cases. Would you describe
16 briefly the Renewal Program, if that's
17 possible? Is that a recent --

18 HONORABLE BAER: I will be glad to do
19 that. I'm impressed that you even know about
20 it, although I shouldn't be because I know your
21 investment in these issues. I congratulate you
22 for a sophisticated question.

23 The Renewal Center is a private
24 not-for-profit agency that began probably in
25 the '70's, or even before that and operates in

1 a downtown location on the Boulevard of the
2 Allies. Its principal function initially was
3 through the criminal courts, both the state,
4 the local and I believe the federal courts,
5 although I'm not sure that the feds use them at
6 this point. They take people in who have
7 issues which are precluding them from being
8 successful in society, principally surrounding
9 employment, but they are DNA issues. They can
10 be anger issues. They deal a great deal with
11 that, and that impacts upon us because a lot of
12 our issues involve anger between parties. It
13 might also involve some minimal mental health
14 issues and the like.

15 They take them in and they live
16 there. They develop a plan for them to find
17 employment. If they have anger problems, they
18 deal with it. If they don't know how to get up
19 and go to work in the morning, they deal with
20 that. If they don't know how to dress
21 appropriately, they deal with that. If their
22 inclination when an employer provides
23 constructive criticism is to punch the employer
24 out, which does happen, they try to deal with
25 that.

1 The important terms of our use of
2 them is that, so many of the people that we see
3 in the child support payment area, for whatever
4 reason, say to us, I cannot find a job or I
5 cannot hold a job. Or, we look and they've had
6 7 or 8 jobs, and not great jobs, washing dishes
7 at restaurants, delivering pizza, but they keep
8 getting fired from all of them, so we recognize
9 they have a problem.

10 Representative Walko is right. If
11 the individual is \$10,000 behind in child
12 support, you can only put them in jail if he
13 holds the keys to the jail house doors, civil
14 contempt. You put him in jail and you say, pay
15 a hundred dollars. What have you accomplished?
16 Sure, you got a pair of Nike's, cheap ones, for
17 the kids, but you haven't done much else.

18 As I talked about in custody, you
19 have not attacked the disease. You've merely
20 attacked one of the symptoms. What we do with
21 that person is, we put them in the Renewal
22 Center. If that person in the Renewal Center
23 reports to us--this happens all the time--and
24 says, I'm never paying, it really isn't a
25 question of not finding a job. It's a question

1 of anger. They deal with them, which is what
2 our mediation program is designed to do also,
3 although in a different area, in custody. They
4 deal with that. They say you got to pay. This
5 is your child and they talk through that, which
6 nobody has ever done with them.

7 If it's a DNA problem they deal with
8 that. They have certified drug addiction
9 counselors on staff. They breath test
10 everybody when they come in every time to make
11 sure nobody is drinking. They get them dressed
12 correctly. They have resources all over the
13 community. They find them jobs. They send
14 them to work. They do sessions to keep them at
15 work, and they get them working.

16 I have to tell you, we have had
17 wonderful success. Judge Mulligan just told me
18 a story last week -- No, it was Judge Baldwin.
19 Judge Baldwin told me a story of a very large
20 person who yelled, Judge Baldwin in the middle
21 of the hall and she thought I'm dead, and he
22 ran up and gave her a big hug and said, you
23 changed my life for the better. I work here
24 and I love it.

25 I have an individual who told me he

1 would never go to work no matter what I did
2 with him. Came to court with his duffel bag,
3 said, send me to jail, so I did. He was in
4 jail about 48 hours; very verbal, very bright
5 guy. Wrote me a note, it's not what it's
6 cracked up to be. I want another chance. Put
7 him in the Renewal Center. He got a job I
8 believe at Silo and then with Circuit City. He
9 sent me a baseball cap. He said, it's the best
10 thing that ever happened to him personally and
11 he also pays his child support.

12 It's been a very successful program,
13 in that, it's a remedial program to assist
14 people who are dysfunctional in becoming
15 functional and going to work. Our county
16 assists in funding it. Our county has been
17 wonderful in that regard.

18 ACTING CHAIRMAN WALKO: Thank you,
19 Judge. Representative Masland.

20 REPRESENTATIVE MASLAND: Thank you,
21 Representative Walko. Thank you, Judge Baer.
22 It's always a pleasure. I enjoyed your
23 testimony during the special session on crime,
24 and certainly you are quite on top of these
25 issues as well. I'd like to look at the

1 mandatory mediation for a second. You
2 suggested that's one area that we can help.

3 My question is, how should we do it?
4 In other words, there's the struggle, if you
5 will, between what's a court rule and what
6 should be done by legislation. With 67
7 counties, do we fashion some rigid system of
8 mandatory mediation and not allow for court
9 rule, or do we leave it flexible for Supreme
10 Court rule or for local rule? Do you want to
11 comment?

12 HONORABLE BAER: I sure do. Your
13 mediation orientation statute, as I know you
14 know, is a very flexible statute that provides
15 that every county can draft its own rules and
16 its own program.

17 Again, a very sophisticated question
18 and a very difficult question. There's a
19 constant struggle between local courts and
20 Supreme Court. I sit in both courts because I
21 sit as the Chair of the Supreme Court Domestic
22 Rules Committee.

23 As to amount of structure, my view is
24 that, you need to leave it very flexible. You
25 need to leave it flexible because we are such a

1 varied and disparate state; that what would
2 work in Allegheny County will not work in
3 Philadelphia County; notwithstanding we're the
4 two biggest counties. We have very different
5 demographics and very different problems. What
6 will work in our county and Philadelphia County
7 will not work or would not be appropriate in
8 Pike or McKean or Potter or Forest.

9 Indeed, they may not need it. I
10 don't know. You'd have to ask those judges. I
11 didn't talk to them. If you are in a county
12 where you have 11 lawyers and you have 3,000
13 people and everybody knows everybody and always
14 has, maybe they do mediation much more seat of
15 the pants than we can where we are 1.3 million
16 people.

17 I think that you want to leave it
18 very flexible. I think it necessarily has to
19 develop by local practice to some extent and be
20 tailored to the local situation.

21 What we need from you -- It's a brave
22 new world. What we're saying when we talk
23 about this is, our traditional mechanism of
24 dispute resolution which has guided America
25 marvelously for 200 years and England before

1 that doesn't work in custody. That we don't
2 have a dispute, and we give it in front of a
3 judge or a jury and we decide it and we send
4 them on their way because that's not what this
5 is about as I described. So, we're saying we
6 need a new methodology dispute resolution for
7 custody.

8 I do think that that's dawning on all
9 of us. I think this discussion would have
10 probably been laughed at 10 years ago, but I
11 think that as we scratch our heads and say,
12 custody is going to be the death of us and you
13 get your letters, that that's what is dawning
14 on us.

15 What we need from you is the
16 statutory authority to do this, because 10
17 years ago it might not have been constitutional
18 and today it probably is. Our Constitution is
19 a dynamic document that changes with the time.
20 Ten years ago the legislature might not have
21 thought this was a necessary adjunctive dispute
22 resolution, and today the legislature might
23 well think it is because of the difficulty of
24 custody and the fact that kids are at risk.

25 So, we need from you the statutory

1 permission that our society, through its
2 elected officials, will permit this. Then
3 allow us to design the specific programs on a
4 countywide basis to best suit us.

5 I might say, our program, and I think
6 Representative Cohen asked this -- or
7 Representative Walko asked and I didn't answer.
8 Our program is doing wonderful. If we have a
9 difficulty and we are working on it--that's
10 where I was at 8 o'clock this morning before
11 coming over here--is, we need to get the two
12 parties to pay their money and to go into the
13 room together which can be traumatic and can be
14 difficult.

15 Once we get them into the room as I
16 described, people who haven't spoken to each
17 other in years and years are making tremendous
18 progress inside of two hours. But, they didn't
19 know they had this commonality of interest
20 until we forced them into the room, forced them
21 eyeball to eyeball, and forced them with fine
22 professional help to begin dialoguing. We will
23 take parents who would never have talked to
24 each other again until their kids were 18 or
25 long gone and get them to talk to each other.

1 In answer to your question, I think
2 we need a great deal of local flexibility.

3 REPRESENTATIVE MASLAND: One other
4 question on the mandatory aspect of mediation
5 that arises whenever we talk about this is
6 primarily from people that are concerned about
7 domestic violence. Are we going to force
8 individuals who have been victims of domestic
9 violence in those situations? We talked about
10 that briefly yesterday. I think it would be
11 helpful maybe if you would share your comments.

12 HONORABLE BAER: I'd be glad to do
13 that and elaborate a little bit on it. The
14 answer is no. The statute that you've already
15 passed says that if you are a victim of
16 domestic violence you don't have to mediate.

17 Domestic violence advocates are
18 afraid of mandatory mediation because they are
19 afraid that a spouse with a, again, being
20 gender neutral, battered spouse syndrome, if
21 you will, battered wife syndrome, could be
22 intimidated into inappropriate concessions in
23 mediation. There's several answers to that.

24 First, in our program, and I would
25 recommend it, if you say you are the victim of

1 domestic violence we accept that. We don't
2 make you prove it. We don't put you in a
3 courtroom and scrutinize you. We accept that,
4 and we excuse you from the program.

5 If I can digress a little bit, those
6 people who don't want to mediate can use that
7 as an excuse to get out. It's not a perfect
8 world. We know that. They are not doing their
9 children any favors. They're really not doing
10 themselves any favors if they use it as a
11 pretext. If they do, they do. What can you
12 do?

13 Our program of mediation, whether it
14 be mandatory or not, is not to punish anybody.
15 It's to help people. I guess that falls under
16 the cliché that you can take the horse to the
17 water but you can't get them to drink. If the
18 program after you make it available, if they
19 are going to use a pretext to get out, then
20 shame on them. We let them out because we
21 don't want to scrutinize the domestic violence.

22 Let's me also say, however, what's
23 got lost in that debate, if you have trained,
24 skilled mediators, they will not permit
25 somebody to be coerced or dominated in

1 mediation. I have sat through mini-mediation
2 training. I have not sat through the whole
3 thing because of my calendar. I'd like to some
4 day. But all of our mediators are certified by
5 the American Council of Family Mediators. All
6 of them are trained and all of them are
7 excellent.

8 If they see a situation where one
9 party is dominating the other, regardless of
10 why, even if that party that's being dominated
11 came voluntarily, they stop the mediation then
12 and there. They say, this case is not
13 appropriate for mediation. They send it on to
14 traditional dispute resolution where the judge
15 protects the parties. That safeguard is also
16 built in.

17 REPRESENTATIVE MASLAND: Thank you.

18 HONORABLE BAER: I do not -- Let me
19 finish by saying, I said it's not a perfect
20 world. We are not going to save every kid, but
21 every kid we save is another kid saved. The
22 domestic violence concerns are not enough to
23 not do the program. Safeguards can be built
24 into the program rather than failing to do the
25 program.

1 ACTING CHAIRMAN WALKO: Thank you,
2 Judge Baer. We know you have to get to court.
3 We have a very tight schedule. We really
4 appreciate it. I have often said we could have
5 one witness at a great hearing and it would be
6 you. Maybe we could have a 5- or 6-hour
7 hearing some time.

8 HONORABLE BAER: You can tell that I
9 find this challenging. I find it difficult.
10 When I ran for judge I did it and I know it
11 sounds corny, but I did it because I thought it
12 could have an impact on people and upon
13 society. I found by accident when I become
14 administrative judge that you can have a great,
15 a much broader impact upon people when you make
16 systemic changes than you can doing case by
17 case in the courtroom. I have come to like
18 that role and to think about these broad
19 issues.

20 I enjoyed coming. I enjoyed talking
21 to you. I'm available at anytime for you
22 informally or formally. Any of you who want to
23 visit my courtroom or our court, you don't need
24 an appointment. Come in anytime. Anytime you
25 want to talk to me, pick up the phone and call.

1 I answer all my phone calls except from
2 litigants because I'm not permitted to.
3 Anything I can do for you would be my pleasure.

4 ACTING CHAIRMAN WALKO: I'd like to
5 recall Attorney McCarthy.

6 MS. McCARTHY: Thank you. It's been
7 a pleasure to follow Judge Baer. I think every
8 Family Division judge in this county probably
9 respects him as much as you all do. We are
10 very, very lucky in Allegheny County because we
11 do have such a stalwart bench.

12 In following his remarks gives me
13 the opportunity to agree with a lot of what he
14 said and, perhaps, reinforce it, but also to
15 give you a different perspective on some of
16 what he said because he's a judge and I am a
17 practitioner. We see the population that you
18 serve slightly differently. If I might, I'd
19 like to address some of the issues that Judge
20 Baer addressed because he sort of covered some
21 of the things that I was going to cover.

22 As I said, let's not eliminate
23 no-fault divorce. You decided not to do that,
24 and I concur with what Judge Baer said and,
25 perhaps, state it a little differently. Where

1 we need to focus the changes as a result of
2 divorce is not in the divorce laws. Maybe we
3 need to make marriage a little harder rather
4 than divorce, but we need to look at the
5 economic consequences.

6 However, one of the things that I
7 seriously disagree with Judge Baer on is the
8 reduction of the separation period to one year.
9 I wasn't really in favor of reducing it from
10 three years to two years, and I'll tell you
11 why.

12 I agree that we should not have a
13 fault system where people are stuck in a
14 miserable marriage, because the reality of it
15 is, most people don't get divorced for that one
16 incident of infidelity, but it's because they
17 can't get along anymore. Their goals have
18 changed. They turn out not to be the goals
19 they thought they were. I think we shouldn't
20 make them stay. Therefore, it takes on a
21 unilateral aspect.

22 That means that, the 55-year-old
23 woman who 30 years ago promised to love, honor
24 and obey and be supported by this man; or,
25 change the roles, this man promised to take

1 care of her and she would love, honor and obey,
2 decides, wait a minute. I've changed my mind.
3 I don't want to spend my retirement years doing
4 the laundry and having this boring job and
5 going around to the cocktail parties for his
6 business. Or, I don't want to spend my
7 retirement years with someone with gray hair.
8 I want to go out and do something different. I
9 want to have a whole new career. Well, that's
10 good, but, we can't be inhumane about it and
11 say, surprise. I want a divorce.

12 You have got to give people time, a
13 chance to adjust to this. You cannot imagine
14 the number of people who have come through my
15 office who are shocked that the marriage is
16 over with or that the problems that they have
17 been discussing in their marriage are so bad
18 that somebody would actually get up and leave.
19 It comes as a real surprise. Skip whether it
20 should or shouldn't. It does.

21 My experience watching clients and
22 watching my friends, and I think you have all
23 watched your friends go through it, is that
24 what happens is that it takes 6 months, maybe a
25 year to adjust to this. It is no different

1 than a death. It's a grieving process. It's a
2 loss. You have got to emotionally get use to
3 it, and then you need the time to go on.

4 At the beginning of the divorce
5 process she says, this house I decorated it. I
6 did all this sort of stuff. I have to keep
7 this house. This is so important to me. It
8 represents so much from the breakup of the
9 marriage. A year later she starts seeing, wait
10 a minute; \$1,200 a month mortgage and I'm going
11 to be getting \$800 a month in alimony, and I'm
12 not going to have any cash, maybe I can't
13 afford this house. People need that time to
14 come to that adjustment.

15 So, I submit to this panel that what
16 Judge Baer said focuses in on an issue that is,
17 perhaps, rather limited when he talks about the
18 misery of people staying in the same household.
19 One way to fix that, perhaps, is rather than
20 having the requirement be that the parties need
21 to live separate and apart for two years and
22 leave that undefined so they can still live in
23 the same household is to make living separate
24 and apart be a physical requirement.

25 In other words, you have to

1 physically separate, and maybe you address that
2 issue by changing the criteria for exclusive
3 possession of the marital residence because now
4 it's virtually impossible to get exclusive
5 possession of the marital residence
6 particularly where it's jointly titled.

7 I have some suggestions about how to
8 address the unified family court question that
9 might go to that as well, but I think that we
10 need to look at that issue. While people who
11 live in the same household for this two-year
12 period can be miserable and make everybody else
13 miserable, those are not the majority of the
14 cases, quite frankly; at least not what I see
15 coming through my office, and there are ways to
16 address those problems rather than to simply
17 say, let's make it one year and not give people
18 the opportunity to adjust to this.

19 I also agree and disagree with
20 something that Judge Baer said regarding
21 custody and closing the courthouse doors. I
22 see the clients who don't ever make it to the
23 courthouse on these custody issues. I see the
24 people who come in and one of their first
25 concerns is, how do I do this easiest for my

1 kids? They never make it to the courthouse.
2 What Judge Baer sees and the family bench here
3 sees are the people who make it to the
4 courthouse, and there's a slightly different
5 problem.

6 The problem is that, he's right in
7 the sense that motions are too readily
8 available and, perhaps, we need to change the
9 criteria back to what it was before that.
10 Before you can come back to court and ask for a
11 change in custody you have to prove there's
12 been a substantial change in circumstances.
13 That might be a simple solution to the problem.

14 I agree with him, and I can't tell
15 you enough how much I agree with him in terms
16 of this mediation question. He will be the
17 first to tell you that I wasn't standing there
18 rah rah cheering for it when it was first set
19 up, because one of the problems is it delays
20 people's access to the courts. I happen to
21 think that we shouldn't delay people's access
22 to courts. And the constitutionality
23 challenges on a very specific narrow kind of
24 program. It involves religion issues. I'm not
25 necessarily sure that it per se is going to

1 address the statute directly.

2 What I do think needs to happen is, I
3 think we need to make mediation mandatory, not
4 mediation orientation. What we do now is, we
5 bring them into the room for two hours. I have
6 got news for you, a lot of these issues take
7 more than two hours. The first half hour of
8 which is going to be devoted to, let's get over
9 the anger. How long the mediation should be,
10 et cetera, should be flexible and should be
11 able to be based on the different court
12 systems, or the different counties.

13 What I don't want to see is us
14 closing the courthouse doors. That goes to one
15 of the things that I'd like to see not be
16 reformed. One of the things that I hear a lot
17 of now is, family court should be treated
18 differently and we should have alternate
19 dispute resolution.

20 While I believe tremendously that
21 mediation is a good start in eliminating the
22 problems that the citizens complain to you
23 about in relationship to custody cases, I don't
24 think the solution is that family court cases
25 should be treated any differently. I believe

1 the citizens of this Commonwealth are entitled
2 to some level of uniformity.

3 In other words, the legal system --
4 drop back to basics. The legal system is here
5 because I say it's A and you say it's B and we
6 can't agree. That's what the judge is supposed
7 to do. If I say the best interest of the child
8 is with me and dad says the best interest of
9 the child is with him, guess what? Maybe
10 sometimes, ultimately, somebody needs to answer
11 that.

12 If I can go to court and some judge
13 can tell me whether I'm at fault for my car
14 accident, I don't know why I shouldn't be able
15 to go to court for something more important
16 like deciding with my kids. It would be an
17 ideal world if parents would never bring
18 custody cases to court, but this isn't an ideal
19 world. This isn't what happens.

20 I think that we have to keep the
21 courthouse doors open and it creates a problem,
22 and I agree with what Judge Baer said about
23 uniformity. It does create a problem as to
24 uniformity because each one of these cases must
25 be handled as an individual case because each

1 one of these kids is an individual. Each one
2 of these husbands and wives are individual.
3 The fact that my neighbor Mary Smith got \$700
4 and I'm only getting 500 is because it's a
5 different case. That has to happen. I think
6 we have to look at it from that perspective and
7 I think we have to avoid things like
8 presumptions.

9 I agree with Judge Baer when he says
10 that the concept of splitting the children down
11 the middle is not a good idea. He talked to
12 you about educational issues. Let me give you
13 another real basic.

14 Every night when you go to bed you
15 know what bed you are going to sleep in. I
16 don't know why a 10-year-old child shouldn't
17 have that same option. I don't know why a
18 10-year-old child has to have 2 sets of
19 toothbrushes. I don't know why a 10-year-old
20 child has to be able to remember where their
21 favorite toy is or schlep their pillow from
22 house to house within a week or from week to
23 week.

24 That's not to say it isn't a really
25 good idea in certain circumstances, but it's

1 got to be the right series of circumstances
2 with the right combination of people and the
3 right combination of kids. The fact of the
4 matter is, most custody cases are decided at
5 birth. Most custody cases are decided from the
6 time the kids are born until the parties
7 separate. Because, we have to focus in on the
8 children; not on the parents.

9 Those are my agreements and
10 disagreements with Judge Baer. It's also fun
11 to disagree with him.

12 Let me talk to you about some areas
13 of reform, one of which I happen to also
14 disagree with him about, and it goes to the
15 unified family court. Again, this is from the
16 litigant's experience.

17 I agree that we need to have unified
18 family courts. The problem is as I see it from
19 the complaints that I get from my clients, and
20 probably, therefore, the complaints that you
21 getting from the citizens, goes to the
22 fractured system. Today I go to court on
23 support. Next month I go to court on custody.

24 The reality of it is, is that, that
25 creates a bigger problem for the clients than

1 it does necessarily that Judge Baer believes in
2 equally shared custody and Judge Mulligan
3 doesn't. I agree with him that it would be
4 nicer to have more consistency and uniformity
5 following through in the case, but here's where
6 I have the problem with one judge-one family.

7 People who are going through this do
8 not behave the way they would under other
9 circumstances; trust me. They just don't.
10 It's an extremely emotional experience. In the
11 first 6 months people might not behave as well.
12 They might not act as rationally. She's never
13 going to get a dime. That makes an impression.

14 What about she comes into court,
15 she's very angry. There's been some minor
16 incident and she claims that he's sexually
17 abused the child. Remember, judges are human
18 beings. They don't put on this black robe and
19 forget their biases. They don't put on this
20 black robe and aren't impressed by these sorts
21 of things.

22 So, you come into a motions
23 proceedings where she wants an emergency relief
24 with no contact and claims sexual abuse. You
25 can't decide it right then and there and you've

1 got to have a hearing. Until that hearing
2 where maybe it will show there was no sexual
3 abuse, this taint is in the air. It's in the
4 judge's mind. I believe that the judges do
5 their very best, at least in our county. They
6 work hard to avoid this sort of stuff, but
7 let's get real. The fact of the matter is
8 that, these kinds of things carry through.

9 I guess my other problem with it is,
10 this goes to the separation period, perhaps.
11 My other problem with it is, is that, the
12 clients reality is, she comes home and there's
13 the Dear Jane note. He comes home, there's the
14 Dear John note. Whoops, now what do we do?
15 Who's going to have the house? Who's going to
16 pay the VISA? Who's going to pay the
17 utilities? Which car do I get? You know,
18 those kinds of issues. Those are the
19 immediately pressing issues. How do we divide
20 up the one household into two households even
21 if it's on a interim basis?

22 One thing I have thought about and,
23 perhaps, haven't thought it through completely,
24 is that, we have some sort of separation
25 proceeding, and maybe this is conducted by a

1 different judicial fact finder, because
2 remember, we don't have juries. The people who
3 hear this are also the people who are
4 ultimately going to decide the case. So, maybe
5 we need to have a judicial body, whether it be
6 masters or hearing officers or judges who
7 decide these issues upfront. Who gets the
8 house? Who's going to have how much income
9 going which way? Who's going to see the kids
10 when? Which bills are going to get paid?

11 As it stands right now, we talk
12 about who gets what in support; when the kid is
13 going to see each other, but all these other
14 issues about the cars, the debts, the house,
15 the pots and pans, they're just sort of left
16 for the parties to fend for themselves. That's
17 another area where you don't necessarily get
18 uniformity, because that's what merry where
19 (phonetic) to a certain extent you hire a
20 lawyer who knows the family court system well,
21 you're going to end up better off. That's one
22 way of fixing it.

23 Other people have suggested things
24 like, we don't have custody heard by the same
25 judges that hear the economic issues, because

1 they are different and people's attitudes are
2 different and their behavior is different.
3 Another suggestion has been, perhaps, we have
4 judges for the pretrial process. Again, this
5 sort of goes to the separation court idea.
6 They hear advances against equitable
7 distribution. They hear exclusive possession.
8 They hear mortgage foreclosure type issues, and
9 then another judge is the one who hears the
10 trials on custody, the trials on equitable
11 distribution, the trials on alimony pendente
12 lite.

13 Quickly I'd like to address two other
14 areas, and one goes to this area that I just
15 said, which is -- and this is one that no one
16 likes to hear because it involves money from
17 the government, but, we need more judges.
18 Maybe it doesn't involve money. Maybe it just
19 involves the shifting of priority.

20 In order for people not to suffer
21 through the system, they have to get into court
22 quicker. We do it as well as we can. I mean,
23 the guidelines -- A lot of the rules that we
24 have instituted keep people out of the court
25 system because we have to get to the cases

1 quicker or give them a short shrift of justice.
2 The complaints that you are hearing are, I
3 didn't get my day in court. I never got to see
4 a judge. It was done out in the hall. To do
5 it we need more judges.

6 One of the other issues that I have a
7 big complaint about, and I think goes to this
8 whole thing about the economic consequences
9 from a no-fault divorce because divorce is
10 easier is, how we treat the economically-
11 dependent spouse. The fact of the matter is,
12 the economically-dependent spouse is the person
13 who makes less money, 50 percent less or more.
14 That person usually makes less money because
15 they are staying home and devoting themselves
16 to the marriage, raising the kids, doing the
17 laundry, going to parties, making contacts.

18 That person needs to have some form
19 of compensation to then move into the normal
20 work force because they are not out there
21 getting paid minimum wage. Unfortunately, when
22 the wife of 20 years or the husband of 20 years
23 goes out and says, yeah, I have been home for
24 the last 20 years doing the most difficult
25 management job in America, running a household,

1 no one gives them credit for that, and they
2 don't immediately move up the corporate ladder
3 and get a better paying job.

4 We, in the divorce code, if we are
5 going to say, let's go out, let's let them out
6 of the marriage, we have to try to maintain the
7 economic bargain, which is 30 years later I was
8 supposed to be able to be taken care of. I did
9 my part. Now it's my turn to enjoy the fruits
10 of that; just like when the 55-year-old man is
11 severed from Westinghouse, he gets a nice
12 severance package, sort of a similar kind of
13 concept. The legislature can fix it maybe
14 easily.

15 A lot of people will say to me it's
16 already in the code. Nobody is reading it if
17 it's in the code, and it's written in very fine
18 ink. The fact of the matter is, what we need
19 is something that says, compensation for years
20 of service to the marriage. Not compensation
21 because I stayed home and I didn't work outside
22 of the marriage and I ate bonbons and watched
23 soap operas if that's what the issue is, but
24 compensation for what you contributed to the
25 marriage and to the whole economic unit.

1 Because, her staying home benefits
2 him because he doesn't have to pay for somebody
3 to do what it is that she's doing or leave his
4 job early to go get the kids when they're sick
5 from school. I say this on a gender basis
6 because this is the way society set it up; not
7 because it should be that way, because there
8 are cases the other way. The fact is, that's
9 what we have to look at.

10 So, add something in the code that
11 makes it very specific that we are going to do
12 something to compensate for the years of
13 service, whether it's alimony, which I think we
14 do not give readily enough; whether it's giving
15 her a hundred percent of the marital estate
16 because 5 years later he's got enough money
17 that he's going to have regenerated it. Or, it
18 is to make sure that alimony is not such a
19 secondary remedy that it's parceled out in a
20 very parsimonious fashion. Thank you.

21 CHAIRWOMAN COHEN: Thank you.

22 ACTING CHAIRMAN WALKO: Thank you
23 very much, Attorney McCarthy. I'm sorry we
24 won't be able to have questions at this time
25 unless there's, perhaps, one brief question.

1 Any of my colleagues? Representative Masland.

2 REPRESENTATIVE MASLAND: If I could
3 just make one brief comment. You talked about
4 a change of circumstances for custody. Almost
5 anything could be a change of circumstances in
6 custody when a child goes from age 12 to 13 and
7 all of a sudden is a teenager. That is a
8 change of circumstances.

9 MS. MCCARTHY: As well it should be.

10 REPRESENTATIVE MASLAND: I'm just
11 saying, I don't know that we should do that. I
12 don't know that we should put that requirement.
13 If we do put that requirement, it's not much of
14 a requirement.

15 MS. MCCARTHY: It gives the courts a
16 little bit of help. Thank you.

17 ACTING CHAIRMAN WALKO: Thank you
18 very much. Our next witness is Kevin Sheahen.
19 He is the President of the National Congress
20 for Fathers and Children.

21 MR. SCHEAHEN: First, I'd like to
22 thank you for allowing me to come speak.

23 ACTING CHAIRMAN WALKO: Thank you for
24 being here.

25 MR. SCHEAHEN: And I want to thank

1 you also for having this hearing. I think it's
2 more than needed.

3 I wanted to first agree with Judge
4 Baer that mediation is good. We need to have
5 that. We need to get custody out of the courts
6 and into the professionals.

7 Second, I also agree with them on
8 going from two years to one year on the
9 divorce. My main concern I'd like to talk
10 about is that, I am my kid's dad. I'm a Local
11 Chapter President of National Congress for
12 Fathers and Children. We are a 501(c)(3)
13 advocacy group. We advocate the best parent is
14 both parents.

15 Pennsylvania's families and children
16 are suffering from the present domestic
17 relations system. Children are routinely
18 denied access to one parent in divorce and
19 paternity situations. Fathers' constitutional
20 rights and equality are compromised by the
21 present PFA's, Protection From Abuse Orders.
22 Support awards have become entitlement programs
23 for custodial parents putting noncustodial
24 parents into untenable situations.

25 Pennsylvania domestic relation courts

1 have become an industry for judges and
2 attorneys for court-related professions. This
3 industry uses family resources at a time when
4 those families needs those resources the most.
5 This industry has excluded families who cannot
6 afford the legal costs and, thus, denied them
7 due process.

8 As an example, I got a letter just
9 Saturday from someone out of the blue heard of
10 our organization. It was a grandmother
11 complaining that her son can't see his son or
12 grandson and they have spent \$2,000 on
13 attorneys just to try to see their children on
14 the weekends; just to try to see his kid.
15 Judging from the way the person wrote the
16 letter, these people are not 50,000-a-year
17 salary. This happens all the time in this
18 industry.

19 I'm here to talk about the problems
20 with the present custody system and to present
21 a solution that is being presently submitted to
22 Pennsylvania's House as draft legislation.

23 Pennsylvania's custody statutes are
24 gender neutral; yet, mothers are awarded
25 primary custody 90 percent of the time. Judge

1 Baer said what the problem was and so did Ms.
2 McCarthy. The judges are biased. Judges
3 rarely order joint custody when custody is
4 contested. The reasons are that parents bring
5 custody to court; therefore, they cannot get
6 along. Why do you think they divorce?

7 The judges then refuse to follow the
8 present statutes to determine which parent or
9 parents is not cooperating with the children.
10 The present statutes say that the parent most
11 willing to cooperate with a noncustodial parent
12 is the one who should have custody. In
13 essence, the judges now reward the custodial
14 parent's noncooperation in denying joint
15 custody.

16 So, where's the problem? Like I said
17 before, Judge Baer said the problem is, it's
18 the bias in the judges. Many family law
19 attorneys in Allegheny County say 95 percent of
20 the problem is with the judges. Why are the
21 judges the problem? It's their bias. What
22 particular is the bias? It's called a
23 confirmatory bias.

24 A confirmatory bias is described as
25 mental health professionals who display a

1 tendency to skew the material to fit a
2 preconceived hypothesis. Poorly trained
3 clinicians frequently fail to explore
4 alternative explanations or seek information
5 that is discrepant to their favorite theory or
6 hypothesis.

7 So, if a judge thinks, well, moms are
8 nurturers; dads are providers. He looks at a
9 test, a draw person test which is a typical
10 psychological test. He's going to look at the
11 drawings, well, because he drew it this way
12 he's not a good parent.

13 Is this judge a mental health
14 professional? No. Usually his training is not
15 in this field. Usually our judges come from
16 the ranks of the Bar Association. However, in
17 the present form of Pennsylvania's custody
18 decision-making process, the judge is called
19 upon to use his discretion to determine the
20 best interest of the child.

21 What happens in the courtroom is the
22 application of this confirmatory bias of the
23 judge. This bias all too often follows our
24 society's historical roles of fathers being
25 bread winners and mothers being nurturers, i.e.

1 the tender years doctrine.

2 Our society suffers greatly from the
3 absence of an involved father. A child who
4 grows up without an involved father has a 400
5 percent greater chance of being involved with
6 crime, substance abuse and early sexual
7 activity.

8 Judge Baer is the Administrative
9 Judge of Family Division and Juvenile Court in
10 Allegheny County. On January 31st of this year
11 he made a statement, while wearing his juvenile
12 court hat, that there's too much fatherlessness
13 in this county. Yet, this is the same judge
14 who routinely limits noncustodial parents,
15 usually fathers, to spending 4 days a month
16 with his children; 4 days a month. Think about
17 it. Can you be a parent 4 days a month?

18 I want you to seriously think about
19 that. The answer is, he cannot be a parent.
20 He becomes a visitor and our courts label him
21 as such. How would you like to be called a
22 visitor of your own children? This adversarial
23 degrading system of our children's parents does
24 not have to be this way. This system, in fact,
25 promotes parents to become absent or deadbeats.

1 I'd like to quote Doctor Robert Fay,
2 a pediatrician in New York, that most deadbeat
3 dads were, in fact, beaten dead by our court
4 system.

5 What can you, as our legislators, do
6 to help this problem? The first answer is for
7 the public to vote these prejudice judges out
8 of office, but that is easier said than done.
9 Legislation is needed to limit the discretion
10 of the judges when it comes to determining
11 parenting skills.

12 Representative Mike Veon has drafted
13 such legislation. His draft legislation
14 presently has 18 sponsors within the
15 Pennsylvania House. A copy of the proposed
16 bill is attached.

17 I would like to briefly discuss some
18 of the highlights of this proposed legislation.
19 First, it's changing Pennsylvania's definition
20 of shared custody to joint custody. Why is
21 this important? Most states use the term of
22 joint custody over shared custody, so we get
23 uniformity that way.

24 Joint custody is also a more
25 legalistic term than shared custody. Joint

1 custody implies greater degree of parental
2 equality than shared custody, but the most
3 important aspect of this legislation is as
4 follows.

5 There shall be a rebuttable
6 presumption that an award of joint custody is
7 in the best interest of the child. What does
8 rebuttable presumption mean? A rebuttable
9 presumption means that the confirmatory bias of
10 the judges is now limited. If they award
11 anything less than joint custody, then that
12 judge must put in writing on the order the
13 reason for denying joint custody.

14 What if a parent is unfit? The
15 existing statutes currently list some objective
16 measurements to consider, such as criminal
17 convictions--notice I use the word convictions
18 and not allegations--in determining custody
19 awards. This would remain intact in this
20 proposed legislation. Some of these objective
21 criteria include criminal homicide, kidnapping,
22 unlawful restraint, and the list goes on.

23 The same guidelines for determining
24 parental fitness should also cover court-
25 appointed psychologists, but that's a separate

1 hearing. However, this proposed bill doesn't
2 address that industry. That industry needs to
3 be addressed also. One court-appointed
4 psychologist used my height as a factor in not
5 recommending shared custody.

6 Another important change in Chapter
7 5303 recommended by Mike Veon is to require
8 parents to submit a parenting plan. It's
9 already in I think it's Section 5308, but it's
10 not enforced by the judges.

11 Allegheny County is close to this
12 aspect with the Generations Program, and I
13 applaud Allegheny County for doing that. I
14 think it's a great step. In this program
15 parents meet with a mediator. Then the parent
16 with the most reasonable parenting plan has
17 come away more satisfied and the other parent
18 has become satisfied too rather than going
19 through litigation. A lot of cases have been
20 solved by this and that's good.

21 Research and common sense tells us
22 that a custody order or parenting plan
23 consented to by both parents is more likely to
24 be honored by both parents. Children also know
25 that their parents care enough about them to

1 overcome their personal conflicts when it comes
2 to this issue.

3 Another positive note about the
4 Generations Program is the noninvolvement of
5 attorneys during this process. There are two
6 good reasons why it is in the best interest of
7 the children and parents.

8 First, the cost to the family is
9 one-fifth than if the same hearing was held
10 during a conciliation, with attorneys present.
11 The second, and more important reason is, now
12 both parents have become educated on what
13 custody is, how children are affected, and have
14 become exposed to mediation or conflict
15 resolution--a skill separated parents need to
16 acquire. The parents are right there talking
17 to the mediator; not the attorneys speaking for
18 them.

19 What if a parent does not want joint
20 custody? If a parent only wanted to see his
21 kids 4 days a months, the answer is a simple
22 one. That parent can submit his parenting plan
23 taking less than 50/50 time with the kids.
24 With the adversarial court system that
25 Pennsylvania has, it is easy to give time up.

1 It is damn difficult to get more time. I have
2 spent \$85,000 and 5 lost years with my kids
3 because I want to be with them more than 4 days
4 a month. I want to be a 50/50 shared custody
5 parent.

6 The Allegheny Family Division has
7 taken 5 and a half years in my attempts to
8 become an involved parent, and it's still not
9 resolved. The trial judge, Judge Baer, took 6
10 months to write his written opinion the first
11 time I appealed. The county court rules allow
12 him 45 days. He never even bothered to write
13 an opinion in my second appeal when that
14 earlier decision was remanded by Superior
15 Court.

16 Why is joint custody in the best
17 interest of the children? In June of 1995, the
18 American Psychological Association, Division
19 16, recommended joint custody as a next best
20 parenting plan for children besides an intact
21 marriage. I agree with everybody that intact
22 marriages are best, but divorce happens. The
23 American Psychological Association says the
24 next best thing is joint custody.

25 We have seen in our young people the

1 devastation brought about by fatherless
2 children. Presumptive joint custody gives the
3 children the chance they deserve to be raised
4 by both parents when there is a dissolution of
5 marriage or relationship. Presumptive joint
6 custody gives both parents a chance to be more
7 than visitors in their children's lives without
8 having to spend their life's savings and 5
9 years of litigation.

10 Another benefit of joint custody is
11 related to support enforcement. The Census
12 Bureau statistics of 1991 indicate that when
13 there's joint custody, support was paid in full
14 90 percent of the time. That's 90 percent
15 compliance. Think of the savings our state
16 would see if we could attain 90 percent support
17 compliance. If a noncustodial parent does not
18 have visitation followed, then support
19 compliance drops to 45 percent.

20 In either argument, the children
21 benefit from joint custody. They benefit from
22 the emotional involvement of both parents and
23 they benefit from the financial support of both
24 parents.

25 A couple of other issues I'd like to

1 bring up is, just the amount of child support.
2 We go by what -- What should we look at? What
3 the parent used to make? We talked about I
4 think Jeffrey Nichols was the most deadbeat dad
5 on Newsweek Magazine a couple of years ago. He
6 was \$500,000 in arrears. I contend that was
7 the worst child support award. The child
8 support award in that was \$9,000 per month.
9 What 3 children need \$9,000 a month?

10 I also would like to leave with a
11 petition our group has put together to request
12 a gender audit of the court petitions and
13 custody petitions for Allegheny County. I'd
14 also like to submit for your information
15 expenditures on children by families for any
16 information that might help in that line.

17 I have also attached, and Julie has
18 a copy of it, from Jim Cook. Jim Cook is the
19 President of Joint Custody Association of
20 America. He has a list of the benefits of
21 joint custody. He's willing to come speak to
22 you at anytime. He's spoken at 38 different
23 state legislatures on the issue of joint
24 custody. He's the most prominent person in the
25 world, I think, on this issue.

1 Thank you. I'm open for any
2 questions.

3 ACTING CHAIRMAN WALKO: Thank you
4 very much. It was very informative. I had a
5 question concerning something that you said
6 earlier about fathers' constitutional rights
7 and equality are compromised by the present
8 Protection From Abuse Orders. I guess you mean
9 the system? Is there something systematically
10 wrong?

11 MR. SCHEAHEN: Yes. What happens
12 right now, and divorce situations aggravate it
13 is, emotions are high. If someone accuses
14 someone and says, well, I'm afraid for my life.
15 He's going to shoot me. I agree that all
16 precautions should be taken. But, if that's
17 found to be a false statement to gain legal
18 advantage because the way the system is run
19 right now with PFA, for a woman to file a PFA
20 in a divorce situation, for her it's a win/win
21 situation.

22 What do I mean by that? She's going
23 to win and see that her revenge is brought out
24 by the father, the husband having to go through
25 the legal uphill mountain he has to climb to

1 fight that charge. The second place she wins
2 is the children are now denied time with the
3 father during that time. Again, now he's put
4 behind the eightball when it comes to custody
5 issues.

6 What happens to the woman if they
7 are false? Absolutely nothing. If I pulled
8 the fire alarm out in the hall here, I would be
9 arrested for filing a false fire alarm. If
10 there's a false PFA, nothing is done.

11 I agree that if someone is in
12 legitimate fear of their safety, something
13 needs to be done. But, something needs to be
14 done when that is brought for personal legal
15 gain or revenge.

16 ACTING CHAIRMAN WALKO: I have one
17 more question. Regarding joint custody, I
18 understand the concept of the rebuttable
19 presumption that you want. Is there any
20 presumption, or what is the current statutory
21 law? I believe it's just that custody should
22 be awarded in accordance with the best interest
23 of the child.

24 MR. SCHEAHEN: Right.

25 ACTING CHAIRMAN WALKO: Is there any

1 presumption in the law at all now?

2 MR. SCHEAHEN: It somewhat indicates
3 that both parents are equal, but it does not
4 say presumptive joint custody or shared
5 custody. The four-pronged test for a shared
6 custody in Pennsylvania right now is, one, that
7 has two fit parents; two, you have two parents
8 who love their children and want to be involved
9 in their lives; three, you have two parents
10 viewed by the children as a source of love and
11 security; four, possible minimal cooperation
12 between parents when it comes to issues of the
13 children.

14 I mean, those are 4 easy guidelines
15 to be met, but they are not followed by the
16 courts. They don't really look at that in an
17 award. What the judges should be doing, if one
18 parent objects to joint custody, find out the
19 reason why. I think in most of the cases
20 you'll find it's just strictly revenge. I want
21 control.

22 ACTING CHAIRMAN WALKO: You made a
23 point, you complimented the Generations
24 Program. I'm wondering about the comment you
25 made concerning the average noncustodial parent

1 is awarded four days per month. Were you
2 addressing judge order rulings, or is that
3 orders that are pursuant to conciliatory
4 hearings? What is that four days per month
5 based on?

6 MR. SHEAHEN: That's the cookbook
7 custody award by judges and deals made out in
8 the hall to uneducated parents. It's every
9 other weekend.

10 ACTING CHAIRMAN WALKO: Forgive me a
11 second. Those deals being made in the hall
12 outside of the hearing officer, those are the
13 ones -- that's the whole body of them ending up
14 with an average of four days' custody? Is that
15 right?

16 MR. SHEAHEN: No, sir. Judges do the
17 same thing. Judges award every other weekend
18 on a routine basis.

19 ACTING CHAIRMAN WALKO: We don't have
20 much of a track record yet. The Generations
21 Program, what's happening there with those
22 arrangements that emanate from that program?

23 MR. SHEAHEN: What we're finding, and
24 a lot of our members we meet with prior to them
25 going into the Generations Program. Six of

1 them met, myself or a couple of our members
2 have personally met with just to try to educate
3 them how the Generations Program work. They
4 drafted an idea of what they wanted for a
5 parenting plan, and 6 out of 6 had their plan
6 accepted by the other side in the mediation
7 program.

8 ACTING CHAIRMAN WALKO: Thank you.
9 Representative Cohen had a question.

10 CHAIRWOMAN COHEN: Thank you,
11 Representative Walko. Thank you, Mr. Sheahen,
12 for being here. Just one question. What is
13 your view? We have had some proposals before
14 the legislature which would give children at
15 varying ages, 10, 12, 14, either their views as
16 to which parent they'd like to live with being
17 mandatory or at least a strong guideline for
18 the judge. What would be your view on that
19 proposal?

20 MR. SHEAHEN: I'm glad you asked that
21 question, Representative Cohen. What I have
22 seen with the members that I have been involved
23 with is what's called parental alienation.
24 What happens a lot is, a custodial parent, and
25 it's typically the custodial parent, 90 percent

1 of the time it's the mom too, will say, dad is
2 bad. Dad won't pay. Dad is sleeping with
3 other women. There's a program going on, a
4 brainwashing program.

5 Now, if we allow those children to
6 come in court and say, dad is bad. Dad won't
7 pay the bills. Dad is sleeping around, and we
8 put credence to that, I think we are doing a
9 great injustice to the children and to the
10 parents.

11 So, I think the present statute is
12 good where we haven't set a specific age, but
13 we have left it up to the children's maturity
14 level and the way they respond. I think we
15 need to caution the judges that really that's
16 not their issue. Their issue is legalistic.
17 Those answers should really come from a
18 forensic professional in the mental health
19 industry to determine, has there been parental
20 alienation going on.

21 Doctor Richard Gardner is an expert
22 in this field. I think you would do well
23 reading some of his information drafting any
24 custody laws that we have.

25 CHAIRWOMAN COHEN: Thank you.

1 ACTING CHAIRMAN WALKO: Thank you.

2 First of all, I'd like to welcome
3 Representative Harold James from the City of
4 Brotherly Love. Thank you for being here.

5 REPRESENTATIVE JAMES: Thank you.

6 ACTING CHAIRMAN WALKO:
7 Representative Masland.

8 REPRESENTATIVE MASLAND: Thank you,
9 Representative Walko. Just a couple comments
10 and questions, really, as I missed the first
11 part of your testimony, but I did read over it.
12 I got here I guess as you were talking about
13 the confirmatory bias. To be honest, I have to
14 say I believe that's overstated.

15 Based on my experience in this area,
16 granted in Central Pennsylvania, Cumberland
17 County, Dauphin, York and Perry as opposed to
18 Allegheny County, I don't see what you're
19 talking about. You make the comment, usually
20 our judges comes from the ranks of the Bar
21 Association. I think they all come from the
22 ranks of the Bar Association. The last time I
23 counted they had to be lawyers.

24 Making reference to the tender years
25 doctrine, for instance, I guess that's part of

1 the confirmatory bias. The tender years
2 doctrine is no more.

3 MR. SHEAHEN: I realize that.

4 REPRESENTATIVE MASLAND: Do you
5 understand that?

6 MR. SHEAHEN: Yes, sir, but it's
7 being practiced.

8 REPRESENTATIVE MASLAND: I guess it
9 depends on the person's perspective as to
10 whether or not it is being practiced or whether
11 or not that's just a way to explain why someone
12 doesn't get custody.

13 Most custody cases are going to be
14 resolved in Allegheny County through mediation
15 and conciliation. You are going to have a very
16 small percentage that actually go to the courts
17 where the court is required to be King Solomon
18 and decide how to divide things up; where the
19 parties will not agree on anything, will not
20 talk, and then the judge is going to have to
21 decide who is going to be best able to care for
22 the kids predominately throughout the week, and
23 then if it's the mother or the father, and I
24 have represented cases where the father has
25 gotten custody. I have been on both sides of

1 this. You can shake your head back there, but
2 I have done it, pal (referring to a man in the
3 audience).

4 The fact is, it is not a situation
5 where, just as a rule of thumb, it always goes
6 one way or the other. They have to look at
7 what is in the best interest. I think most
8 judges try to do that. Most judges don't want
9 to have to do that.

10 The whole idea behind mediation
11 conciliation is to get the parties to agree to
12 things on their own. You shouldn't have to
13 take it to somebody who's sitting there in a
14 robe. But if you're sitting there in a robe,
15 you have to make those decisions. You are
16 going to have to say, well, who is going to
17 have them during the week? If you are going to
18 give it to mom, then you are going to have to
19 give dad times on the weekends. It can't be
20 every weekend, because if mom is working she's
21 never going to see them. It's going to be an
22 every other weekend situation.

23 Your statement that it boils down to
24 four days a month makes it seem like these
25 judges are being cold hearted when I think they

1 are being practical. And in most of the cases
2 I have handled, it's not just an every other
3 weekend. There's also visitation during the
4 week where they get to see them on a partial
5 custody basis, whether it's a night here or
6 afternoons there. There's other arrangements
7 that can be made, but those arrangements have
8 to be made generally when the parents agree;
9 when the parents talk. If the parents don't
10 talk, the judge can't force that. The judge
11 has to say, well, we'll just put this person in
12 as primary custodian and the other person will
13 have so much time. I don't think that
14 demonstrates a bias so much as the reality of
15 the fact that people aren't talking.

16 MR. SHEAHEN: I appreciate your
17 comments, but I disagree.

18 REPRESENTATIVE MASLAND: Obviously.

19 MR. SHEAHEN: The reason why I say
20 this is, most fathers going through divorce
21 assume the tender year doctrine still is in
22 force. They assume all they have is every
23 other weekend. What I'm saying is, let's take
24 that assumption away. Let's treat them as
25 parents that they are. Our children need that.

1 Our children need involved fathers. Our
2 children need involved mothers, both
3 financially and emotionally.

4 With our present system it is not
5 working. Most fathers going into a divorce
6 assume, I'm only going to see my kids ever
7 other weekend. I'm going to be labeled a
8 visitor. It's degrading. They are going to
9 back out.

10 Our society has proven, children that
11 grow up fatherless will suffer. Then our
12 society suffers. We need to give the fathers
13 the opportunity to be a father. Give the
14 children a chance to have two parents.

15 REPRESENTATIVE MASLAND: Let me just
16 make one request because, really, to be honest,
17 a couple of the statements in here kind of
18 colored my view as to how credible your
19 testimony is. One is that, a Pittsburgh
20 court-appointed psychologist, quote, used my
21 height as a factor in not recommending shared
22 custody. I have a hard time thinking somebody
23 would do that. If that's the case, I'd like to
24 see it.

25 MR. SHEAHEN: It is the case. It's

1 my attachment number 2 that Julie has.

2 REPRESENTATIVE MASLAND: And it's
3 based on your height?

4 MR. SHEAHEN: That was one of the
5 factors. He also addressed the way I dressed
6 and my posture.

7 REPRESENTATIVE MASLAND: Did the
8 judge use those factors as reasons in
9 determining how the custody was awarded? Is
10 that part of the order that the judge said,
11 well, based on this recommendation I think
12 height is a factor?

13 MR. SHEAHEN: The judge refused to
14 write a written opinion when the court ordered
15 him to. I had to go to the Superior Court to
16 bypass that step in the procedure. I lost six
17 months with my children.

18 REPRESENTATIVE MASLAND: I'll be
19 anxious to look at that.

20 ACTING CHAIRMAN WALKO: Mr. Sheahen,
21 you did indicate that that was a court order
22 that has been given to my assistant?

23 MR. SHEAHEN: What it is, it's a
24 written brief that I submitted to the Superior
25 Court with reference to the transcript. If

1 you'd like the transcript and the psychological
2 report, I'd gladly submit that.

3 ACTING CHAIRMAN WALKO: If we could
4 have the segment of the transcript, I would
5 appreciate it and we could put that in as part
6 of the record of this proceeding. Thank you
7 very much.

8 I'd like to point out, Mr. Sheahen
9 was our third witness. All three witnesses
10 actually had differences on a multitude of
11 issues, including Judge Baer, Attorney McCarthy
12 and you, Mr. Sheahen. Now we go to Eileen
13 Yacknin who is a staff attorney for
14 Neighborhood Legal Services.

15 First of all, thank you for taking
16 time to be here.

17 MR. SCHEAHEN: Thank you for inviting
18 me.

19 ACTING CHAIRMAN WALKO: I might be
20 presumptive, but I believe Ms. Yacknin might
21 give a different point of view on some issues.
22 Thank you for taking time out from your
23 schedule.

24 MS. YACKNIN: Thank you all for your
25 interest and your concern in these issues.

1 Thank you also to Julie Boyle for inviting me
2 to testify. As a legal aid lawyer for the last
3 20 years I see the poorest of the poor. Those
4 are our clients. They are the most desperately
5 needy poor people who often, through no choice
6 of their own, but sometimes because of no other
7 way to deal with things have to go to court.
8 Yet, as a result of the inability of their
9 situations to pay for a lawyer, they have no
10 choice but to come to Legal Services for help.

11 If, as you know, we aren't able to
12 provide legal services for people because of
13 the enormous funding cutbacks that we have
14 suffered over the last 20 years, these people
15 have to go to court without the assistance of
16 lawyers. Even the pro bono programs that have
17 started up in various counties cannot assist
18 all the people with all their needs.

19 Most of the needs that people have
20 who come to our office, most of our clients
21 first come to our office. Most of the clients
22 we have to turn away are clients who have a
23 domestic relations problem. Most of the people
24 who go to court that we have to turn away have
25 to deal with their domestic relations problems

1 without the assistance of legal counsel. Not
2 to say that the other side doesn't have legal
3 counsel, but at least one side of the opposing
4 parties don't have that benefit. This causes a
5 very severe strain on the ability to obtain
6 justice for our poor clients.

7 I wanted to talk, though, about one
8 issue that springs directly from that. I
9 address it in the second half of my written
10 testimony, but I'll address it first here is,
11 the financial burden on our clients who then
12 have to proceed through the system either
13 without lawyers or not proceed at all, or even
14 with our clients is the impact, the effect of
15 mandatory mediation on those clients.

16 Legal Services, and I particularly
17 applaud, heartily applaud Judge Baer for his
18 innovation in this area. Although I have some
19 reservations, I think the possibilities, the
20 potentials of mandatory mediation are
21 tremendous for all the reasons that Attorney
22 McCarthy and Judge Baer have stated to you. I
23 hope that that program can be expanded.

24 Certainly, if there's a way to work
25 out differences in domestic relations issues

1 without the need for a judge, without the need
2 for lawyers, then that certainly is going to be
3 far more positive than to have it imposed, a
4 solution imposed involuntarily.

5 Nonetheless, as I think
6 Representative Masland ascertained, this is an
7 expensive procedure. Judge Baer indicated that
8 the cost of the mediation and the other
9 mandatory aspects of that are intended to
10 provide the funds to pay for it so it's a
11 self-generating funds program. The fact is
12 that, the mediation itself costs \$100 per
13 parent.

14 In addition, the parenting, or the
15 separation classroom program costs \$40 per
16 parent. And in addition, for every child over
17 6 years old the cost for their program, for
18 their hour-long session is \$15 per child,
19 generally split between the parents. That's a
20 lot of money for anybody. It's almost an
21 impossible amount of money for our clients.

22 I indicated in my written testimony,
23 these fees are imposed as a mandatory
24 precondition every single time there's any sort
25 of domestic relations dispute. It's not just

1 required in Allegheny County at least when the
2 parties initiate custody disputes. It's not
3 just required at the beginning of a case. And
4 it's not just required only if you can't
5 resolve who is going to be able to take care of
6 the children.

7 If there's a dispute with regard to
8 visitation, even if both parents agree that one
9 of the parents should be the primary caretaker
10 and there's a dispute about how many days a
11 month the children should be visited, that
12 dispute must first go through mandatory
13 mediation. Again, I don't challenge that that
14 might be a positive thing with a positive
15 outcome, but the fact is, that's an expensive
16 procedure for poor people.

17 In addition, if there are contempt
18 issues -- For instance, if, for whatever good
19 cause or bad cause a parent does not abide by
20 the visitation schedule, then before there's a
21 court hearing, then again, those parties must
22 go to mandatory mediation. Again, I'm not
23 saying that that's improper or inappropriate,
24 but it's a very expensive procedure for people
25 who can't afford it. All of our clients cannot

1 afford it. Every single one of our clients
2 who -- This is an enormous amount of money.
3 It's a burden which most of our clients cannot
4 assume.

5 But, particularly because Legal
6 Services does not represent most of the
7 indigent people in our counties who we serve in
8 domestic relations cases any longer, there are
9 so many people who go to the courts who are
10 poor who cannot afford that even though they
11 don't have a Legal Services lawyer. The
12 problem is this: Judge Baer has recognized
13 that the problem of cost is a problem for
14 mediation and has instituted a procedure, a
15 discretionary procedure by which parties can go
16 and ask a judge through a motion for a waiver
17 of those fees. As we have been seeing for one,
18 this is not a uniform waiver.

19 The legislature has already, for as
20 long as I have been practicing and probably
21 much before, the legislature has already
22 recognized that people who are eligible
23 financially for legal services should not be
24 required automatically to pay any of the costs
25 of the litigation. That typically has included

1 all the filing fees and the certification of
2 court documents and transcripts. Those are
3 In Forma Pauperis rules.

4 So I, as a legal services attorney,
5 when I represent a client I file a simple
6 Affidavit into the court, and automatically my
7 client does not have to pay any of those fees,
8 as I believe should be the case.

9 Unfortunately, that isn't the case
10 for these mediation fees. That is totally
11 discretionary. I can't automatically get it
12 for my clients. I have to go to court, and
13 then whether or not the judge grants the right
14 to waive these fees is totally discretionary
15 among the judges.

16 It's been our experience so far that
17 we are finding that the judges are not
18 automatically allowing waiver of fees for our
19 clients. Many judges will say, okay, we'll
20 waive the \$100 fee, but you still have to pay
21 the \$40 fee, or something like that.

22 In addition, this is a considerable
23 cost to our time to have to go to court to ask
24 for permission to waive these fees, even though
25 our clients have been determined to be so poor

1 that they are lucky enough to have a free
2 lawyer from our program.

3 One day because of the number of
4 people in motions court I had to spend three
5 hours waiting for the opportunity to present my
6 motion to court. The problem is magnified
7 because we do, as I said, have a few, not
8 enough, but a few members of the Bar willing to
9 handle the cases that we can't handle; the
10 visitation issues, the contempt in visitation
11 issues, by pro bono attorneys who have
12 volunteered their services to represent the
13 people that we can no longer help.

14 We have asked the court, Judge Baer
15 in particular, for permission to have those
16 lawyers to have the mandatory mediation fees
17 waived for those clients who are represented by
18 pro bono attorneys. They are not covered
19 automatically by the In Forma Pauperis rules,
20 which pertain only to legal services
21 organizations. Unfortunately, Judge Baer
22 declined that request.

23 Finally, in addition, the third group
24 of people, most of the people who have domestic
25 relations problems that we don't handle have to

1 go themselves. We've been hearing reports that
2 are disturbing us greatly that the judges are
3 not showing the compassion to the fact that
4 these people, even though they are desperately
5 poor, can't afford to pay these costs.

6 We believe that something should be
7 done legislatively, if not through the local
8 system, especially if the legislature is
9 considering expanding mandatory mediation, as
10 possibly it would be appropriate to do, to
11 address this very serious concern, because what
12 happens is, if the parties cannot pay these
13 mediation court costs they are deprived by rule
14 right now from proceeding at all in court.
15 They have no access at all to get to court
16 unless they first pay for these mediation
17 costs.

18 This means, whether or not you are
19 the person who sues for custody or whether or
20 not you are the person who's being sued for
21 custody. If you were going along and thinking
22 that things were fine and all of a sudden you
23 are being sued for custody, you are dragged
24 into court involuntary; and yet, you're not
25 allowed to have your day in court until these

1 costs are paid.

2 I urge you to consider this issue
3 which is so important and desperate for our
4 clients, especially now when, as we all know,
5 welfare is being eliminated and our clients are
6 now having to take on the lowest paying, most
7 menial jobs that are available, and yet having
8 to pay for day care for these clients.

9 Most of of my clients now, for their
10 children, most of my clients I'm seeing now
11 it's very disturbing to me to see that they
12 can't afford to pay their rent and their
13 utilities anymore because they have to pay for
14 the day care that's not funded. Of course, you
15 can deal with all of these issues, but that's
16 not being funded sufficiently. Without getting
17 the job and having to get the day care, then
18 they are off of welfare.

19 Part of this whole entanglement of
20 what's happening to poor people is affected by
21 this mandatory mediation cost. I again urge
22 you, I can't urge you strenuously enough to
23 please consider this.

24 I believe that any client, father or
25 mother, who would be financially eligible for a

1 legal services representation should have these
2 costs waived. I know that Judge Baer's concern
3 in not doing that automatically is that, he's
4 concerned that the program is not going to be
5 funded sufficiently. I don't blame him for
6 that concern. The program requires people who
7 are willing to do three -- mediators who are
8 willing to do three for pay and one pro bono.
9 Unless you have enough people paying, they are
10 not going to be able to get the mediators to do
11 that one pro bono. It will have to be more pro
12 bono.

13 I'm sure he would be delighted if
14 the legislature allocated money for this. We
15 would too. In any event, something needs to be
16 done to address this concern because this is
17 going to be an increasing concern as mediation
18 progresses in this county and, perhaps,
19 throughout the state. I thank you for that
20 concern.

21 Secondly, with regard to custody, I
22 think I agree with -- I know I agree with Judge
23 Baer and with Attorney McCarthy that
24 presumptive joint custody is not an appropriate
25 way to deal with custody issues. I know also

1 that bias is in the eyes of the beholder. I
2 believe that there's significant literature. I
3 made a small bibliography, which I'll present
4 to Julie afterwards, which indicates that
5 despite what Mr. Sheahen has said, that, in
6 fact, as a result of the development of the
7 best interest standard, in fact, courts seem to
8 be awarding custody when it's litigated to
9 fathers instead of mothers for a variety of
10 reasons. There's a trend that way.

11 Let me point out that the best
12 interest standard in the best possible world is
13 actually the best way for a judge to have to
14 determine these terrible, awful, heartrending
15 decisions. But, it's a totally discretionary
16 standard.

17 There's no way in our state, at
18 least, for a judge to know exactly what to look
19 at to determine what the best interest is. The
20 case is run over everything in terms of what
21 you look at to determine what the best interest
22 is.

23 I do want to object to the figure
24 that was used previously by Mr. Sheahen that 90
25 percent of mothers obtain custody following

1 divorces. That figure may be true, but it's
2 true because it includes all custody situations
3 regardless of whether or not there's been a
4 dispute. Most families when they split up make
5 decisions voluntarily. Most of those times the
6 families decide that the children would remain
7 in the custody of the mother. So, that 90
8 percent figure includes that.

9 It also includes people who, after
10 filing court actions, make decisions without
11 resorting to litigation. That figure includes
12 that. It's sort of disingenuous to say that
13 it's the court system that has a bias of 90
14 percent favoring mothers. That's not true.

15 It is true, however, if a case cannot
16 be resolved voluntarily or by some sort of a
17 settlement before trial, in those cases where
18 judges must make decisions, it appears as
19 though the trend is to award custody to fathers
20 more often than to mothers. Again, I do have
21 sources citing statistics in this regard.

22 Why is that? I also hasten to add
23 that this does not appear to be the case in
24 Allegheny County. We have, thank goodness and
25 very luckily, some of the best and brightest

1 judges in Allegheny County on the family bench.
2 But, many times judges seem to be using some
3 sort of double standard.

4 For instance, if you are the
5 father -- It's okay for a father to go to work
6 every day and allow a caretaker to take care of
7 the children while you are gone. It's not okay
8 by some judges' standards for the mother to go
9 to work and not take care of the children.
10 That's a factor used against that mother. It's
11 not okay if the mother wants to pursue a career
12 and not stay home with the children and provide
13 instead day care and then ask for custody of
14 the child because that factor is often used
15 against the mother where it's not used against
16 the father.

17 On the other hand, the fact that a
18 father who has pursued a career, has been able
19 to acquire material benefits that are honestly
20 benefits that every parent would like to
21 provide for their children, judges often say,
22 well, the father is able to provide a better
23 house, camp experiences, going to private
24 schools, that the mother is not able to
25 provide.

1 Yet, the fact is that, had the
2 mother pursued a career, perhaps been able to
3 acquire the income that's parallel to the
4 income of the father, then the mother could
5 have done that, but she was stuck with this
6 Catch 22 situation that sometimes judges seem
7 to be using.

8 In addition, I think another major
9 factor that we are seeing is the issue of
10 second families, stepparent families, the
11 remarriage of these parents. While judges
12 frequently see that a father who remarries now
13 has a woman in the house who will then be
14 presumed to be another caretaker for the
15 children, that's not the case for mothers who
16 remarry. Judges don't see that a father in the
17 house will serve that function and they don't
18 give the same sort of preference to that factor
19 as they do to the factor of a remarriage of a
20 father.

21 I'll also say the factors that go
22 against joint custody as a presumption, the
23 fact that you can't force people who can't work
24 things out to work things out just because you
25 say so, which is required in joint custody, is

1 going to improve this system. I would say that
2 joint custody probably is the basis by which
3 most families deal with custody issues upon
4 separation. It's just done voluntarily without
5 a need to resort to courts. As you all know,
6 these cases concern what happens when parents
7 can't get along with each other.

8 I would also say this. I think
9 California was one of the first states to enact
10 some sort of a joint custody preference or
11 presumption. I believe that recently it has
12 done away with that, having experienced that
13 sort of presumption for a number of years and
14 having to deal with the problems that Judge
15 Baer and Attorney McCarthy raised in that
16 regard. I don't even believe the trend anymore
17 is towards joint custody.

18 There is, however, a new sort of a
19 legal trend, a legal standard that has been
20 propounded and enacted in a number of our
21 states now. That is, when you have parents
22 that cannot agree any longer, the best interest
23 is a discretionary standard without certain
24 guidelines about what you look to to decide
25 best interest. It's up to the judge.

1 Different states have, in fact, statutorily
2 imposed certain guidelines to define what you
3 should look at.

4 For instance, in that sort of a case
5 if there were a set of standards you wouldn't
6 say, well, the employment of the mother outside
7 the house can be used as a factor against the
8 best interest of a child.

9 One of the most important factors
10 that the trend seems to be considering and
11 using is the primary caretaker standard. They
12 look to see what has been the pattern of family
13 relationships in the household before there
14 ever was a separation; before the parent has
15 ever contemplated they would not live together
16 until death due them part.

17 The primary caretaker standard
18 requires that judges look at factors such as
19 who is involved in the nurturing of the
20 children; who is involved in the day-to-day
21 daily tasks that are required of every single
22 child; getting you dressed, chaperoning,
23 feeding you, organizing school activities and
24 social activities. If the judge can look at
25 those factors and say, this looks like this has

1 been a shared custody arrangement throughout
2 the life of the relationship, then there will
3 be a presumption that in the future that
4 relationship should continue.

5 But, if the judge would look at those
6 factors and decide that the family
7 relationships were divided; that one parent
8 over another has contributed most to those
9 relationships, then the judge should make that
10 a preference in determining custody. I cited
11 the fact that there are a number of judicial
12 decisions in other states that have focused on
13 this. In fact, actually, Pennsylvania did as
14 well in 1982, but there was that one case cited
15 Jordan versus Jordan and it never was --

16 Another problem with our court system
17 is, we have a 3-judge panel of Superior Court
18 who don't necessarily pay attention to other
19 3-judge panels of Superior Court decisions. In
20 fact, that seems to be what happened with
21 Jordan versus Jordan. There was a case that
22 said the primary caretaker is important. It
23 doesn't seem to have been followed.

24 I have also cited 3 states where a
25 primary caretaker standard has been adopted as

1 part of a list of best interests of children in
2 statutes, Washington, New Jersey and Minnesota.
3 I'd ask that the committee look at those state
4 statutes for help in determining how to assist
5 judges in using uniform standards for
6 determining custody.

7 One other thing I need to add very
8 quickly, it's not the common routine situation
9 that parents get four days of partial custody a
10 month. With all due respect to Mr. Sheahen
11 and, obviously, he suffered terribly through
12 his experiences, that is definitely not the
13 typical. It is a quite unusual situation.

14 For whatever reasons, his experience
15 should not be used as a -- as a -- as a
16 lodestar for determining what to do with these
17 cases. Thank you very much.

18 ACTING CHAIRMAN WALKO: Thank you.
19 Questions? Representative Orie.

20 REPRESENTATIVE ORIE: I guess one of
21 the questions I had that I was discussing with
22 Representative Walko prior to this was in
23 regards to the population that you represent.

24 Specifically, as you addressed in
25 your summation with the Generations Program,

1 utilizing the mediation program itself, how
2 many of your clients, based on that population,
3 how many of them have the ability to utilize
4 this program?

5 MS. YACKNIN: The financial ability?

6 REPRESENTATIVE ORIE: Right.

7 MS. YACKNIN: None.

8 REPRESENTATIVE ORIE: What is
9 happening now without intervention from the
10 state, do you know?

11 MS. YACKNIN: In the cases that we
12 represent we do go to court and ask for the
13 fees to be waived. Where the judge has only
14 reduced the fees or has not -- Where the judges
15 have only reduced the fees, sometimes our
16 clients have to wait for months until they can
17 try to acquire money from somebody else or save
18 a little bit of money to be able to do that. I
19 have a few cases where my client has just sort
20 of disappeared. They have been put off by the
21 system. They can't get access to it.

22 REPRESENTATIVE ORIE: I guess one of
23 the things you hear, at least from other
24 individuals, as well as yourself, is how
25 important or vital this is in regards to

1 getting away from the litigation costs and
2 hitting the point in the best interest of the
3 child. The majority of your clients don't have
4 that option, is that correct?

5 MS. YACKNIN: That's right. I
6 definitely agree with that.

7 REPRESENTATIVE ORIE: I guess the
8 other question I would ask, along with that,
9 for them to even go into mediation or try to
10 get waiver of these costs, they have to do it
11 on their own most of the time?

12 MS. YACKNIN: At this point, yes.
13 There used to be a time that we did represent
14 most poor people in domestic relations cases.
15 We can't any longer.

16 Yes, most of these clients are doing
17 it on their own. It's a difficult system to
18 try to navigate on your own.

19 REPRESENTATIVE ORIE: I appreciate
20 that. Thank you.

21 MS. YACKNIN. Thank you.

22 ACTING CHAIRMAN WALKO: Thank you,
23 Representative Orie. Representative James has
24 a question.

25 REPRESENTATIVE JAMES: Thank you, Mr.

1 Chairman. I just want to ask if I
2 misunderstood. You said something where if the
3 client can't have mediation they can't go to
4 court?

5 MS. YACKNIN: That's true under our
6 system, yes.

7 REPRESENTATIVE JAMES: So then what
8 happens?

9 MS. YACKNIN: The case is abandoned,
10 or actually, in one case I heard of this
11 happening recently. If you are the person
12 who's being sued, what happens is that, the
13 person who sues must pay the fee before the
14 case can go to mediation. You don't ever get
15 to go to court until you go to mediation first.
16 You pay the fee.

17 Then the other side is given an
18 order that says you have to pay your fee by
19 such and such a date. If you don't, you will
20 have to go to court for a contempt hearing. I
21 hope this is not true, but I have a feeling it
22 was true.

23 In one case we heard of a poor woman
24 who was ordered to pay by a certain date;
25 didn't pay by a certain date; and for whatever

1 reasons didn't show up at the court hearing for
2 the judge to evaluate why she didn't pay that
3 fee, and was then arrested by the sheriff for
4 contempt and dragged away from her home and put
5 in jail for a weekend until she finally got to
6 court on Monday to be able to explain why she
7 never paid that fee. It's a horror story that
8 even if it's not true, could very well be true
9 for our clients.

10 REPRESENTATIVE JAMES: You think this
11 is something maybe we can change in the
12 legislature or should look at?

13 MS. YACKNIN: I sure hope so.

14 REPRESENTATIVE JAMES: Thank you.

15 ACTING CHAIRMAN WALKO:

16 Representative Masland.

17 REPRESENTATIVE MASLAND: Picking up
18 on that point, it would be my suggestion that
19 we not legislate what people do or do not have
20 to pay, but that we leave some discretion in
21 the counties.

22 I ran the Accelerated Rehabilitative
23 Disposition Program in Cumberland County for
24 the DUI cases and non-DUI cases. There were
25 many people that qualified for a public

1 defender who could still afford to pay the cost
2 of that program. For some of them that meant
3 that they had to drop Cable TV for a couple
4 months. I would suggest that if dropping Cable
5 TV for a couple months would enable them to pay
6 some of these fees, they would probably get a
7 little bit more out of the program if they
8 invested a little bit on their own. I have to
9 differ with you on that.

10 My question and concern is your
11 promotion of these lists of items that would
12 contain something like a primary caretaker
13 standard. I have a real problem with starting
14 a list that may never end. Somebody has a
15 little problem here so we add that to the list.
16 Somebody has a problem there we add this to the
17 list.

18 You look at our criminal laws with
19 mitigating standards and things like that with
20 respect to the death penalty, what's
21 aggravating and what's mitigating. These
22 situations I think we ought to leave in the
23 hands of, again, the discretion of the judge.
24 You have case law out there. Case law does
25 talk about a primary caretaker standard. The

1 judge does has access to that.

2 MS. YACKNIN: I appreciate your
3 concern. I think, perhaps, rather than
4 rejecting my suggestion, that you could look to
5 the experience of the states in which such
6 lists have, in fact, been legislated to see how
7 effective that has been. My understanding is
8 that people seemed to be quite pleased with it.

9 First of all, as the articles I have
10 recently read indicate, by having pretty
11 defined standards, it then gives litigants an
12 opportunity to sort of evaluate their own
13 situations and perhaps, even say, oh well, look
14 at these factors. I'm not sure -- I don't
15 think I'm going to win under these standards so
16 I'm going to work out an agreement. It might
17 reduce the whole business that it does reduce
18 litigation. Anyway, I can appreciate what you
19 are saying.

20 REPRESENTATIVE MASLAND: If you get
21 into lists, you have to have, including but not
22 limited to, situation because, otherwise,
23 somebody will say you didn't pay much attention
24 to this factor. Even if the judge addresses it
25 in the order I did pay attention to it, you are

1 going to have to exclude something, and to a
2 certain extent in these situations you have an
3 obligation to allow the court and parties to
4 say, let's look at the totality of the
5 circumstances, if I can use that.

6 MS. YACKNIN: The concern of people
7 who propose these things is that, too often
8 judges seem to use inappropriate factors for
9 determining custody. If some group could try
10 to define it more specifically, it could help
11 judges as well as litigants.

12 REPRESENTATIVE MASLAND: I'll be
13 happy to look at the list, although I'll look
14 at it somewhat warily.

15 ACTING CHAIRMAN WALKO: Thank you,
16 Representative Masland. Representative Orié
17 had a brief follow-up question. We have one
18 minute left on your time.

19 REPRESENTATIVE ORIE: I guess my
20 question is a follow-up to Representative
21 Masland in regards to this list in other
22 states. Is it a detailed list or just
23 generalities of what specifically is dealt with
24 on that list?

25 MS. YACKNIN: The three resources I

1 obtained are different. Minnesota's does have
2 12 factors. One, the wishes of the child's
3 parent. Two, the reasonable preference of the
4 child; three, the child's primary caretaker;
5 four, the intimacy of the relationship between
6 parent and child, and it goes on.

7 REPRESENTATIVE ORIE: That's what I
8 wanted you to define. Thank you.

9 ACTING CHAIRMAN WALKO: Thank you
10 very much for taking time out from your busy
11 schedule, and good luck in all your work.

12 MS. YACKNIN: Thank you.

13 ACTING CHAIRMAN WALKO: Our final
14 witness is a gentleman, and his wife is also
15 here. They went through a heartrending
16 situation a number of years ago. Because it's
17 a custody matter, which it is not the typical
18 custody, but I thought it important to ask Mr.
19 Gordon to come and tell us his story and make
20 his suggestions.

21 MR. GORDON: Representative Cohen,
22 Representative Walko, ladies and gentlemen:
23 Thank you for asking us to speak this morning.
24 We believe that legislation is needed to
25 provide the right to partial custody for

1 siblings of a deceased parent in custody
2 visitation procedures.

3 On April 13, 1991, our daughter
4 Denise was shot and killed. Her then 2-year
5 old son, our grandson, was a witness to this
6 horrible act. The father of the child who shot
7 and killed our daughter was incarcerated in
8 North Carolina. Law enforcement officials in
9 Raleigh did not immediately notify us that our
10 daughter had been killed. Her friend from
11 Raleigh called us here in Pittsburgh to tell us
12 what happened. She saw the incident being
13 reported on the local television news. By the
14 time we found out where our grandson was, he
15 had been turned over to his paternal grand-
16 parents who went to Raleigh from Pennsylvania
17 to get him.

18 In an attempt to shield us from
19 further agonizing ordeals after our daughter's
20 death, another daughter Doreen, who is provided
21 free legal counsel through her employment,
22 sought through the courts visitation and/or
23 partial custody of her nephew, our grandson.
24 The court denied her because she did not have
25 standing.

1 The paternal grandparents, I must
2 say, were not very cooperative concerning
3 visitation.

4 Doreen appealed the court's decision
5 to the Superior Court. Judges were Wiland,
6 Cirillo and Montgomery, Judge Cirillo wrote
7 the opinion which upheld the Common Pleas
8 decision; Judge Wiland dissented.

9 The court turned her down again.
10 However, the court's opinion in part stated,
11 because Doreen Jackson does not seek legal
12 custody of the child or attest that the child
13 resided with her for a year or more, or that
14 she assumed in loco parentis status, her case
15 unfortunately slipped through one of the voids
16 in the law.

17 Having specifically addressed
18 parents, grandparents and great grandparents in
19 visitation statute, we are presented with the
20 issue of whether the legislature intended to
21 preclude an adult sibling of a deceased parent
22 from seeking visitation rights.

23 Denise has brothers and sisters and
24 they all have children. She also has a now
25 19-year-old son, a half brother to the child

1 who witnessed her death. They could not visit
2 with their nephew and brother because they did
3 not have standing.

4 Since our daughter was denied
5 visitation by the court, we took legal action
6 at a great financial loss to visit our
7 grandson. We were permitted to visit with him
8 on two occasions a month in a mall.

9 Since we are currently in our 60's,
10 we are extremely concerned that if something
11 would happen to us, because of the current law
12 the court would deny Denise's siblings and her
13 eldest son visitation because they do not have
14 standing. Any contact our grandson would have
15 with his mother's side of the family would be
16 cut off.

17 How many other families in
18 Pennsylvania are suffering because of the
19 current law? Please, we urge that legislation
20 be passed to provide standing to seek partial
21 custody and visitation to siblings of deceased
22 parents in custody matters. Thank you very
23 much.

24 ACTING CHAIRMAN WALKO: Thank you,
25 Mr. Gordon. Any questions?

1 (No response)

2 ACTING CHAIRMAN WALKO: I just want
3 to point out there is legislation which has
4 been introduced. I introduced it which would
5 go along with granting standing to siblings of
6 deceased parents, but I limited it to the case
7 of a criminal homicide, which this was. One of
8 the objections I had heard from judges was,
9 this would bring too many parties to the
10 custody procedures.

11 Did you have any thoughts on that as
12 far as limiting it to criminal homicide?

13 MR. GORDON: No, sir, I don't.

14 ACTING CHAIRMAN WALKO: Would you
15 support a limitation?

16 MR. GORDON: Yes, I would.

17 ACTING CHAIRMAN WALKO: Are you
18 currently still visiting your grandson.

19 MR. GORDON: No, sir, I'm sorry to
20 say we're not, because the father of the child
21 was paroled from prison after 4 and a half
22 years and the child went back to Raleigh for a
23 short time. He did, however, come back to
24 Pennsylvania for a short visit with his
25 paternal grandparents. We found out and made

1 some phone calls and were able to speak with
2 him. We do periodically, at least once a
3 month, try to send him some gifts and write him
4 a short note.

5 ACTING CHAIRMAN WALKO: One of the
6 things -- Another point, and we have discussed
7 this, would the sibling have had standing if
8 there had been a loco parental relationship
9 prior to the death? Did that come up?

10 MR. GORDON: It didn't come up. I
11 don't know how to answer that, Representative
12 Walko.

13 ACTING CHAIRMAN WALKO: Perhaps
14 that's an unfair question. My feeling on it is
15 that, such a change, a major change such as a
16 criminal homicide of a parent should throw out
17 the past and start anew.

18 MR. GORDON: I agree to that.

19 ACTING CHAIRMAN WALKO: Any other
20 questions or comments?

21 (No response)

22 ACTING CHAIRMAN WALKO: First of all,
23 I'd like to thank you, Mr. Gordon, and all the
24 witnesses today, and I'd especially like to
25 thank Representative Cohen for bringing this

1 hearing to Pittsburgh. This is the beginning
2 of our efforts. I think we had a very good
3 hearing today. I thank all the representatives
4 who took part in this hearing. Representative
5 Cohen.

6 CHAIRWOMAN COHEN: Thank you. Again,
7 I just wanted to echo Representative Walko's
8 thanks to the members of the task force and to
9 other representatives who took the time to be
10 here, the people who testified. Our unsung
11 hero who didn't get a break is our court
12 reporter who has transcribed these two and a
13 half hours. We thank you for your persistence
14 and courage to stick this out.

15 As I mentioned at the opening of
16 these hearings, we are on a strict agenda,
17 pressed for time, but I did say in the
18 beginning and I will reiterate, this task force
19 was developed because of the input that we had
20 from citizens across the Commonwealth dealing
21 with the issues that we are dealing with today,
22 when our original task and our original charge
23 was merely to study no-fault divorce.

24 But, because we heard from so many
25 of you on the issues of custody and finances

1 and court administration, this task force was
2 formed by the Speaker of the House.

3 So, many of you are here today and
4 have not had the opportunity to make a
5 presentation to us. We urge you, please, to
6 submit any of your thoughts to us in writing.
7 We will be happy to consider and, perhaps, even
8 to respond if you have questions. Your input
9 is what guides us to devise and initiate what
10 we hope are intelligent laws and procedures.
11 Please feel free to contact any of us. It
12 doesn't matter who sitting up here that you
13 contact. We'll certainly share your
14 information with each other.

15 Again, our thanks to our host,
16 Representative Walko, to the City of Pittsburgh
17 and County of Allegheny for your hospitality.
18 These hearings are concluded. Thank you.

19 (At or about 11:30 a.m. the
20 hearing concluded)

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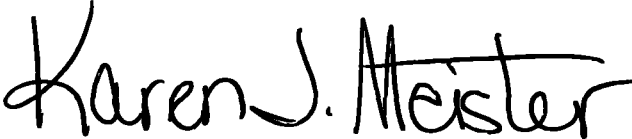
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C E R T I F I C A T E

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3 I, Karen J. Meister, Reporter, Notary
4 Public, duly commissioned and qualified in and
5 for the County of York, Commonwealth of
6 Pennsylvania, hereby certify that the foregoing
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22 Karen J. Meister - Reporter
Notary Public

23 My commission
24 expires 10/19/00
25