

HOUSE OF REPRESENTATIVES
COMMONWEALTH OF PENNSYLVANIA

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House Bill 1723

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House Judiciary Committee

Main Capitol Building
Room 60, East Wing
Harrisburg, Pennsylvania

Monday, March 16, 1998 - 10:20 a.m.

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BEFORE:

Honorable Thomas Gannon, Majority Chairperson
Honorable Al Masland
Honorable Jere Schuler
Honorable Kathy Manderino
Honorable Don Walko

KEY REPORTERS

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ALSO PRESENT:

Brian Preski, Esquire
Majority Chief Counsel

Judy Sedesse
Majority Administrative Assistant

C O N T E N T S

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(Written testimony submitted by:
Howard Goldsmith, Esquire
Robert Raphael, Esquire)

1 CHAIRPERSON GANNON: The House
2 Judiciary Committee is called to order for
3 public hearing on House Bill 1723 as sponsored
4 by Representative Veon dealing with the issue
5 of shared custody. I want to thank you for
6 your patience. I was delayed on the turnpike
7 coming up here. Our first witness is the
8 Honorable Michael R. Veon, 14th Legislative
9 District. Welcome, Representative Veon. You
10 may proceed at your leisure.

11 REPRESENTATIVE VEON: Thank you,
12 Chairman Gannon. I appreciate you giving me
13 the opportunity for this particular hearing. I
14 appreciate your interest in the issue
15 generally, all of the members of the committee,
16 Representative Schuler, Masland, Manderino,
17 Representative Walko, staff member Brian
18 Preski.

19 I know that all of you have very busy
20 schedules, so I especially appreciate the
21 opportunity on a session day, a lot of other
22 things going on, to take the time, make the
23 time to allow me to make some brief comments
24 and to listen to the other folks that want to
25 testify on this particular bill.

1 I know that you are well aware the
2 issue of child custody is very important and
3 certainly a very emotionally charged issue. I
4 think we all can agree the focus of the custody
5 proceedings should be to determine what is best
6 for the child or children involved. However,
7 as we all know, sometimes the rancor and
8 animosity between parties runs so high that
9 making that determination is very difficult.

10 It is critical in such proceedings
11 that our courts operate from as neutral a
12 position as possible, and that the ground rules
13 for custody proceedings be as fair as possible
14 to all parties involved.

15 That, Mr. Chairman, members of the
16 committee, is what I'm trying to achieve with
17 House Bill 1723--fairness; fairness for both
18 parents, and fairness, of course, for the
19 children. To achieve this, House Bill 1723
20 makes the following changes to Title 23:

21 It sets definitions of the terms
22 joint custody, joint legal custody and joint
23 physical custody. By using the term joint
24 custody, we put Pennsylvania in line with
25 national models.

1 It sets out as the general rule for
2 courts that a joint custody order shall be
3 awarded, unless the court finds that joint
4 custody is not in the best interest of the
5 child. In other words, we are establishing
6 joint custody as the official judicial starting
7 point.

8 The bill clearly states that the
9 courts assume a rebuttable presumption that an
10 award of joint custody is in the best interest
11 of the child. Under this proposal, each side
12 in a custody dispute may rebut or provide
13 evidence as to why joint custody is not in the
14 best interest of the child. It is important to
15 note that, ultimately, the decision, of course,
16 remains with the judge.

17 This bill requires that the court
18 state on the report the reasons in granting any
19 other award other than joint custody.

20 The bill also outlines specific
21 criteria for courts to consider when
22 determining custody, such as the likelihood of
23 the parents to cooperate on child care matters
24 and to make parenting decisions jointly.

25 The bill specifically prohibits an

1 award of joint custody from affecting child
2 support, without the existence of other
3 factors.

4 The bill mandates that the courts
5 require parental counseling in cases where the
6 parents have not agreed to a custody award. It
7 also requires the judge to consider the
8 recommendations of the counselors before
9 awarding custody.

10 The bill mandates that parents submit
11 to the court an agreed-to parenting plan, and
12 upon failure of the parents to do so, requires
13 the court produce such a plan with the
14 assistance of a mediator. The bill sets out
15 the required elements of the parenting plan,
16 including education, religious training, health
17 care, parenting time, including holidays and
18 vacations, transportation arrangements, a
19 parental dispute mediation process.

20 The bill allows one parent to be
21 designated as the primary caretaker for public
22 assistance purposes.

23 House Bill 1723 also strengthens the
24 ability of a parent to enforce the court order
25 when the other parent is in violation of the

1 parenting plan, and the bill enables law
2 enforcement authorities to implement laws for
3 relief of parental kidnapping.

4 The provisions I have mentioned and
5 others in the bill in my opinion are designed
6 to bring more fairness to the custody
7 proceedings, and to empower parents who are
8 deprived of their right to share in the raising
9 of their child.

10 I introduced this legislation after
11 hearing from many frustrated, noncustodial
12 parents who contacted me as a result of my work
13 over the years in strengthening the child
14 support laws in Pennsylvania. After talking
15 with these parents, and after researching this
16 issue, it become clear to me that all these
17 people are asking for is a level playing field
18 before the court so they may have an equal
19 chance in the custody decision. In my opinion,
20 they deserve that simple and basic right.

21 I was also motivated to introduce the
22 legislation because I believe that we should
23 applaud those parents who want to participate
24 in the raising of their child, and we should
25 encourage that participation to the fullest

1 extent possible.

2 A survey of the research on custody
3 issues shows, I believe, that joint custody can
4 result in more involvement from both parents,
5 which leads to better adjusted children.

6 Over the past year I've worked with
7 and gained the support of several state and
8 national organizations dedicated to this issue.
9 The goal was to craft a rational and fair
10 proposal for presumptive joint custody. I hope
11 we have achieved that goal in this legislation.

12 Mr. Chairman, members of the
13 committee, on behalf of all the children of
14 Pennsylvania, again, I appreciate your time on
15 a very controversial issue, certainly complex
16 and complicated. It's an emotional issue. I
17 know that many of you have heard from parents
18 on both sides of this issue over the years.

19 One final point I want to make, I
20 have worked very hard, as you know, as many
21 members of this committee have, in
22 strengthening child support laws in this state.
23 I have made it very clear to those
24 organizations and individuals that support this
25 kind of change in the law that there is no

1 connection to child support, and that we need
2 to make sure that we have the strongest child
3 support laws in the nation, if at all possible.

4 There is a separate legal issue for
5 child support. I think the most rational,
6 fair, and interested people in finding a way to
7 have a better custody law in the state also
8 understand that they have a strong obligation
9 and need to pay their child support.

10 These are two separate issues. I
11 know that sometimes in our experiences
12 different people in the community want to
13 connect the two issues. They are not connected
14 at all. You should pay your child support one
15 hundred percent.

16 At the same time, I think that many
17 people, because of their involvement in court
18 proceedings in dealing with child support, have
19 genuinely come to the conclusion that a
20 presumptive joint custody law would, in fact,
21 be in the best interest of the children of
22 Pennsylvania.

23 Again, I understand it's
24 controversial; it's emotional. At a later
25 time, Mr. Chairman, I'd like to also provide

1 you with some of the research that I have come
2 across that I think helps to make not only the
3 legal case, but a psychological case that
4 presumptive joint custody can, in fact, be in
5 the best interest of the children in this
6 state. I think that's a standard that we ought
7 to proceed with. Hopefully, all our decisions
8 can be made on whether or not we believe a
9 change in this law would, in fact, be in the
10 best interest of the children.

11 I have come to the conclusion after
12 paying attention to this issue for several
13 years that it would be in the best interest of
14 the children to make this change in the law.
15 Again, I appreciate your time. I know you have
16 a lot of issues on your agenda, Mr. Chairman.
17 I appreciate your time in taking up an issue
18 that's important to a lot of people in
19 Pennsylvania. Thank you for the opportunity to
20 be here.

21 CHAIRPERSON GANNON: Thank you
22 Representative Veon. Representative Schuler,
23 any questions?

24 REPRESENTATIVE SCHULER: Thank you,
25 Mr. Chairman. Representative Veon, I'm a

1 little confused. I need some clarification.
2 On page 9, line 26, where it deals with,
3 entered by a court in this Commonwealth or any
4 state may. Can you clarify that? What is the
5 relationship when you are dealing with a state
6 other than Pennsylvania?

7 REPRESENTATIVE VEON: I'm not sure of
8 the answer to that. Jere, I have to get you
9 the answer to that.

10 REPRESENTATIVE SCHULER: That's fine.
11 Thank you, Mr. Chairman.

12 CHAIRPERSON GANNON: Representative
13 Masland.

14 REPRESENTATIVE MASLAND: If I could
15 pick up on that--I actually have a question--
16 but I think the answer is, if that is existing
17 law now, there may be a court order in another
18 state. Now if Pennsylvania has jurisdiction
19 because the parties are here, we can basically
20 pay attention to what that order says and take
21 that into account as the court is resolving
22 matters.

23 I actually had a question. You made
24 a statement that House Bill 1723 strengthens
25 the ability of parents to enforce the court

1 order when the other parent is in violation of
2 the parenting plan. I think that's a good
3 idea.

4 Interestingly enough, the Divorce
5 Bipartisan, Divorce Task Force held a hearing
6 on custody and family law related issues in
7 Philadelphia this past Friday. We actually had
8 people come forward who are involved in this,
9 not as parents, but involved as mediators,
10 attorneys, et cetera, who were saying that
11 there are times when a parent is not taking
12 advantage of his or her rights to partial
13 custody; is not seeing the children when they
14 should be seeing the children. And because the
15 parent who maybe has primary custody feels it's
16 important that, let's say, their son sees their
17 father, they're upset and they can't enforce
18 that.

19 As I look quickly at your language,
20 it looks more like the situation where you are
21 being denied access to the kids and you want to
22 get to them. It may be worth looking at the
23 flip side of the coin, whether there is
24 anything we can do to enforce or to encourage
25 parents to actually exercise their rights when

1 they have them, but they're avoiding them. I
2 know that's another issue, but I think that's a
3 concern. Something to think about.

4 One other comment. I know that,
5 technically, support and custody are legally
6 separate issues. But, they are inevitably
7 intertwined. I don't know that we can ever
8 fully separate them. There were even some
9 people in Philadelphia this past Friday who
10 said, maybe you have to somehow have them
11 resolved at the same time. That doesn't say if
12 somebody is not paying support, you can deny
13 them custody, but it may be wise to have the
14 judge making those orders at or about the same
15 time so you have one-family, one-judge
16 situations where it doesn't bounce back and
17 forth so much between the courts. Again,
18 technically, they are separate, but the issues
19 do collide.

20 Thank you. This is a good proposal.

21 REPRESENTATIVE VEON: As always,
22 those are good comments from Representative
23 Masland. Mr. Chairman, as always, again, this
24 committee is one of the best committees in the
25 legislature, thoughtful members making the

1 time, taking the time to work out very
2 difficult issues.

3 These kinds of issues, as you know,
4 oftentimes on your part require the wisdom of
5 Solomon. In many instances in this particular
6 area of the law there is no easy answer. The
7 best we can do is in a thoughtful way with
8 thoughtful members of legislature try to make
9 the law better.

10 I'm convinced that the research shows
11 that presumptive joint custody as a starting
12 point is, in fact, most importantly in the best
13 interest of the child. I'd like to work to
14 convince other members of the committee of that
15 case. As in all of these issues, there's a lot
16 of work that needs to be done certainly on this
17 bill, and those kind of suggestions from
18 Representative Masland are very welcomed. I
19 look forward to working with the members of the
20 committee to pass the best bill possible.

21 CHAIRPERSON GANNON: Thank you.
22 Representative Manderino.

23 REPRESENTATIVE MANDERINO: No
24 questions. Thanks.

25 CHAIRPERSON GANNON: Representative

1 Veon, I want to thank you for taking time from
2 your schedule to appear before the committee in
3 support of your legislation and providing us
4 with testimony that gives us the insight that
5 we need to work on this very important issue.
6 Thank you for being here today.

7 REPRESENTATIVE VEON: Thank you, Mr.
8 Chairman.

9 CHAIRPERSON GANNON: Our next
10 witnesses are James Carmine, Chair of the
11 Department of Philosophy at Carlow College,
12 Division of Humanities; and Mr. James A. Cook,
13 National Congress for Fathers and Children. Is
14 Mr. Cook here?

15 PROFESSOR CARMINE: I'm Professor
16 Carmine and Mr. Cook is right here.

17 Good morning, Mr. Chairman. I want
18 to start by saying, I'm a registered voting
19 Republican and I want to thank you for giving
20 me the opportunity and my colleague, Mr. Cook,
21 to speak briefly on behalf of the Veon bill. I
22 will speak for a few minutes and turn the
23 duration of my time over to Mr. Cook, who is an
24 authority on joint custody legislation
25 nationally.

1 The growing consensus among experts
2 across multiple fields, including a 1997 report
3 published by the United States Department of
4 Education, National Center for Education
5 Statistics, is children deprived of meaningful,
6 physical contact with their biological fathers
7 are at significant risk in numerous ways;
8 including, they are less likely to succeed in
9 school; more likely to fail in school; more
10 likely to have behavioral disorders; more
11 likely to take drugs, and more likely to commit
12 suicide.

13 Nevertheless, in the vast majority of
14 custody decisions in Pennsylvania, biological
15 fathers are allowed to be with their children
16 only four days a month.

17 Mr. Veon's presumptive joint custody
18 bill is intended not only to help fathers
19 remain involved in their children's lives, but
20 also to take children out of the unnecessary
21 and abusive cross fire that now occurs between
22 divorcing parents, who are both terrified of
23 losing their children to the other parent.

24 Despite the heroic work of even the
25 best judges, given current custody law,

1 competent, loving parents who separate are
2 given an unintended, perverse incentive to
3 compete for primary custody through wasteful
4 litigation. In the process, both parents harm
5 each other and their children.

6 In actual practice, if not statute,
7 Pennsylvania custody law currently presumes
8 primary custody by one parent, typically the
9 mother, is in the best interest of children.
10 This provides the unintended, perverse
11 incentive for fearful parents to litigate for
12 primary custody. The parent who loses is, by
13 and large, physically ejected from the
14 children's lives.

15 In addition to eliminating one parent
16 from the children's lives, another unintended
17 effect of a legal environment unable to
18 extricate itself from a pattern of primary
19 custody awards is that, a parent who hopes to
20 win primary custody must use the law to damage
21 the other parent in order to demonstrate
22 superior parental competence. In the process,
23 both parents, as they attempt to demonstrate
24 the other parent's incompetence, will damage
25 their children. No child is helped by the

1 intentional denigration of either of their
2 parents. Yet, current custody law virtually
3 guarantees mutual parental denigration and, of
4 course, the following bitterness.

5 Most important, however, is that,
6 judges, I'm afraid, have little control to
7 remedy these tragic unintended consequences of
8 the current, though tacit, primary custody
9 doctrine. Judges are bound by a history of
10 case law from a bygone era. Judges are bound
11 by legal precedents set when employment
12 patterns were radically different from ours.
13 And a tragic legal environment over which
14 judges have little control, a legal environment
15 where children and parents are unnecessarily
16 harmed by unintended, perverse incentives,
17 provided by the legal environment itself, is a
18 legal environment that demands a legislative
19 solution.

20 The Honorable Mr. Veon's House Bill
21 1723 will begin to take the terror of losing
22 one's children out of the divorce process. It
23 will protect both children and parents of
24 divorcing and separating families and will give
25 judges a far better tool for making good

1 custody decisions than they presently have.
2 House Bill 1723 will help change the legal
3 environment that currently creates perverse
4 incentives for parents to engage in litigation
5 both damaging to their children and utterly
6 wasteful of our valuable judicial resources.

7 Thank you very much. I now turn the
8 remainder of my time to Mr. Cook.

9 MR. COOK: Thank you. I am James
10 Cook, President of the Joint Custody
11 Association. My comments are, obviously, in
12 favor of H.B. 1723. What I have here, in order
13 to make the most efficient use of my time, are
14 merely notes as reminders of things to speak
15 of. I'm not going to speak a piece or read a
16 piece to you. The materials I have backing up
17 what I'm about to say are in the Manila
18 envelope that you received.

19 In addition to being President of the
20 Joint Custody Association, I should say a word
21 about the Judicial Council in California. The
22 Judicial Council is the administrative arm of
23 the courts in California. I am a member of the
24 Child Support Advisory Committee which creates
25 the guidelines for child support collection.

1 I've also attended all the American
2 Bar Association Family Law Council meetings on
3 the topic of custody and joint custody. I also
4 attend the American Psychological Association
5 and American Orthopsychological Association
6 meetings on the issues of divorce.

7 I'm somewhat regarded as the
8 initiating author of the California statute
9 bringing joint custody into being which was
10 passed by the California legislature in 1979.
11 Since then, I have been present at 36 of the
12 state legislatures during the debate and
13 development on this topic, and several foreign
14 countries who are now adopting joint custody
15 as a preference.

16 Incidentally, in my travels I find
17 that the widest number of statistical
18 evaluations tend to be collected in California.
19 I'll be talking about some California cases
20 merely because the statistics are available.
21 However, I want to assure you that I'm not here
22 to contend that California is necessarily
23 perfect or that you should adopt what
24 California is doing.

25 Quite to the contrary, it's

1 Pennsylvania's decision. My comments are
2 really on the statistical results. In fact,
3 the only thing I'll be talking to are the
4 public policy effects of passing a bill such as
5 H.B. 1723. I'll not be talking about
6 individual war-story divorce situations. I
7 think it behooves us, obviously, to talk about
8 those issues that fall within a legislative
9 bailiwick rather than that which falls
10 primarily in the bailiwick of a seated jurist
11 judge.

12 We have seen an interesting
13 legislative adoption of joint custody
14 nationwide. The first three years, after 1979,
15 were somewhat slow, but during that time within
16 the first three years, 33 states adopted the
17 principle or the idea, and it became the
18 fastest-moving in brevity of time most
19 widespread as far as number of states adopting
20 of any major family law change in the entire
21 20th Century.

22 The concept of joint custody and the
23 encouragement of it moved faster than the
24 concept of no-fault divorce; of the Uniform
25 Child Custody Jurisdiction Act; of the idea

1 that best interest should be the criteria for
2 deciding child custody, or that both parties
3 should be financially responsible. The lesson
4 out of that I think is that the public
5 recognizes and was ready and it was an issue
6 whose time had come.

7 What have been the consequences and
8 could you and should you make changes that H.B.
9 1723 bring about judging from what we know of
10 the consequences now over the last 17 years?
11 California has had 17 years of implementation
12 of the joint custody statute. What has
13 occurred during that time?

14 Incidentally, the California example
15 is interesting because it's the largest unified
16 judicial system anywhere in the country that
17 processes over 177,000 family law divorce
18 custody cases annually. It was, I regret to
19 say, the first state with no-fault divorce,
20 which I'm not here to defend. It was also the
21 first state in 1974 to set a criteria of a
22 child's best interest in deciding custody.

23 In fact, with the passage of joint
24 custody in California, the Bar Association
25 announced that it was the single most important

1 legislative change in the entire 10 years since
2 the advent of no-fault divorce.

3 There is several things that brought
4 it about and Pennsylvania may experience a
5 couple things that I am mentioning. The
6 largest bulk of psychological analysis of what
7 was happening to children of divorce occurred
8 throughout the '70's. It was a great rise of
9 what is happening to young children and what is
10 the consequence of this rapid rise of sole
11 custody and no-fault divorce. It was a search
12 for something to better the circumstances of
13 the children.

14 Furthermore, the second enormous
15 influence was that of child snatching. It was
16 the only recourse that was available in sole
17 custody situation for aggrieved parents. A
18 third impetus, and I'm sorry to have to mention
19 it, was homicide. Homicide of judges,
20 attorneys and the opposite spouse in those
21 desperate situations where a parent was led to
22 believe that they were going to be deprived of
23 access to the children altogether.

24 I want to ease into another also
25 impetus for joint custody. That's the problem

1 of child support collection. We know and we
2 certainly have evidence that, in sole custody
3 situations, the delinquency rate in the payment
4 of child support is anywhere from 45 to 75
5 percent of the cases. However, what we know
6 from bureau census statistics, that in joint
7 custody situations the delinquency rate of
8 child support is only six or seven percent.
9 Joint custody is the single, most effective and
10 least expensive policy action one can take to
11 help encourage and ensure the payment of child
12 support.

13 As I mentioned before in about the
14 first three years, the first three years the
15 ball got rolling slowly. It was coming to the
16 public's awareness that joint custody was
17 likely to prevail when you go through the
18 court. Those are the early years. What
19 happens after it gets established? What is
20 likely to happen in Pennsylvania, if you have
21 an emphatic rebuttal presumption for joint
22 custody? Now almost 90 percent of all the
23 divorce custody cases going through the
24 California courts come out at the far end with
25 joint custody. It's an expected result for

1 most people going into divorce. Why? For two
2 single reasons, I think.

3 One is that, the law encourages it.
4 It's a portion of the law the public generally
5 reads themselves, those issues dealing with
6 custody and divorce. If the law is encouraging
7 them to think positively about joint custody,
8 that's the first influence.

9 The second influence is, they are
10 merely watching and listening to and taking the
11 statistics on court decrees. If the court
12 decrees, as they are now in 90 percent of the
13 cases it's likely to prevail, many parents go
14 in expecting now that it's likely to occur.

15 Now, one of the big issues is, how is
16 the time divided? The largest survey I have
17 seen is that the public has come up with 34
18 different ways of allocating the time of the
19 child. There's no easy, simple solution. I'm
20 not here suggesting absolute 50/50. For
21 instance, that may be impractical for most
22 people. What we have found is the stimulus or
23 imagination about how to make it possible.

24 Out of the 34 different ways of
25 dividing the time, one can say, ah, but how

1 many actually get equal joint custody? Now, as
2 impractical as absolutely equal is for most
3 families, nevertheless, we find that 20 percent
4 of all the cases coming out of the system have
5 a nearly equal division of time with the child.
6 What is nearly equal? It's between five and
7 nine overnights in every two-week period.

8 A major cost from public policy point
9 of view is, what's likely to be the financial
10 cost, economic cost of the state of running a
11 court system that has a good healthy nudge
12 toward joint custody. One of the important
13 things is court return costs. Roughly, from
14 the statistics I have seen, 16 percent of the
15 joint custody cases return for re-adjudication.
16 But, 31 percent of the sole custody cases
17 inevitably return taking court time.

18 Let's put this even a little finer.
19 How about cases in which a judge takes the
20 initiative of decreeing joint custody even
21 though one parent objected? In those cases we
22 find still the joint custody cases come back to
23 court less often than sole custody. The
24 statistics are close. Twenty-nine percent of
25 those with joint custody decreed against the

1 objection of one parent come back, but 31
2 percent of the sole custody cases do come back.

3 As for contempts which absorb the
4 court's time, contempt mothers file contempt
5 citations twice as often in sole custody cases
6 as they do in joint custody cases. What does
7 it do about litigation? Is there any reduction
8 in litigation for joint custody?

9 We found that there is 19 percent
10 less litigation of custody cases in joint
11 custody than occurred during the former sole
12 custody era. Sole custody in this case would
13 have been prior to 1979. There is, in fact,
14 less litigation. Interesting stimulus that
15 way, a couple having joint custody, having come
16 to some sort of agreement and/or decree that
17 that will occur frequently do not come back to
18 litigate nitpicking issues because there is a
19 slim chance that one party or the other may
20 lose custody altogether. That we find is an
21 impetus to find a way to work it out in joint
22 custody.

23 When does joint custody occur in the
24 minds of these parents? What is the impetus
25 that brings it about? Now that we have got

1 several years of implementation, it's
2 interesting to note that even though the
3 parents filed an objection to each other and
4 often seeking sole custody, by the time they
5 went to court, 62 percent of the parents had
6 voluntarily themselves decided that joint
7 custody was a legitimate and worthwhile
8 outcome. Overwhelmingly, the joint custody
9 cases are occurring voluntarily as a result of
10 what they see in the law and as a result of
11 what the court cases came.

12 Who is the biggest single facilitator
13 to the achievement of joint custody? This may
14 surprise you because I imagine you hear
15 complaints about attorneys. We know that 24
16 percent of the joint custody cases are the
17 result of cooperative attorneys helping the
18 parents to bring it about. The new breed
19 family law attorney is encouraging joint
20 custody. That's what I find among young
21 attorneys.

22 Another interesting thing. How about
23 those cases which came out sole custody, sole
24 custody was decreed by the court? Thirteen
25 months later we find that 15 percent of those

1 sole custody parents have voluntarily agreed to
2 shift toward joint custody, even though one has
3 sole custody after they have left court.

4 Among the other advantages is that,
5 joint custody parents we have found are more
6 often likely to make voluntary extra payments
7 than sole custody payments. By voluntary
8 extra, I mean allowances, health, summer camp,
9 music lessons, assistance in paying for an
10 automobile and for saving toward college
11 education. There is an impetus in joint
12 custody to, as I call it, heart strings loosen
13 purse strings. If you can keep up that heart
14 contact, it's much easier to get parents to
15 consider the extra voluntary payments.

16 In this era in which both genders
17 want to work to the best of their remuneration,
18 the nice thing about joint custody, it does
19 facilitate working mothers, working at
20 remunerative occupations which they personally
21 find more satisfying.

22 Let's talk for a moment about abuse.
23 We should be for anything that will help reduce
24 abuse among parents. A lack of access,
25 controlling the child, keeping the child away

1 from one parent or the another is unfortunate
2 and can be a stimulus, a frustration leading to
3 abuse. In joint custody cases where you are
4 assured that both parents are going to have
5 substantial time with the child, we reduce the
6 recourse to abuse and we reduce the frustration
7 that brings about abuse.

8 The important thing is, I think, what
9 is the effect on children? What is likely to
10 be in the children's best interest? I think it
11 behooves us of this generation to try to get
12 across to this next generation that the
13 differences between the genders can be
14 resolved. If we don't, we are breeding I think
15 males and females who think it's inevitable to
16 fight with each other. We must show the
17 democratic process provides an opportunity for
18 settling or resolving, or at least ameliorating
19 the difference between the genders.

20 It's also the single biggest signal
21 to young people of equality. I think equality
22 is the single most important political
23 imperative of the last half of the 20th
24 Century. We are now beyond equality for races,
25 genders, sex, religion and into equality for

1 children. It's their personal example that we
2 do believe in it.

3 Furthermore, and lastly on that
4 issue, a child in joint custody need not choose
5 between parents or to develop a guilt trip over
6 some parent they excluded. Children need not
7 choose when there's a matter of joint custody.
8 As Representative Veon has mentioned, best
9 interest dominate. I'm not suggesting the
10 replacement of the best interest idea.

11 I don't want to use up too much more
12 of your time. I'll mention two I think
13 important things. One is to set an atmosphere
14 for the divorcing public. There is a crucial
15 time we find in the process for divorce in
16 which, almost invariably, one parent wants
17 divorce and the other does not. Most often we
18 have found, and it's at least 74 percent of all
19 the individual parents seeking joint custody is
20 the married partner who did not want a divorce.
21 They are desperate to look for a way to
22 cooperate, get along and suggesting the
23 sharing. The joint custody parents who are
24 seeking it I think are peace seekers and
25 peacemakers.

1 I think we should encourage what we
2 can to help the person who doesn't want to
3 attack the other side. And the rebuttal
4 presumption really means that the party
5 proposing joint custody need not mount an
6 aggressive attack on the other side.

7 It's a very crucial moment to see
8 what we can do about the party who is doing
9 their best to try to preserve the marriage,
10 although in this day and age divorce will take
11 place anyhow. I think we must do what we can
12 to back the individual who wants to share with
13 the other party.

14 I would say that the most noble
15 function of the law is to provide an example of
16 what's expected of people. I think
17 establishment of rebuttable presumption of
18 joint custody will prevail is the kind of image
19 we want to give to the divorcing public.

20 There was a question asked about,
21 certainly, there are parents who want access,
22 what about those parents who are not following
23 up on their parenting or not coming around to
24 be with the child? I think our first step is
25 to protect those who want to have access and be

1 good parents.

2 Hopefully, we can bring along those
3 who are not doing so or not intending to pursue
4 their access for the child, but I must caution
5 you, we must really to be forming a law around
6 what is desired rather than forming a law
7 around worse case examples. We can say there
8 are some parents out there who would not come
9 back and not pay attention to the child, but
10 that's not a reason to deny joint custody to
11 the rest who want to be involved. I thank you
12 very much.

13 CHAIRPERSON GANNON: Thank you very
14 much, Mr. Cook. Representative Manderino.

15 REPRESENTATIVE MANDERINO: Thank you.
16 Thank you both for testifying. I couldn't help
17 but make a correlation in my mind during both
18 of your testimony with the argument that you
19 give in favor of joint custody, sounding very
20 familiar to the arguments that I heard last
21 session when I served on a panel that was
22 looking at the no-fault divorce law. In
23 particular, the arguments of those folks who
24 said, don't get rid of no-fault divorce. The
25 reasons they gave are the same reasons that you

1 give in favor of joint custody.

2 For that reason, I find it a bit kind
3 of incongruent, particularly, Mr. Cook, that
4 you had some inferences in there that you don't
5 defend no-fault divorce; that you regret
6 no-fault divorce. I'd like to hear from both
7 of you what you think about no-fault divorce;
8 what you think about no-fault divorce and joint
9 custody and those two concepts together. If we
10 move in looking at changing either/or both of
11 these areas of the law, how you think they fit
12 together.

13 PROFESSOR CARMINE: Let me speak
14 first to that. This is an issue that I have
15 given tremendous thought to over the years. I
16 think that no-fault divorce can only work when
17 we have what might be described as no-fault
18 child custody. No-fault divorce gives parents
19 an opportunity to escape what is essentially a
20 relationship that is damaging they believe to
21 each of them.

22 In no way am I supporting a return to
23 putting fault back in divorce. That would
24 simply add more bitterness to a situation
25 that's already seems to tend toward bitterness.

1 Rather, the problem is taking away things that
2 provide incentive for bitterness.

3 It's a tragedy when one's marriage
4 falls apart. We know that, and sometimes
5 there's an unrealistic expectation that you can
6 do something to hold it together. But, that's
7 not the case in reality. If the marriage
8 fails, that's a failure between two adults.
9 But what we find happening is that, there are,
10 as I've been saying over and over, perverse
11 incentives given for parents to damage their
12 children in order to help with the divorce
13 process.

14 I think we need to recognize the end
15 of a marriage does not mean that you lose your
16 children. So, I think that no-fault divorce is
17 only possible if we, in fact, have with it
18 something similar to a presumptive shared
19 custody or a presumptive joint custody.

20 REPRESENTATIVE MANDERINO: In your
21 opinion the two go together?

22 PROFESSOR CARMINE: Either you get
23 one or both. As a state certainly committed to
24 the notion of no-fault divorce, it seems the
25 only reasonable addition is to add to that

1 presumptive joint custody.

2 One example of this. In Pittsburgh
3 we have a thing called the Generations Program.
4 It's a lovely program in principle. What it
5 does, it allows parents to get an education on
6 how they can avoid some bitter conflict in
7 their child custody proceedings. It suggests
8 that they try as much as possible to be
9 flexible. It says all the wonderful things
10 that we would like to think will happen in a
11 custody case.

12 But, at the conclusion of these
13 programs what we will typically hear is, but if
14 you do go to court and it's not so subtle,
15 basically dad, you're only going to get four
16 days a month. That seems to me to subvert the
17 very notion of the Generations Program, which
18 in principle is truly lovely.

19 MR. COOK: During the debates in 1969
20 that brought about no-fault divorce, the debate
21 stopped at one point. While providing no fault
22 as a procedural way to speed inevitable
23 divorces, they failed to go on to the next
24 section, which is, what's going to happen to
25 child custody? We entered the '70's and the

1 '80's with no fault strictly procedural on
2 property, but not providing no fault in child
3 custody. There is and probably should be no
4 fault in child custody; therefore, joint
5 custody would prevail.

6 In going around the country I find a
7 very hot and growing topic in state
8 legislatures searching for ways to phrase it is
9 this problem of what to do about no-fault
10 divorce. I think this year we're going to see
11 a beginning shift from no fault to some other
12 concepts. I'm personally working on the
13 issues, and I have some ideas which I'm going
14 to develop. They're not fully developed at the
15 present time.

16 From my experience there should be
17 neither the wording of no fault or fault.
18 That, in fact, what we have done, we have set
19 up a shopping list of how one could be entitled
20 to a divorce. One side we say, it's going to
21 be no fault; we can't go to a shopping list.
22 The other side you say fault, we'll go to
23 adultery, promiscuity, and so forth.

24 What's lacking in most of our
25 statutes are any virtues that one can aspire to

1 show that you are doing your best to help
2 preserve a marriage. I think we should have an
3 opportunity for a party to be able to present,
4 they've been loyal, conscientious, conserving
5 funds, paying bills, consistently working so
6 that some judge at least can use those points
7 or those issues to bring some allocation in the
8 spoils of divorce.

9 I regret to say, at the present time
10 we have constructed a monster dealing with the
11 problem of divorce which does nothing to help
12 preserve it, but gives a number of ideas about
13 how you can get out of a marriage, including
14 merely asking for the divorce. We have done
15 nothing to give an example to our children or
16 to the future generation that we value ethical,
17 committed relationships.

18 REPRESENTATIVE MANDERINO: I hear
19 very clearly what you say about working towards
20 staying in a marriage. But, I want to ask you
21 directly, if that is not where the couple ends
22 up going, are you of the opinion that returning
23 to a fault-based system, again, the focus in
24 joint custody, the focus in all divorce
25 proceedings that have children, the primary

1 purpose should be what is in the best interest
2 of the children?

3 It's my understanding from family law
4 practitioners, and in particular one of the
5 primary drafters of Pennsylvania no-fault
6 divorce law way back when, who was actually my
7 father, that children were a very important
8 focus on that; that we didn't want parents
9 making each other out to be the bogeyman in the
10 relationship because that served the children
11 no good. I just want to make sure, if you're
12 saying we should reintroduce the issue of
13 fault, how we do that without having that
14 happen?

15 PROFESSOR CARMINE: Let me speak to
16 this again.

17 REPRESENTATIVE MANDERINO: I
18 understand where you're coming from.

19 PROFESSOR CARMINE: I want to expand
20 because I think the answer is reasonably clear.
21 With regard to no-fault divorce, the intent is
22 to take children out of an embittered
23 environment so they can grow up to be healthy
24 children. That is, I think, the fundamental
25 intent of no-fault divorce. It's not a way to

1 force parents to sit together and fight. There
2 was a recent study that we saw that shows, and
3 this is the odd part, that shows it turns out
4 that children fair better, even those awful
5 bitter marriages.

6 A mistaken conclusion that can be
7 drawn from this I think is that, well, we ought
8 to reintroduce fault into the divorce process.
9 I think that's utterly mistaken. What we find
10 instead is, in divorce, after the divorce, the
11 likelihood of even greater embittered
12 parenting, even more horrible experiences, even
13 more litigation is so overwhelming that no
14 matter how awful the marriage was, when we have
15 the so-called primary custody doctrine--I'm
16 calling it the primary custody doctrine--
17 creates even a more horrible environment. So,
18 if we have a no-fault divorce but a whole lot
19 of fault in the child custody, you're going to
20 really hurt your kids, and that's what we've
21 got.

22 MR. COOK: Political practicality
23 tells me that we're not going to do away with
24 no-fault divorce per se, categorically. I
25 think we are going to have modifications around

1 the country. Therefore, for the moment I'll
2 sit still and say, yes, there will be no fault.
3 But, if we talk on the outside of the courts
4 about ethics, morality, standards but have no
5 way of performing them in the courtroom and
6 getting any credit for them, that's something
7 we have to rectify. I think we can rectify it
8 first in the child custody area by staying with
9 the best interest is the primary criteria, but
10 adding how both parents deal in the virtues,
11 the desires that we want in our society rather
12 than try to dig up some fault that we can blame
13 them for.

14 REPRESENTATIVE MANDERINO: Thank you.
15 Just one last question for Professor Carmine.
16 I'm just curious. Carlow College, Department
17 of Philosophy, is this an area in which you
18 teach?

19 PROFESSOR CARMINE: Yes, I'm a
20 philosophy professor at a primarily women's
21 college. I'm also the pre-law advisor. I'm
22 continually hoping to send women to college to
23 be lawyers. I'm in no way antagonistic to
24 lawyers. I see it as a more systemic problem.
25 I also certainly am not antagonistic to the

1 careers of women since my entire career is
2 depending upon them having successful careers.

3 I really like to be certain that
4 people recognize, this is not a gender issue.
5 This is actually an issue of how do you put
6 children in an environment where they can grow
7 strong. Children whose parents are given an
8 incentive to hurt each other are damaged. How
9 would you feel when you heard your mom say to
10 your dad or your dad say to your mom, he's no
11 good; she's no good? Even if it's not said,
12 they're going to court. Obviously, they don't
13 think they are very good.

14 REPRESENTATIVE MANDERINO: My
15 experience with Carlow College is that it's
16 predominately a nursing school.

17 PROFESSOR CARMINE: No longer, though
18 we certainly have a very, very strong nursing
19 components.

20 REPRESENTATIVE MANDERINO: I'm
21 confused how this subject matter was in the
22 curriculum.

23 PROFESSOR CARMINE: I am the pre-law
24 advisor. The pre-law program is growing. I
25 think this is a particular niche for Carlow to

1 go as it develops its pre-law program and its
2 family law. I have internships with the CASA
3 program, if you're familiar with that, and
4 other law programs.

5 REPRESENTATIVE MANDERINO: Thank you.

6 PROFESSOR CARMINE: You are quite
7 welcome.

8 CHAIRPERSON GANNON: Question, to put
9 you on the spot a little bit. I'd like from
10 you, as well as your proponent, what is the
11 principal argument of those who are opposed to
12 shared custody, presumptive shared custody in
13 the law?

14 MR. COOK: Now I'm about to speak for
15 what the opponents are thinking, which is very
16 suspect, of course. Their principal opposition
17 from what I can see is something they don't
18 voice openly and that's control; the desire and
19 the expectation of control, including
20 controlling what that child will love in the
21 future, virtually insidious that way.

22 Falling after a desire for unilateral
23 control is a worry about money income. I think
24 it's a good idea to separate completely the
25 child support issue from the custody issue.

1 Child support is decided usually in these
2 states by guidelines at the present time.

3 To help encourage this feeling of
4 being able to have control, then the opponents
5 have drifted to such excuses as it increases
6 abuse rather than removes the reason for abuse;
7 that we don't get along; that a child needs
8 stability. A child does need stability, but I
9 think a child needs stability of a relationship
10 with both parents. A child is interested in
11 where the alternate parent is living and what
12 home they have. There is a stability issue.

13 Another argument is that of
14 shuttling, but they seem not to see what's
15 going on in society. They only bring up the
16 excuses to justify retaining sole custody. As
17 far as shuttling is concerned, we're in a stage
18 which a child's life even in a conventional
19 married family nowadays is a series of
20 shuttling. School, soccer, scouts, religious
21 organizations, grandparents and so on; and we
22 are also a highly mobile society, particularly
23 among the young who cannot afford to buy their
24 own home. Those are some of the objections I
25 hear.

1 CHAIRPERSON GANNON: Brian Preski.

2 MR. PRESKI: Mr. Cook, I guess my
3 question is with the 17 years that California
4 has had presumptive joint custody now, have
5 there been any studies on the collateral
6 effects on the children? Are the children of
7 divorce under presumptive joint custody now
8 doing better in school? Is there a less
9 truancy rate? Has there been anything like
10 that completed yet?

11 MR. COOK: Yes, there has. By the
12 way, I want to qualify just a little.
13 California is a bit ambiguous on the idea of
14 rebuttal presumption. It's rebuttal
15 presumption if you agree. It's a preferred if
16 you don't agree.

17 The most extensive study on the very
18 thing that you asked happens to have been done
19 by my wife who got her Ph.D. degree in
20 psychology based on the study of the
21 consequences of custody arrangements as a
22 function of mental health for adolescents. She
23 is the counselor for students at Beverly Hills
24 High School.

25 Overwhelmingly, what they've found,

1 and by the way, this is regardless of whether
2 it was joint custody or not, but the children
3 who had frequent, continuing, open access to
4 both parents survived best psychologically.
5 Those who had restriction or could not easily
6 get in touch with the other parent or live with
7 them were the ones that suffered the most. If
8 the child can continue to develop their
9 individual feeling for both of their parents
10 separately, they will survive best.

11 MR. PRESKI: I guess the next
12 question, as you do this on a national scale
13 and you go from state to state to discuss this,
14 what other states have moved now towards
15 presumptive -- if not presumptive, have moved
16 towards joint custody?

17 MR. COOK: The first shift was in
18 Nevada, after the California example. Nevada
19 and California have one of the longest
20 contiguous borders anywhere in the nation.
21 Nevada adopted quickly. Another quick adoption
22 was that of Louisiana; then Florida, who
23 primarily uses the term shared custody rather
24 than joint custody; Iowa, Illinois,
25 Connecticut; and from there the number falls

1 down with more indiscriminate implementation.

2 MR. PRESKI: I guess my last question
3 then for both of you is, do you see now, when
4 you both gave your talks you talked around
5 this, but the impetus towards shared custody?
6 If the change is made in the law and the
7 citizenry starts to accept it, is that
8 something that they go into the divorce now
9 understanding and it simply does not become an
10 issue; rather than, in states like Pennsylvania
11 where it's simply another issue in a line of
12 things that have to be decided? Is that
13 because that's the law and because that's the
14 mind frame that you go into this, do you give
15 that as the basis for the success that you have
16 seen?

17 MR. COOK: It has a lot to do with
18 it. In fact, what I see among the younger
19 people divorcing, and by younger I mean those
20 in the 20's and the first half of the 30's,
21 it's almost taken for granted nowadays. They
22 have all grown up in an era of talk about
23 equality. They just rather expect it.

24 The objections I find tend to fall in
25 the 50-year old age group or the late 40's who

1 are still reminiscent of the time when one
2 gender or the other had control of the child.
3 There is a change going in the public's
4 perception for what's an equal and decent idea.

5 The other is, it's costly to divorce.
6 Overwhelmingly, we see about 60 percent of the
7 cases going through the courts without any
8 attorney at all, which is unfortunate. No
9 personal protection. They read and see that
10 it's likely to take place and they adjust for
11 it and make their own proposal for joint
12 custody.

13 MR. PRESKI: My last question is
14 then, Mr. Cook, given the experience that you
15 have had with this, have you ever seen cases
16 where both parents are decent, virtuous human
17 beings, but where it does not work?

18 PROFESSOR CARMINE: Let me just ask
19 you to clarify the question. You mean in a
20 joint custody environment where two decent
21 parents still go to war? Or, do you mean when
22 you have a primary custody environment like
23 ours where decent parents go to war? In ours
24 it's all too common.

25 MR. PRESKI: In a shared or joint

1 custody environment where you have two parents
2 who or -- They've decided their marriage is
3 over. Neither one are adulterers. There is no
4 case of abuse or anything like that, but for
5 one reason or another where the shared custody
6 or joint custody just won't work.

7 What about in California? You might
8 have someone at the top of the state and
9 someone at the bottom. Does that come into
10 play?

11 MR. COOK: I have seen a few cases.
12 I probably would rather not see cases of
13 so-called ideal parents being unable to do it,
14 but it does occur. Joint custody alone, the
15 passage of presumptive joint custody statute
16 won't clear away all the problems that people
17 confront going into divorce. There are, from
18 what I have seen, at least three major reasons
19 why people who are now heading into divorce.
20 Custody is rather unlikely to change it. Those
21 three reasons are self-interest, self-
22 indulgence, control over one-self personally.

23 A secondary area is that of sex,
24 intercourse. A third area, and I'm sorry the
25 system has not yet approached it even as well

1 as they approached bankruptcy law, and that's
2 financial, the financial collapse. A lot of
3 those issues continue even though the parents
4 may be very nice to their children and
5 congenial. Sometimes those same antagonisms
6 can eventually break down a joint custody
7 arrangement too. I won't say it will work for
8 everybody forever.

9 MR. PRESKI: Thank you.

10 CHAIRPERSON GANNON: Thank you very
11 much, Mr. Cook and Professor Carmine, for
12 sharing your information and thoughts and facts
13 with us today.

14 PROFESSOR CARMINE: Thank you, Mr.
15 Chairman.

16 CHAIRPERSON GANNON: Our next
17 witnesses are David M. Scott, Altoona Division
18 Director of the Greater Pittsburgh Chapter
19 National Congress for Fathers and Children; and
20 Mr. John Eichelberger, Commissioner of Blair
21 County, Blair County Courthouse. Welcome,
22 gentlemen. You may proceed.

23 MR. SCOTT: Thank you, Mr. Chairman.
24 I would like to thank you and the entire
25 Judiciary Committee for allowing me to make

1 this presentation in favor of House Bill 1723,
2 presumptive joint custody legislation. I would
3 like to begin by introducing myself. My name
4 is David M. Scott, and I'm a lifelong resident
5 of Pennsylvania, except for my service in the
6 United States Army. I'm currently a practicing
7 certified public accountant in Altoona and have
8 been with the same firm for 13 years, and I'm
9 also the Altoona Division Director of the
10 Greater Pittsburgh Chapter, National Congress
11 for Fathers and Children.

12 We have over 100 participants of our
13 Altoona Division, which include fathers,
14 mothers, grandparents, second spouses, and
15 other family members who strongly support this
16 legislation.

17 When I entered the courtroom in May
18 of 1990, it was the beginning of my limited
19 relationship as a father to my daughter. In a
20 matter of 15 minutes my involvement with my
21 daughter Ashley was reduced to every other
22 weekend and one evening per week. When I left
23 the courtroom that day, it was also the
24 beginning of my current status as a second-
25 class parent. I had no idea at the time what

1 turn the future would take.

2 During 1991 and 1992, there was
3 custody litigation that lasted 18 months and
4 resulted in conciliation conferences,
5 evidentiary hearings, appeal to the Superior
6 Court, false allegations of sexual abuse, court
7 home study, a number of visits to various
8 psychologists. I spent in excess of \$30,000,
9 but my former wife was provided with attorneys
10 and expert witnesses by the Watchtower, Jehovah
11 Witnesses. This custody case was a segment on
12 CBS News "60 Minutes" on December 27, 1992.

13 The next three years since that
14 litigation, I was a full-time father and mother
15 at times. I was extremely involved with my
16 daughter's life. Two nights every week and on
17 every other weekend, I saw that my daughter got
18 her meals. I saw that she combed her hair,
19 brushed her teeth, learned table manners. I
20 taught Ashley to cook simple things, wash
21 dishes, dust the house, and fold the laundry.

22 Every Thursday evening I would take
23 Ashley to dance class and pick her up when it
24 was over. I paid for the costs and took care
25 of all associated fund-raising activities. I

1 took her to children's theatre, the circus,
2 concerts and ballet events.

3 I was the parent who took care of
4 Ashley's school activities and school
5 fund-raising activity. I took care of getting
6 Ashley's needed school clothes, winter boots,
7 hats, gloves, et cetera, in addition to my
8 monthly support payment. I was there when
9 Ashley needed someone to take her to the
10 library for a school project and to help her
11 with her homework. We would read books
12 together every week.

13 In May, 1995, my former wife married
14 a member of the Jehovah Witnesses in another
15 state. Now there was additional custody
16 litigation that lasted six months and resulted
17 in conciliation conferences, evidentiary
18 hearings, appeal to the Superior Court, and
19 more visits to psychologist and the financial
20 burden which ended in the selling of my home
21 with now an unsecured debt of \$25,000, which
22 will take me the next five to seven years to
23 pay off this debt.

24 My daughter was allowed to move out
25 of state with her mother. This past school

1 year she let Ashley be tardy 26 days and be
2 absent 34 days from school. She's gone from an
3 above-average student while in Pennsylvania to
4 a below-average student in another state.

5 The above-described experience might
6 seem extraordinarily, but what is very sad is,
7 it's the rule in this state, not the exception
8 for the following reasons.

9 The current primary physical custody
10 model is what creates the current custody
11 battle climate which is based on a win or lose
12 premise. Each parent acquires an attorney and
13 battles for the prize, the children, because
14 when you enter the courtroom it is winner takes
15 all. There are no winners but only losers, and
16 that is the children of this state. They are
17 caught in the middle of these custody battles
18 with the high probability of being eliminated
19 from one of the parents. The excessive
20 financial cost of this litigation could be used
21 instead to educate our children.

22 During the above-described litigation
23 my former wife brought false allegations of
24 sexual molestation against my daughter's
25 psychologist. False allegations of sexual

1 molestation are used as a weapon to eliminate a
2 father from his children, and this also
3 eliminates the grandparents. This is based on
4 the custody battle mentality which is to do and
5 say anything to win and who cares what it does
6 to the children.

7 During the above-described litigation
8 my former wife falsely accused me of spouse
9 abuse. False allegations of spouse abuse and
10 false protection from abuse orders are the
11 other weapons used to eliminate a father from
12 his children, which this also eliminates the
13 grandparents.

14 There is no such thing as taboo
15 anymore in this society which thinks fathers
16 are all child molesters, but seem to forget
17 that our children are placed in homes with a
18 mother's new husband or significant other
19 without any knowledge of the individual's
20 background. My daughter was allowed to move to
21 another state with a stepfather who she only
22 met five times.

23 The parent who becomes the
24 noncustodial parent (visitor) has a high
25 probability of being eliminated from his or her

1 children's life.

2 These noncustodial parents are
3 usually fathers which are needed in these
4 children's lives along with the mother. As
5 fathers, we just do not want to be limited to
6 the financial giver, but we also want to be an
7 equal caregiver.

8 It is very sad, but more than 50
9 percent of the children in this state come from
10 a broken home which has placed a large crack in
11 their foundation, and when a father or mother
12 is eliminated from the child's life, it will be
13 a lifelong crack in the foundation that can
14 never be fixed.

15 I have enclosed letters from fathers,
16 mothers and grandparents from the Altoona area
17 as exhibits, which show that my experience as a
18 divorced father is not extraordinary, but the
19 rule in this state.

20 Exhibit 1, Mr. Robert Lender, a
21 father; Exhibit 2, Mrs. Donna Nycum,
22 grandmother; Exhibit 3, Mrs. Susan Galant,
23 grandmother; Number 4, Mrs. Beverly Hetrick, a
24 grandmother; Exhibit 5, Mrs. Clarice and Paul
25 Hoerath, grandparents; Number 6, Mr. Damian

1 Futrick, father; Number 7, Mrs. Joann Dick, a
2 grandmother.

3 Currently, as Altoona Division
4 Director of the Greater Pittsburgh Chapter of
5 the National Congress for Fathers and Children,
6 my phone rings off the hook. I have found my
7 experiences, as a second-class parent, is not
8 the exception.

9 We should do everything in our power
10 to maximize contact between the child and both
11 parents. One clear way to eliminate the
12 adversarial custody battles in this state is
13 the establishment of presumptive joint custody
14 in Pennsylvania.

15 Thank you for your support of this
16 very important legislation that I believe will
17 benefit all families of Pennsylvania.

18 CHAIRPERSON GANNON: Thank you, Mr.
19 Scott. Mr. Eichelberger.

20 MR. EICHELBERGER: Mr. Chairman,
21 members of the committee, I sincerely
22 appreciate this opportunity to address you
23 concerning H.B. 1723 and ask for your support
24 of this much needed legislation.

25 You will, I am confident, hear many

1 statistics about the importance of having both
2 parents involved in a child's upbringing. I
3 know for a fact you have heard that somewhat
4 this morning. I have received many studies
5 during my tenure as a divorced parent which
6 conclusively demonstrate that two involved
7 parents are the best platform for a
8 well-adjusted, academically-successful and
9 well-behaved child.

10 I concur with this contention which
11 is not a stretch for most thinking people. In
12 fact, with the exception of some extremist
13 groups, no one would dispute the basic premise
14 of the benefit of a two-parent family.

15 I have been amazed, however, at our
16 court's track record of predominately awarding
17 custody to one parent and confounded to see ,
18 that the one parent, as a recent study shows,
19 is the mother 90 percent of the time. When you
20 deduct the mothers who are found unfit for
21 obvious reasons such as criminal involvement or
22 health factors, and deduct those which choose
23 not to accept the child, the figure drops to
24 just three and one-half percent. I find it
25 impossible to believe that only three and a

1 one-half percent of the fathers in this county
2 are fit, in the eyes of the court, to have the
3 primary physical custody of their own children.
4 I find it even harder to understand why I was
5 not granted this status.

6 It was a devastating day in 1990 when
7 my former wife and mother of our two-year old
8 son left our home. Initially, communication
9 was good between us. I spent a lot of time
10 with my son Johnny; in fact, more than she did.
11 When communication broke down and scheduling
12 became a problem, we went before a judge. A
13 temporary order was issued which placed my son
14 with my estranged wife and gave me visitation
15 privileges every other weekend. I was told by
16 my attorney that this was a standard order and
17 that after psychological evaluations were
18 completed, we would be back in court for a
19 permanent schedule.

20 What I learned later in the process
21 was that, this initial temporary order would
22 set the tone for everything which was to
23 follow. This temporary order was now referred
24 to as the existing order and shifted the burden
25 to me to change what the court had already

1 decided.

2 Stunned and confused by this
3 first-time involvement in the legal process,
4 quickly drowning financially from the debt my
5 estranged wife left behind accompanied by
6 mounting legal fees, and suffering from the
7 emotions of loss and humiliation from the
8 divorce, I nonetheless felt confident that my
9 day in court would protect me from losing my
10 time with my son. After all, I was never in
11 any trouble with the law. I was not accused by
12 my estranged wife of any misconduct or abuse.
13 I remained in the household. She left and got
14 an apartment in the area.

15 All of my family of four siblings,
16 mother, grandmother, aunts, uncles, cousins
17 lived in the area. She had only two parents
18 and one grandmother who lived in the area, but
19 were all in the process of moving out of the
20 state and did so during our proceedings.
21 Lastly, we both had full-time jobs.

22 In the end I was awarded joint legal
23 custody with primary legal physical custody
24 being awarded to my ex-wife. In a convoluted
25 visitation schedule I see my son about 45

1 percent of the time. I was informed by my
2 attorney that this was as good a deal as I
3 could expect, that I was very lucky to get
4 that. I still cannot understand why my 45
5 percent is considered good, although I know
6 many others who are very much less fortunate.

7 As a county commissioner I have made
8 my views on equal custody very public. As one
9 elected official to another, my position has
10 been surprisingly well received.

11 Interestingly, the mothers, grandmothers,
12 sisters and aunts of divorced men stop me at
13 the grocery store or on the street and tell me
14 how much they miss spending time with their
15 special child which they seldom see any longer.

16 Extended families are important.
17 Some of my fondest memories are those of
18 special times with my grandparents or uncles.
19 Time is so limited in many orders that the
20 father needs what time he gets to build the
21 bond between himself and his child, leaving
22 precious little time for those moments with
23 others.

24 I would be remiss if I did not take
25 this opportunity to mention a much less human

1 and arguably less important concern which is
2 that of the millions of dollars of tax money
3 spent each year on the seemingly endless array
4 of options available through our courts to
5 determine the fitness of parents. This bill,
6 if enacted into law, would, for many,
7 dramatically shorten the process and stop the
8 aggression of the current competitive system.
9 I might add in this paragraph, my bill today
10 would be your bill some time soon if the
11 unified court system goes through.

12 Our courts, one would think, would
13 guarantee the presumption of equality in every
14 matter before them. If calls came to this
15 great capital that the court system in our land
16 was treating Blacks or Jews or Asian Americans
17 or Hispanics or anyone in our society any
18 differently when they came before them because
19 of their race or religion, the public outcry
20 would be tumultuous; the action taken swift and
21 the consequences to the offenders severe. The
22 court's record is crystal clear as is your
23 public responsibility.

24 I pray that you have the wisdom, the
25 strength and the courage to support this bill

1 which, if enacted, will restore justice to the
2 court system of this Commonwealth. Thank you
3 for your time and attention to this important
4 matter.

5 CHAIRPERSON GANNON: Thank you, Mr.
6 Eichelberger. Representative Manderino.

7 REPRESENTATIVE MANDERINO: No.

8 CHAIRPERSON GANNON: Representative
9 Schuler.

10 REPRESENTATIVE SCHULER: No.

11 MR. PRESKI: One question,
12 Commissioner. Do you know or has there ever
13 been a study of what portion of your budget
14 over the course has been devoted to this
15 position of family law cases?

16 MR. EICHELBERGER: You know, in the
17 last couple of weeks I have been so busy. I
18 haven't had time to do that, but I can do that.
19 I would be glad to follow up with a letter and
20 supply that to the committee.

21 MR. PRESKI: If you could, would you
22 share that with us?

23 MR. EICHELBERGER: You bet.

24 MR. PRESKI: Thank you.

25 CHAIRPERSON GANNON: Thank you very

1 much for taking time out of your schedule to be
2 here today, Commissioner. Thank you too, Mr.
3 Scott.

4 MR. SCOTT: Thank you.

5 CHAIRPERSON GANNON: Mr. Goldsmith,
6 our next scheduled witness has informed the
7 committee that he's ill today. He'll be
8 submitting written testimony which we'll pass
9 out to the members of the committee here and
10 other members of the committee.

11 We'll go on to our next scheduled
12 witness which is Mrs. Karen Scott and Martha
13 Brunelle, National Coordinator of Children's
14 Knights for Children's Rights. I believe Mrs.
15 Scott is going to be testifying by herself.

16 MRS. SCOTT: I am, sir. Thank you.

17 MS. BRUNELLE: I'll say something
18 afterwards.

19 CHAIRPERSON GANNON: You may proceed
20 whenever you are ready, Mrs. Scott.

21 MRS. SCOTT: Thank you very much,
22 committee members, for allowing me to tell my
23 story today. Forgive me if I'm a little
24 nervous. I have never done this before. I
25 really had quite a horrendous two weeks.

1 I'll start with the morning -- First
2 of all, I want to introduce you to someone.
3 This is my son Nathan (producing a photograph).
4 He's 16 years old. February 27th, as the alarm
5 rang at 5:45, my usual routine, I got out of
6 bed and went in to wake my son up; flipped the
7 light on; did not see him in his bed. I
8 assumed that he was already up and downstairs
9 getting ready for school. I awoke his other
10 brothers.

11 I went downstairs and Nathan wasn't
12 there. I went back upstairs, went into
13 Nathan's room, looked around the dresser. I
14 found my son in a kneeling position with quite
15 a lot of blood coming out of his mouth. I
16 assumed that he had had an accident and bumped
17 into something. I walked over to him. I
18 placed my hands on his shoulder. He was very
19 cold, and I knew he was dead. There was a belt
20 around his neck and it was fastened to the end
21 of his bunk bed. I immediately left the room
22 to call 911. Went back into the room and tried
23 to remove the belt from my son's neck. At the
24 same time I was trying to protect my other two
25 children from witnessing such a horrible sight.

1 I had to keep calm for the brothers'
2 sake; plus, I had to take care of my son
3 Nathan. I felt that God put him in my hands
4 when he was born and God was placing him in my
5 arms when he was dead.

6 The coroner came, the police came,
7 investigation. The thing that stuck out was
8 that sometime the night before Nathan had gone
9 into my bedroom and found a recent court order
10 that had just come down stating that he was to
11 go on another two-week summer visitation with
12 his father. He was quite upset about this, but
13 I did not realize the extent to which he was
14 upset.

15 I'll give you a little history of our
16 divorce and things that have transpired and
17 what I believe led to my son's death. We were
18 divorced in 1989. It was what you want to call
19 an amicable divorce. I'm not here to point
20 fingers. My ex had full visitation rights to
21 my children, which he exercised whenever he
22 wanted to. When he came to Pennsylvania, I let
23 him stay in the house so the kids were not
24 removed from the house. I let him use my
25 vehicle. This went on until 1992.

1 When Desert Storm broke out I met my
2 present husband. I told my ex-husband that we
3 were going to be married. My ex-husband
4 promptly flew to Texas and filed what's called
5 a Bill of Review to have our divorce annulled
6 and reopened. From then on the litigations in
7 Maryland, Texas, and Pennsylvania began,
8 constantly dragging the children into it.
9 Before the Bill of Review there weren't
10 problems with visitation. After the Bill of
11 Review and the court orders and litigations in
12 Pennsylvania, my ex-husband denied my children
13 their rights.

14 For example, Kennywood picnic, school
15 picnic, I bought the tickets. Children wanted
16 to go to their school picnic. Ex-husband, it's
17 his visitation weekend. I'm not telling him
18 what to do he says. Does not want to take the
19 children to their Kennywood picnic. Police are
20 called. This is how it began.

21 It came to the point where the
22 children did not want to go with my ex-husband
23 anymore, and because, it became apparent that
24 it wasn't about the children. It was about my
25 remarriage. He would do interviews with the

1 children in hotel rooms. He would constantly
2 have the children evaluated by psychologists
3 after psychologists. As of the past three
4 years my ex-husband has filed 99 motions in the
5 court of Westmoreland County--99. Most of
6 these motions involved taking my children out
7 of school and having them evaluated by
8 psychiatrists and psychologists.

9 In 1993 my ex-husband arrived on my
10 property to return custody of Nathan. The
11 other two children had refused to go with him
12 on the visitation weekend. I thought that he
13 had left. When I went outside to get Nathan's
14 things, my ex-husband was waiting for me. He
15 beat me. He threw me to the ground and he put
16 me in the hospital. He was incarcerated and he
17 was let out on bail on \$75,000.00. The
18 children did see it. They did witness it, but
19 they were denied testifying in court because it
20 was felt at the time they were too young to
21 testify.

22 Nathan always felt that he was
23 responsible for the abuse that was placed on me
24 because he went on the visitation. No matter
25 what I said, no matter what I did, he felt he

1 was responsible.

2 Suspension of visitation became
3 apparent after this incident because of founded
4 emotional child abuse against my son. This
5 came about because my ex-husband filed many
6 false child abuse charges against me. After
7 evaluating the children and talking to the
8 children again, it became apparent that he was
9 the abuser.

10 On November of 1994, supervised
11 visits were reinstated. Supervised visits were
12 to take place at a local center at the
13 Westmoreland Comprehensive Counseling Center.
14 My two younger boys, Justin and Patrick, hid
15 under a table and didn't want to have anything
16 to do with this; while Nathan, who is the kind
17 of individual who couldn't speak for himself
18 and was just going into a shell, sat there. My
19 two younger boys got up from the room and left
20 the room. The counselor left the room herself
21 to go after my two younger boys, shut the door
22 and left Nathan and my ex-husband alone in the
23 room. After that, all three children refused
24 further visits.

25 In January 1996 I appealed to the

1 court to appoint a guardian ad litem to speak
2 for the children. In December of 1995, social
3 workers were ordered to my home to remove the
4 children for supervised visitation. Again, the
5 children refused.

6 In January of 1996 the children
7 refused another social worker transport.

8 In January of 1996, at the end of the
9 month, armed sheriff's deputies arrived at my
10 home, removed my children physically, placed
11 them in a sheriff's van used to transport
12 felons, shotguns in the front seat and drove my
13 children to a local psychiatric center for a
14 supervised visit with their father.

15 At the end of January, 1996, my son
16 Nathan had a complete mental breakdown. He was
17 hospitalized, and while hospitalized Judge
18 Driscoll of Westmoreland County ordered Nathan
19 removed from the psychiatric facility by
20 sheriff's deputies again to be reexamined by
21 his court-appointed psychiatrist. This was
22 totally against the psychiatrist that was
23 taking care of my son at the time.

24 My ex-husband then petitioned the
25 court to have my children evaluated by Doctor

1 Richard Gardener, a psychiatrist. Judge
2 Driscoll denied the psychiatric evaluation. I
3 was pregnant at the time. I was put on strict
4 bed rest. In 1996 of December, Judge Driscoll
5 ordered me, against my doctor's orders, into
6 court to listen to Doctor Richard Gardener
7 testify on a telephone, a 61-page psychiatric
8 evaluation against me and my three children
9 whom he had never met.

10 Doctor Gardener takes this time to
11 expound on threat therapy. In January 1997,
12 Judge Driscoll ignores all testimony regarding
13 children's wishes, father's moral deficiencies,
14 social workers' reports and orders threat
15 therapy to be instituted. Threat therapy,
16 which is in my court order, says the children
17 will be taken to the local psychiatric facility
18 every other Saturday. They will be in a good
19 frame of mind. They will not argue with their
20 father. They will say nothing negative to
21 their father, even to the point where their
22 father had them in a local mall and was using
23 obscene language about me, their mother, and
24 they objected to it. All he had to do was call
25 the court Monday morning and I was sent a

1 letter of threat of incarceration.

2 Judge Driscoll had my children
3 brought into the courtroom in February of 1997.
4 He told my children that they will respect
5 their father. They will be in a good frame of
6 mind. They will be positive; that nothing will
7 be said against their father. In other words,
8 they were silenced. They had no first
9 amendment rights, nothing. They had no
10 recourse, nothing against this man.

11 This was to be reviewed in six
12 months. The children were assigned a monitor
13 to their case. When they came back from their
14 visits they were to report what went on on the
15 weekend. There was never a review.

16 In February of 1997, myself and my
17 husband, their stepfather -- I was called to
18 the school over Nathan's depressive behavior.
19 The school wanted an explanation of what was
20 going on with my son.

21 In March, 1997, my ex-husband
22 petitioned the court for a two-week summer
23 visitation, of which he was granted. The
24 children were very, very upset. All he was
25 required to do was to show a picture of a house

1 that he lived in since he doesn't live in the
2 state. He lives 15 minutes from Missouri. The
3 house that he took them to was not the house in
4 the picture. They slept on cots. They slept
5 on the floor. They slept in chairs.

6 In the summer of 1997, my ex-husband
7 returned the children and the children reported
8 physical abuse. He took them across the border
9 and he smacked them until they called him daddy
10 in the tone of voice that he requested. This
11 was reported to the monitor. This was reported
12 to Child Line. It was found that because my
13 children did not know what state they were in,
14 nothing could be done. If it had occurred in
15 Pennsylvania, something would be done. Now,
16 granted, this man is already a founded child
17 abuser in the State of Pennsylvania; cannot
18 obtain Act 34 clearance; cannot obtain Act 161
19 clearance.

20 The court sent my ex-husband a letter
21 requesting that he attend Parents Anonymous
22 classes. This force visitation, threat therapy
23 continued with my ex-husband carrying notebooks
24 to write down negative comments about the
25 children. If the children would fight with

1 each other; if the children would say a comment
2 that he didn't like, he kept a notebook and he
3 would record it telling them that your mother
4 will go to jail.

5 January, 1998, no review still was
6 done. The judgment, the two attorneys met; the
7 guardian ad litem who I requested to represent
8 the children met. No court record was even
9 completed at this hearing. Threat therapy is
10 to continue.

11 February, 1998, my ex-husband again
12 petitioned the court. He wanted more summer
13 visitation. My son Nathan at the time had just
14 recently acquired a job. If you read his
15 obituary he was quite a busy boy, very good in
16 school, an excellent student, DeMolay, lots of
17 extracurricular activities. He was very upset
18 about the possibility of losing his job.

19 The judge wrote into the order that
20 she would personally speak to my son's employer
21 so that he would not lose his job; to explain
22 to the employer that Nathan was under a court
23 order and had to have forced visitation with
24 his father.

25 The morning that Nathan died with all

1 the chaos that was going on and the coroners
2 and trying to protect my two other children,
3 the court document in which I just mentioned,
4 the February 1998, was found downstairs on my
5 kitchen island. Sometime during the evening
6 while I had taken the dogs outside, Nathan had
7 taken it upon himself to go into my bedroom and
8 look for the court order.

9 The remaining children, Justin and
10 Patrick, and you can see their pictures over
11 there. It was very hard to find a picture of
12 Nathan just by himself. They were always
13 together. My 14-year old son has never walked
14 to the bus stop by himself in his entire life.
15 It's as if part of his body is gone.

16 The court refuses and continues
17 threat therapy. This past weekend forced
18 visitation resumed. This time ordering the
19 bishop from our church to act as a mediator. I
20 was informed last night that there was a
21 confrontation at the church between my
22 ex-husband and my son Justin. As I sit here
23 today, I fully expect my ex-husband to call the
24 court to recommend me to be incarcerated.

25 My children are brought home from

1 this psychiatric facility. They're very
2 depressed and they're very angry over their
3 lack of rights. This has been six years full
4 of court orders, three years and 99 motions
5 filed by my ex-husband. All forms of
6 visitation were unsuccessful; unsupervised,
7 supervised, removal by gunpoint by sheriff's
8 deputies, threat therapy. My children have
9 been convicted for thought crimes. Even when
10 provoked, my children had no first amendment
11 rights or free speech. No review was done.
12 The records are inaccurate. Agents of the
13 court did not even testify. The monitor that
14 was assigned to protect my children never even
15 testified in the court of what had been
16 transpiring.

17 The court has not been gracious or
18 interested in the children, but only in the
19 rights, the rights of my ex-husband. The
20 guardian ad litem did not represent the
21 children's wishes. They had a private agenda.
22 Example: On a visitation weekend recently, he
23 had called my ex-husband without the court
24 knowing, without the attorneys knowing, without
25 the psychiatric facility knowing and met

1 privately with my husband on a Saturday. I
2 have letters in my packet here about how upset
3 my children were, especially Nathan.

4 The court has allowed and sanctioned
5 the continuation of emotional child abuse. My
6 final say is that, kids need to have choices in
7 custody and visitation issues. A divorce
8 should not disrupt healthy growing periods for
9 children. The pressure should not be on the
10 kids.

11 Another example, my son Justin who
12 took trumpet for a year and a half and
13 practiced very hard, private lessons, had to
14 quit the band because of threat therapy. He
15 had to go with his father. He couldn't go to
16 his games.

17 Children, especially like Nathan, was
18 at the point of feeling no worth because no one
19 listened to him. Right before Nathan died I
20 found him refusing to look in the mirror at
21 himself. He just felt so useless.

22 Justin and Patrick are not far
23 behind, and I now have two boys that are alive
24 that I'm desperately trying to protect them
25 from this pressure. These boys need a time to

1 heal and they need time for peace. My son
2 Justin appealed to the court just recently to
3 stop all visitation. Threat therapy is still
4 in force.

5 Justin has a calendar in his room
6 full of "x's" looking forward to the day he is
7 18. Patrick worries he won't make it.

8 In closing and for the record, I
9 would like to add, the day Nathan died I was
10 pregnant. Within 24 hours fetal heart tones
11 were gone. Nathan was buried March 2, 1998. I
12 was admitted to the hospital March 4, 1998, to
13 have my dead child surgically removed. Within
14 the last two years due to total disregard for
15 the health and safety of my children, three
16 children have died. Enough is enough.
17 Children need stability, rules and the ability
18 to grow and nurture in a healthy environment.

19 Along with this they need choices.
20 Children must have choices in custody and
21 visitation matters. I implore you to look at
22 the face of my dead son Nathan, which, by the
23 way, means gift from God. Read his obituary
24 and please understand that the world is not a
25 better place without him. Please give children

1 choices.

2 I would also like to add to the
3 record that although Mr. Scott is no relative
4 of mine, if children had choices, I'm sure that
5 his Ashley would choose to be with him.

6 CHAIRPERSON GANNON: Thank you, Mrs.
7 Scott. Representative Schuler.

8 REPRESENTATIVE SCHULER: No
9 questions.

10 CHAIRPERSON GANNON: Representative
11 Masland.

12 REPRESENTATIVE MASLAND: No.

13 CHAIRPERSON GANNON: Representative
14 Manderino.

15 REPRESENTATIVE MANDERINO: No
16 questions.

17 CHAIRPERSON GANNON: Thank you. Our
18 next witness is Marsha Brunelle, National
19 Coordinator of Children's Knights for
20 Children's Rights.

21 MS. BRUNELLE: I'm very troubled.
22 I'm very troubled by everything I hear today.
23 I'm troubled because it's nothing new. I get
24 calls from all over the country, mothers and
25 fathers who tell me terrible things which I

1 feel could be alleviated if we started
2 considering the children as human beings rather
3 than as things to be split.

4 Children do know what's going on.
5 Children are motivated by the most basic
6 instincts which we are all motivated by such as
7 love. Love is the primary motivator in this
8 world.

9 I believe we need a custody program
10 instituted. I personally feel that the
11 solution lies in having the judge consider the
12 child's preferences and expressed wishes, even
13 a very young child up through age ten. At age
14 12 having the child's wishes become the
15 principal factor in making decisions in custody
16 and visitation. At age 14 having the child's
17 wishes in custody and visitation be
18 controlling.

19 Why do I say this? So there will
20 never be another Nathan, hopefully. A child
21 should not be driven to suicide. Yes, parents
22 war. There are sometimes good parents, and
23 there are sometimes situations where court
24 makes them enemies. Sometimes they are
25 enemies. Sometimes there is an abusive parent.

1 But, You know who knows about what's going on
2 more than anybody? That child. That child
3 knows more than an evaluator. That child knows
4 more than any judge will ever know after
5 interviewing with him and the court-appointed
6 evaluators.

7 I really implore you to look into
8 giving children an active say in custody. This
9 is the solution. When I heard Mr. Scott talk
10 about Ashley, yes, it was the first thing that
11 went through my mind. If he's that good of a
12 father, she will want to see him. If the
13 father or the mother is a fruit cake, kids know
14 by age six or seven, hey, mom or dad isn't
15 really all there. I would really like to be
16 with so and so more regardless of what a parent
17 says.

18 You cannot brainwash a child unless
19 you're a skilled psychiatric or militaristic
20 brainwasher. You can influence the child,
21 frighten the child, but past a point the truth
22 comes out. I believe that this is the answer.
23 I do hope you'll consider it. Thank you very
24 much.

25 CHAIRPERSON GANNON: Representative

1 Schuler.

2 REPRESENTATIVE SCHULER: No

3 questions.

4 CHAIRPERSON GANNON: Representative

5 Masland.

6 REPRESENTATIVE MASLAND: I'm going to

7 tell you my position on the age requirements.

8 I hate to interject this because I have not

9 listened to the bulk of the testimony in the

10 middle of this hearing because I had to excuse

11 myself for another engagement.

12 I have to disagree with you on the

13 idea that at age 14 the child's decision should

14 be controlling. I think that could be a

15 mistake to put that kind of a decision, that

16 kind of a burden in the hands of a 14 year old.

17 I have a 14-year old son who, fortunately, is

18 not in the midst of one of these type of

19 custody tug of wars. I also have a 14-year old

20 nephew who has been. I don't think he was

21 capable of -- I don't think he is capable of,

22 and I don't think it would be fair to him to

23 put him in that position.

24 On the other hand, I think it is

25 appropriate and the courts that I'm familiar

1 with in Cumberland County do do this. That is,
2 they call the children in to talk to them. I
3 have handled a number of custody cases over the
4 years, and I have seen judges talk to children
5 as young as six and seven years old in their
6 chambers. They do give a lot more credence to
7 what a 13 year old, 14 and 15 year old say.
8 Sometimes they do base their decision solely on
9 that.

10 To put it in the law that at 14 you
11 get to make the decision I think would just add
12 to the pressure that a parent could throw on a
13 child by saying, hey, in another year you will
14 be able to decide. You can come to me. That I
15 think is too much to ask of a child in a
16 situation like that.

17 MS. BRUNELLE: I think you are right
18 in the sense of demanding that child has to
19 make a choice, yes. But let's consider you may
20 have a situation where everybody gets along.
21 In that case the child will, and the parents
22 will work things out anyhow. If you have
23 parents and children who don't get along and
24 you're forcing something and the judge is not
25 listening, then the child ends up being a

1 Nathan in some form. What do we do to prevent
2 that?

3 I know so many cases where the
4 children have not been listened to, although
5 they have been called in in camera. After a
6 period of so much unsuccessful visitation,
7 let's say, to continually force visitation when
8 a child is showing signs that this is really a
9 negative experience, and this seems to be in
10 many cases, I'm afraid, is really court abuse.
11 We're really -- We're committing legislative
12 abuse against children as far as I'm concerned
13 to continually force something that's not
14 successful. That seems to be the case in too
15 many cases.

16 I'm not comfortable with judge
17 discretion as the child gets older and goes
18 through teenage years and has the ups and downs
19 of the teenage years and maybe for several
20 weekends just wants to stare at the ceiling on
21 the weekends and crash, or figure out how to
22 get a certain girl interested in him. Or the
23 girl figuring out, I really like this guy and
24 want to talk to my girlfriends this weekend,
25 and I don't want to sit with whatever parent.

1 Maybe they don't want to sit with either
2 parent.

3 The teenage years are very difficult.
4 I really am troubled by the fact that children
5 do not have the option for choice when they're
6 straining at the bit. I'm not talking about a
7 kid in a divorce, he doesn't know what's going
8 on and suddenly you say, choose between a
9 parent. He doesn't have to choose between a
10 parent. He can see maybe parents equally, or
11 choose to divide up his time the way it might
12 have been if there hadn't been a divorce.

13 But, what do you do when a child is
14 caught in a war and he's under such mental
15 pressure that you are actually hurting him
16 physically or emotionally? We're forcing him
17 to see no way out but suicide, or becoming a
18 run-away and then being labeled by a judge as a
19 delinquent or out-of-control child. Suddenly
20 he's thrown into an element in which he would
21 have never found himself, because most of the
22 kids I find who are getting hurt are the good
23 kids. The bad kids would have been bad anyhow.

24 REPRESENTATIVE MASLAND: I don't
25 dispute that there's a problem. I'm just

1 saying that the solution is not to give the
2 decision to a 14 year old. That's my position.
3 You're not going to change it. I'm sorry to
4 say that. I have seen enough cases where I
5 just don't think that should change.

6 You can go on. Maybe we can continue
7 this afterwards. I don't want to hold
8 everybody else here just so we can go back and
9 forth on our philosophical differences, but I
10 think it's inappropriate.

11 MS. BRUNELLE: If visitation is
12 unsuccessful for a prolonged period of time, do
13 you believe a child desires to have a way to
14 get out of it, or do you believe he must suffer
15 through it?

16 REPRESENTATIVE MASLAND: I believe
17 there is a way. I believe that there is a
18 system. I do believe that most courts, as much
19 as they don't want to work on these cases, most
20 courts will listen and will listen very
21 seriously to a 14, 15, 16 year old and even
22 younger.

23 As long as they can verify that it's
24 not a, grass is always greener on the other
25 side of the fence type decision; as long as

1 it's a decision based on some articulable
2 reasonable facts, and generally it can be
3 articulated by even younger children than 14.
4 A judge will adhere that. But, I don't want to
5 say with a red letter in the law that when
6 you're 14 you make that decision.

7 That's my position. Again, we'll
8 disagree on that. Thank you very much.

9 MS. BRUNELLE: Thank you. I'd just
10 like to say from my understanding judges are
11 not listening.

12 CHAIRPERSON GANNON: Representative
13 Manderino.

14 REPRESENTATIVE MANDERINO: No
15 questions.

16 CHAIRPERSON GANNON: We have a letter
17 that was sent to Representative Don Walko by
18 Mr. Robert Raphael, an attorney in Pittsburgh
19 Pennsylvania. He asked this letter be made
20 part of the record.

21 I want to thank everyone for
22 testifying today before the committee. House
23 Judiciary Committee public hearing on House
24 Bill 1723 is adjourned.

25 (At or about 12 o'clock noon, the

hearing concluded)

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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
7 is a true and accurate transcript of my
8 stenotype notes taken by me and subsequently
9 reduced to computer printout under my
10 supervision, and that this copy is a correct
11 record of the same.

12 This certification does not apply to
13 any reproduction of the same by any means
14 unless under my direct control and/or
15 supervision.

16 Dated this 6th day of April, 1998.
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21
22 Karen J. Meister - Reporter
Notary Public

23 My commission
24 expires 10/19/00
25