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HOUSE OF REPRESENTATIVES
COMMONWEALTH OF PENNSYLVANIA

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House Bill 1723

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House Judiciary Committee

Courtroom B
Montgomery County Courthouse
Swede and Airy Streets
Norristown, Pennsylvania

Tuesday, May 12, 1998 - 10:00 a.m.

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BEFORE:

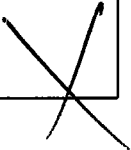
Honorable Thomas Gannon, Majority Chairperson
Honorable Craig Dally

IN ATTENDANCE:

Honorable Robert E. Belfanti, Jr.
Honorable Connie Williams

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1998-079



1 ALSO PRESENT:

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3 Brian Preski, Esquire
4 Majority Chief Counsel

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(Written testimony also submitted by
Homer B. Davis, Jr., M.D.)

1 CHAIRPERSON GANNON: House Bill 1723
2 introduced by Representative Veon will begin.
3 Our first witness is Mr. Howard Goldsmith,
4 Esquire, Chair of the Pennsylvania Bar
5 Association, Family Law Section. Welcome,
6 Mr. Goldsmith.

7 MR. GOLDSMITH: Thank you. Good
8 morning.

9 CHAIRPERSON GANNON: And you can begin
10 whenever you're ready.

11 MR. GOLDSMITH: Thank you. Let me
12 preface my remarks by saying I'm not testifying
13 as the chair of the Pennsylvania Bar Family Law
14 Section since our resolution has not gone through
15 the Board of Governors to date. I'm testifying
16 as a family law practitioner practicing family
17 law in Philadelphia.

18 By way of background myself, I'm also a
19 member of the Supreme Court Domestic Relations
20 Rules Committee, a Fellow of the American Academy
21 of Matrimonial lawyers, and the past chair of the
22 Philadelphia Bar Association Family Law Section.

23 I also lectured extensively in family
24 law and am past Chair of the Family Law Section
25 Custody Committee in Philadelphia. I've tried

1 many custody cases representing both men and
2 women, and my curriculum vitae is attached for
3 your perusal.

4 Since I have submitted my testimony,
5 I'll try to hit the highlights. I don't see any
6 sense in hitting everything, but there are
7 certain areas that I would like to emphasize.
8 Since reviewing House Bill 1723, I have formed
9 an opinion that I'm opposed to the bill.

10 I found that in many cases that I've
11 tried in custody that one area where the
12 judiciary has for all intent and purposes done a
13 good job is in the custody area.

14 There are always horror stories that we
15 always hear; however, for the most part, I think
16 they're isolated and pertain more to the judge
17 that heard the case than to the specific Act
18 that's in place.

19 Courts hold that the best interest of
20 the child standard is the most criteria in a
21 custody decision. Each custody case is fact
22 sensitive and must be decided on the facts
23 presented to the court.

24 It is very difficult to make a
25 hard-and-fast rule with reference to

1 determination of custody cases because of the
2 strong fact-sensitive nature of each case. I
3 note the changes in Section 5302 titled
4 Definitions. Some of these new definitions I
5 have trouble understanding.

6 For example, the joint custody
7 definition speaks of joint legal and physical
8 custody and the parties' obligation to exchange
9 information concerning the health, education, and
10 welfare of the minor child. It then talks about
11 allocated, apportioned or decreed with reference
12 to the parents conferring with one another in the
13 exercise of decision making rights and
14 responsibilities and authority.

15 In my experience, if the court orders
16 joint legal custody which in the order case the
17 court does order, I think the definition
18 presently in the statute is quite clear regarding
19 each parent's rights concerning that child.

20 Problems arose years ago with reference
21 to legal custody in that if one parent was
22 awarded primary physical custody of the child,
23 the noncustodial parent would go to a school,
24 educational institute, or to the doctor or to any
25 other health care provider and at times was

1 turned away without the information that was
2 requested because that parent did not have
3 primary physical custody.

4 I think the legal custody definition
5 clarifies and gives the parent the right to get
6 that information. I have not had any problems in
7 noncustody cases with reference to clients
8 obtaining that information.

9 These new definitions seem to meld into
10 one another. First, we have joint custody; then
11 we have joint legal custody. And that has
12 changed somewhat in that there is nothing
13 mentioned about major decisions concerning the
14 child, only decreed between the parents
15 decision-making rights, responsibility, and
16 authority relating to health, education, and
17 welfare of a child.

18 We have to be practical. And
19 practicalities of the matter are that people who
20 are getting divorced, during the divorce and
21 after the divorce are not always cooperative with
22 one another and in many cases the child becomes a
23 pawn.

24 I think one of the biggest problems with
25 this Act is that it presumes that either the

1 parties will be cooperative with each other or
2 that the parties will be forced to be cooperative
3 with each other due to the court's decree. It
4 does not happen. It's not true.

5 What will happen is that both parents
6 have the same rights. And, therefore, one parent
7 will take the child to the one doctor, the other
8 parent will take the child to another doctor for
9 the same problem. One parent will get medicine
10 from one doctor; the other parent will get
11 different medicine from another doctor. It
12 becomes competition.

13 I firmly believe that there must be
14 primary physical custody for one in order that
15 one parent has the primary responsibility for the
16 child. I personally have no preference for the
17 father or the mother. It depends upon the fact
18 situation.

19 However, one parent must have some
20 primary responsibility for the child. I think it
21 is extremely healthy and important for the child.
22 It is healthy for the child and instills
23 standards and normalcy in the child's life. That
24 is not to say that the other parent should be cut
25 out from the loop of the child's life.

1 For just this reason, the Act presently
2 reads -- presently reads, I emphasize -- "legal
3 custody" and gives both parents the right to share
4 in major decisions concerning their child.

5 Every day decisions should be handled by
6 the parent that has custody of the child at that
7 time. This could be the primary custodian or the
8 partial custodian.

9 I think the primary physical custody and
10 partial physical custody that are now used in the
11 court system are quite clear and definitive. I
12 think it's a mistake again to use terms such as
13 joint physical custody and talk about significant
14 periods of time with the child.

15 The definition of shared custody has
16 been changed somewhat by joint physical custody;
17 and, again, I think the Act pushes too hard to
18 reach results which are more easily reached by
19 much simpler definitions.

20 Looking at Section 5303, it instructs
21 the court to award joint custody as the norm and
22 the court is not permitted to award anything but
23 joint custody unless they find that joint custody
24 is not in the best interest of the child.

25 The problem is the court must litigate

1 every case completely in order to make a
2 determination that joint custody should not be
3 awarded.

4 There were some studies back in the 70s
5 and 80s, one specifically by Judith Wallerstein,
6 a doctor in psychology in California, who was
7 accepted all over the country.

8 And what happened in her decisions and
9 the court decision -- I'm sorry -- in her
10 recommendation and the court decision, for a
11 period of time, all the courts were awarding
12 shared custody. That was the norm.

13 Judith Wallerstein has now written
14 another report and finding and has found that
15 it's not so. Shared custody is not the norm.
16 Shared custody is not the way the court should go
17 with reference to the recommendations from the
18 get go.

19 The Pennsylvania Family Lawyer put out
20 by the Pennsylvania Bar Association of Family Law
21 Section Volume 19 has an article joint custody
22 titled The Pendulum Swings by Thomas Molroy,
23 family lawyer from Pittsburgh, who discusses
24 Dr. Wallerstein's prior recommendations for the
25 court adopting a shared custody attitude and now

1 find that shared custody is not the best way to
2 go.

3 We have to understand that in cases
4 where shared custody's going to work, the parents
5 live quite close to one another and they
6 cooperate with one another. Many and most of
7 these cases never reach the court because their
8 parents reached decisions and are able to
9 communicate with one another.

10 Once the parents turn to the court for
11 help in their custody disputes, they are in an
12 adversarial proceeding. Mediation is one way to
13 go; however, again, we have to have cooperation
14 between the two parties in order to have a viable
15 mediation.

16 You cannot force people to either
17 mediate or to go to mediation and listen to
18 lectures and expect them to make a decision based
19 upon what they hear from mediation. There's a
20 lot of animosity there between the two parties,
21 and it's very difficult if that's the case to get
22 them to make decisions.

23 The most disturbing in Section 5303
24 which requires a rebuttal presumption that an
25 award of joint custody is in the best interest of

1 the child, which is totally inaccurate. And I
2 think the -- I don't think the presumption is
3 valid under any circumstances.

4 What we are saying is that both parents
5 are equal in stature to take care of the child.
6 Each has the same ability, the wherewithal, and
7 desire to take care of the child. That is the
8 only motivation.

9 We have to realize there is other
10 motivations in obtaining shared custody with the
11 child, and one is support. If there is shared
12 custody, the one parent does not have to pay
13 support to the other parent if we have equal
14 shared custody.

15 To require a court to go through factors
16 in order to decide that shared custody is not
17 what should be awarded does not make sense. In
18 many cases a parent will ask for shared custody
19 and really mean not shared custody. That parent
20 wants additional time with the child. So I'm
21 totally against the presumption.

22 The statute goes further and requires a
23 parenting plan to be proposed by the parents.
24 And I can tell you from past experience parents
25 in adversarial proceedings are in no condition to

1 make a parenting plan that is viable for both
2 parents.

3 They'll make a parenting plan that is
4 viable for themselves and not for the other
5 parent. And sometimes the child is not really in
6 their best interest. It's the parent's best
7 interest.

8 I have to disagree with Section 5304.1
9 concerning joint custody and child support. If,
10 in fact, joint custody means joint legal and
11 physical custody, joint means together and joint
12 means sharing.

13 I don't think there's any choice but to
14 state in the record that there must be an
15 adjustment in the support since there is no
16 noncustodial parent. Both parents are custodial.

17 And if the joint custody becomes equal
18 then, by virtue of the fact that joint custody is
19 equal, it would in and of itself constitute a
20 sufficient reduction in the support.

21 The Supreme Court Domestic Relations
22 Procedural Rules Committee has been laboriously
23 working on a formula for the purpose of this very
24 subject. It certainly is unfair for a parent who
25 has the child 50 percent of the time to have to

1 pay the full support order.

2 By virtue of the definition, there is
3 joint custody and as equal, there should be an
4 adjustment. I do not understand the reason to
5 include the word -- the wording "joint custody
6 should not be decreed exclusively for the purpose
7 of effecting child support." I know no reason
8 the court would decree joint custody for that
9 particular purpose.

10 The Act talks about mandatory
11 counseling, the court ordering mandatory
12 counseling. I think to make counseling mandatory
13 is a mistake and it would cause an undue burden
14 on the court system and financial hardship to the
15 parties.

16 Section 5306, it talks about the parents
17 submitting a parenting plan. We then -- if they
18 can't do it, we then require the court to make a
19 plan if, in fact, the parents do not. The
20 requirements of a plan are difficult to
21 accomplish.

22 For example, 5306 (3) discusses the
23 child's personal care and control, including
24 parenting time, holidays, vacation and child care
25 is very difficult. It is often impossible to lay

1 out exactly what vacation you're taking.

2 I do not know how extensive this
3 parenting plan is supposed to be; but based on
4 the criteria, it seems very comprehensive.

5 The other interesting issue is the
6 recipient of welfare benefits. Section 5306 (c) .
7 gives the court the right to designate one of the
8 parents as a public welfare recipient.

9 I must be misinterpreting this point. I
10 don't understand how the court can designate
11 which party is a welfare recipient unless it's
12 only for purposes of the custody and not for any
13 other purpose. Because if both parents are on
14 welfare, they're both on welfare and they're both
15 recipients.

16 In closing, I would just like to say
17 that this is one area of the law that I think the
18 courts generally do a very good job. We always
19 have cases where the result is not what we think
20 is proper. And in some of those cases, the
21 parties are absolutely right or one of the
22 parties are right.

23 However, generally speaking, I think the
24 courts try very hard to make the right decision
25 with reference to the best interests of the

1 child. What we have to remember is, again, the
2 best interests of the child is the standard, not
3 the best interests of the parents.

4 And that's a very important concept to
5 remember because sometimes parents forget and
6 attempt to have decisions made with reference to
7 their best interest and not the best interest of
8 the child. Thank you very much.

9 CHAIRPERSON GANNON: Thank you very
10 much, Mr. Goldsmith. Questions, Mr. Belfanti?

11 REPRESENTATIVE BELFANTI: I'm on the
12 other side of this issue, so it would be biased
13 for me to even ask a question.

14 CHAIRPERSON GANNON: Representative
15 Dally?

16 REPRESENTATIVE DALLY: No, Mr. Chairman,
17 not at this time.

18 CHAIRPERSON GANNON: Representative
19 Williams.

20 REPRESENTATIVE WILLIAMS: Is there any
21 part of this section that you think needs to be
22 amended or changed if you were to?

23 MR. GOLDSMITH: The only part that
24 may -- in most custody trials -- full custody
25 we're talking about. We're not talking about

1 partial custody because that's a whole different
2 area.

3 The only thing I can think of is that a
4 court should make a comprehensive decision. They
5 should define and enumerate why they're making
6 the decision they're making.

7 And I, again, most conscientious judges
8 do that right from the bench or write a decision.
9 But I think that that's one of the things that
10 they should do so that both parties know the
11 reason why the court's making the decision
12 they're making.

13 CHAIRPERSON GANNON: Mr. Preski.

14 MR. PRESKI: Mr. Goldsmith, I guess
15 given the experience that you have in these areas
16 and the number of cases that you've done, part of
17 your testimony was that to have a shared custody
18 arrangement with the parenting plan and
19 everything that goes with it is going to
20 be -- there's going to be an awful lot of
21 cooperation between both parents to have this be
22 accomplished or have it work correctly.

23 My question, Is there anything in the
24 law now that prohibits parties where they do
25 enjoy this good relationship from already

1 entering into a shared custody arrangement?

2 MR. GOLDSMITH: No. When parties make
3 an agreement, they can make any type of agreement
4 they want and the courts will abide by that
5 agreement and enter it as an order.

6 There's also a provision in this -- in
7 the statute that's law now that allows the court
8 to order the parties to make a parenting plan;
9 but it doesn't make it mandatory. It gives the
10 court the discretion if they feel they should to
11 order the parties to make a parenting plan.

12 MR. PRESKI: Given your experience, have
13 you had many cases or have you seen many cases
14 where the parties have entered into this type of
15 agreement?

16 MR. GOLDSMITH: Oh, yes, especially when
17 they make an agreement. There's many cases, in
18 fact, most cases when children are involved when
19 we do a property settlement agreement there's
20 usually a custody section that discussed
21 comprehensive plans and how the parents are to
22 work it out.

23 And they usually have some type of
24 avenue that they can go if there is a dispute
25 with reference to any part of the plan. They can

1 either mediate or they can go to the courts for
2 relief.

3 MR. PRESKI: I guess my next question is
4 I want to get all the data from your experience.
5 At the first hearing we held on this, this bill,
6 this issue, one of the recurrent themes that we
7 had heard from the participants was that there
8 seem to be -- the need for this legislation comes
9 from some type of inherent sexual bias against
10 fathers in the courts. Do you have any thoughts
11 on those statements?

12 MR. GOLDSMITH: Yeah, I have some
13 thoughts on that. I've heard that for years.
14 And I hate to say it, when I started practicing a
15 long time ago, there may have been.

16 But I handle a good deal of fathers in
17 custody cases and I've won several
18 custody -- large custody cases where there's four
19 or five children involved for a father. I don't
20 think it makes a difference anymore.

21 Again, we're back to that, there's
22 definitely -- definitely situations where a court
23 may be biased one way or the other. But, again,
24 we're talking about an individual judge or an
25 individual situation. I don't see that there's

1 that much of a problem anymore.

2 MR. PRESKI: Okay.

3 CHAIRPERSON GANNON: Representative
4 Belfanti.

5 REPRESENTATIVE BELFANTI: Sorry. I
6 wasn't going to do this, but as a follow-up to
7 that question, what percentage of paternal cases
8 that you handle do the fathers win?

9 MR. GOLDSMITH: Full custody trials?

10 REPRESENTATIVE BELFANTI: Yeah.

11 MR. GOLDSMITH: The full custody trials
12 that I have handled for fathers I would say that
13 I probably won about 80 percent of them.

14 REPRESENTATIVE BELFANTI: You've won 80
15 percent of them?

16 MR. GOLDSMITH: Yep. Now, you have to
17 understand, I don't have a hundred cases a year
18 where fathers go for full custody. I don't try
19 that many full custody cases a year. I probably
20 try on the average maybe three or four full
21 custody cases a year; and that's a lot.

22 When we say full custody, we're talking
23 about with psychologists; we're talking about
24 days of hearings. So there's not a whole -- most
25 cases are not full custody trials.

1 When they come to me, it's going to be a
2 day, two days, three-day trial. It's not going
3 to be, you know, a half an hour where you have
4 the mother testify and you have the father
5 testify.

6 REPRESENTATIVE BELFANTI: The data that
7 I have accumulated over the past year or so
8 states very much the opposite is the norm. What
9 percentage of cases that you have that you handle
10 for the father, whether it be full, joint, joint
11 legal, joint physical, do the fathers end up
12 winning in court?

13 MR. GOLDSMITH: I don't understand the
14 question.

15 REPRESENTATIVE BELFANTI: After -- of
16 all the cases you represent the male or the
17 father, what percentage of those cases would you
18 consider you were successful at?

19 MR. GOLDSMITH: I represented for full
20 custody or any kind of custody case?

21 REPRESENTATIVE BELFANTI: Any kind of
22 custody.

23 MR. GOLDSMITH: Well, I don't -- I
24 haven't had -- I don't remember the last time I
25 had a case where the father didn't get any

1 custody rights.

2 I mean, when I represent a father to go
3 for partial custody and he wants maybe two, three
4 weeks a month vacation, extra time for dinner in
5 the evenings, I very rarely have a problem unless
6 there is a problem in the case with getting the
7 courts to award substantial -- partial custody
8 orders.

9 REPRESENTATIVE BELFANTI: Let me get my
10 question cleared up. Let me rephrase. In
11 instances where a father comes to you and he is
12 seeking full joint custody, is it the normal for
13 you to advise him that he will likely get joint
14 legal custody and that's probably the best he can
15 expect?

16 MR. GOLDSMITH: No.

17 REPRESENTATIVE BELFANTI: And then when
18 he is awarded joint legal custody, he is led to
19 believe that, you know, he's done as well as he
20 can?

21 MR. GOLDSMITH: First, no. First of
22 all, they don't come to you -- fathers don't come
23 and say I want joint legal custody. See, that's
24 the problem with the words joint and shared. Is
25 joint half and half. I don't know what --

1 REPRESENTATIVE BELFANTI: Joint,
2 physical, and legal across the board.

3 MR. GOLDSMITH: Would be half and half?

4 REPRESENTATIVE BELFANTI: Yes.

5 MR. GOLDSMITH: I don't -- I
6 very -- I've had a couple recently. And after
7 the case got into it, it just -- it wasn't -- it
8 couldn't be 50/50. It just wouldn't have worked.
9 They didn't live close enough for the -- in order
10 to have a shared custody with 50/50. They have
11 to live in the same area, in my opinion.

12 I mean, I've had one in Oklahoma and
13 Pennsylvania and it worked, but the parties
14 agreed to it and the child agreed to it and went
15 to two different schools every year and was a
16 straight A student. But that was an unusual
17 case.

18 CHAIRPERSON GANNON: Representative
19 Dally.

20 REPRESENTATIVE DALLY: Yes,
21 Mr. Chairman. Mr. Goldsmith, you state that the
22 court has applied the best interest of the child
23 as a standard for many years now in determining
24 custody.

25 How would you characterize this

1 legislation moving that away from the best
2 interest of the child to maybe the best interest
3 of the parent or how would you characterize the
4 legislation?

5 MR. GOLDSMITH: I don't -- I don't see
6 it as moving away from the best interest
7 standard. I don't think the best interest
8 standard will ever be taken away by the courts or
9 the Legislature. There's no reason to do that.

10 I just think it's -- it complicates
11 things. Legal shared, I don't know what those
12 words mean and in the Act I don't know what they
13 mean. And the court is supposed to award joint
14 physical custody or joint legal custody or joint
15 custody to everybody, the presumption, unless
16 they show why it shouldn't be.

17 And generally speaking, the presumption
18 is just not correct. Because most of your cases,
19 it's not the way it should be. And if you read
20 the appeals from custody decisions, there's very
21 few that are reversed.

22 And the reason some are reversed are
23 that the court did not give a full, sound reason
24 for their decision and they were remanded for
25 that purpose. And I'm totally in favor of the

1 court giving a full reason.

2 And the courts in the cases have awarded
3 the trial judges give full reasons for making a
4 custody determination. So they are mandated with
5 that now.

6 REPRESENTATIVE DALLY: Thank you,
7 Mr. Chairman.

8 CHAIRPERSON GANNON: I don't have any
9 questions, but I want to thank you,
10 Mr. Goldsmith, for taking the time from your day
11 to join us and share your thoughts about House
12 Bill 1723.

13 MR. GOLDSMITH: Thank you.

14 CHAIRPERSON GANNON: Thank you very much
15 for being here. The next witness is the
16 Honorable Robert Belfanti, Member of the House of
17 Representatives from the 107th Legislative
18 District. Thank you, Mr. Belfanti. You may
19 proceed.

20 REPRESENTATIVE BELFANTI: Thank you,
21 Mr. Chairman. First, I wish to express my
22 appreciation to the Members of the House
23 Judiciary Committee for allowing me the
24 opportunity to present testimony regarding House
25 Bill 1723, which I am the second name on as a

1 sponsor.

2 I strongly support the presumption of
3 joint custody and urge the Members of this panel
4 to give serious consideration to the persons
5 offering testimony supporting the bill's release
6 from Committee during the 1998 session.

7 Given the time limitation of 15 minutes,
8 I will attempt to impart my feelings on this
9 subject matter in specific terms as they have
10 impacted on my family and in particular on my
11 oldest son, Robert, III.

12 Time permitting, I will make comments of
13 a general nature as well as provide Members with
14 some pertinent data. Like many of you, the vast
15 majority of constituents requests of a domestic
16 relations nature are made by single mothers,
17 those to our district offices, who are in dire
18 need of assistance as a result of their inability
19 to either locate the father of their child or to
20 collect the court-awarded child support payments
21 to which they are entitled.

22 It is extremely rare for noncustodial
23 fathers to visit with their concerns about their
24 inability to secure court-awarded partial custody
25 or visitation privileges.

1 This imbalance of our constituent flow
2 of traffic tends to skew our vision and make us
3 presume that most noncustodial parents,
4 particularly fathers, are deadbeats.

5 Since my son's dilemma, I have come to
6 the realization that custody and support matters
7 transect a wide spectrum of parents on both sides
8 of these issues.

9 My son became a father approximately 14
10 months ago. His custody hearing is scheduled for
11 this June 29th, 1998. His son Jacob will be more
12 than 16 months old at that time. Much of what I
13 would like to say today will go unsaid since much
14 of that my son's attorney will present
15 information at that time and at his request will
16 not be mentioned today.

17 I am, however, at liberty to discuss
18 matters that are already public. During the
19 course of my son's girlfriend's pregnancy, they
20 entered into many agreements. Most of these were
21 discussed with her parents, my wife, and myself.

22 A few of these were my son and his
23 girlfriend would continue to work on their future
24 relationship; he would pay the health insurance
25 deductibles on all prenatal visits and care; he

1 would attend Lamaze -- and I'm not sure that's
2 correctly spelled. I couldn't find it in the
3 dictionary -- but LaMaze parenting classes with
4 her throughout the pregnancy; he would be in the
5 delivery room; baby furniture would be located at
6 both the mother and father's homes as they would
7 continue living together following the birth of
8 the child, again, in an attempt to work out their
9 relationship; the child's name would be by mutual
10 agreement; the child's pediatrician would be by
11 mutual agreement.

12 As a stated, these were simply a few of
13 many, many agreements. Some of them will be
14 discussed in court on June 29th.

15 As the pregnancy entered its third
16 trimester, the subject of marriage continued to
17 be a nightly event. By the 7th month of the
18 pregnancy, the previously agreed to commitments
19 were all withdrawn contingent upon a marriage
20 occurring prior to the birth.

21 During the 8th month, his girlfriend
22 moved out and began having her aunt accompany the
23 couple to LaMaze classes. My son continued going
24 and also her aunt.

25 Without going into much further detail,

1 which will be the subject matter of the custody
2 hearing, I can state that the mother broke off
3 all dialogue about two weeks prior to the
4 delivery date.

5 Skipping ahead -- because during this
6 interim my wife and I had many meetings with the
7 girl's parents to discuss some of the overt and
8 covert threats about how the child -- the birth
9 would take place, et cetera.

10 Skipping ahead, repeated efforts by
11 myself, son, and my wife for status reports of both
12 the mother's health and delivery timetable went
13 unanswered.

14 To make a long, long, long story short,
15 my son was advised of the birth of his son by a
16 friend the day after delivery. My wife and son
17 immediately drove to the Bloomsburg Hospital to
18 see the baby.

19 Unbelievably, the floor nurse prevented
20 my wife and son to even view the child in the
21 nursery stating that the mother left strict
22 orders that it was not to be allowed.

23 They appealed to the hospital
24 administration and were again informed that since
25 there was no evidence of paternity, the mother's

1 wishes had to be respected.

2 By the way, my son and wife did advise
3 the administration that he had, in fact, attended
4 all the parenting classes and all the LaMaze
5 classes at that very hospital for a period of
6 about nine months -- or about seven and a half
7 months.

8 They again appealed to the hospital
9 legal department and were once again rebuffed
10 and escorted out of the hospital by a security
11 officer. A Dictaphone held in few view of the
12 participants recorded all these conversations,
13 and that will be unsealed at the hearing coming
14 up in June.

15 Intermediaries were approached by my son
16 to that he might see his child. None were
17 successful. In fact, the mother threatened to
18 secure a PFA restraining order or file a
19 harassment charge if my son made any attempt to
20 see his child either at the hospital or at the
21 mother's maternal grandmother's residence.

22 My son immediately discussed these
23 developments with his attorney and was advised
24 that he would have to submit to a DNA test,
25 establish paternity, and then seek emergency

1 visitation to the Court of Common Pleas.

2 One of the reasons he was advised of
3 this -- and I don't have it in the text -- is
4 that there are cases and court orders that state
5 that once you begin paying child support, if at a
6 later date it is determined through DNA the child
7 is not yours, you are still obligated to continue
8 paying child support until the child's 18 years
9 old. I have a copy of that court order, by the
10 way.

11 So that was at the advice of his
12 counsel. One other thing that I omitted here was
13 his counsel told him that he would have to wait
14 about ten days and then he could file for a copy
15 of the birth certificate and see if he were named
16 on the birth certificate.

17 My son immediately discussed these
18 developments with his attorney as was -- wait. I
19 already mentioned that. This process was
20 followed immediately but took a hundred and
21 twenty-six days.

22 In the interim, continued attempts to
23 visit the child even under supervised conditions
24 were totally rebuffed. Within one week, about
25 ten days of the child's birth, my son received

1 notification of a child support hearing.

2 His attorney advised him that support
3 and custody visitations were unrelated, at least
4 in Pennsylvania, and that the mother can invoke
5 my son as the baby's father for support purposes
6 while denying him any father's rights as they
7 relate to other matters.

8 I should note that my son voluntarily
9 began paying child support upon receiving the
10 positive DNA results. That took about six weeks
11 prior to the support hearing.

12 In fact, he advised intermediaries of
13 his willingness even with his attorney telling
14 him that he would likely be obligated to pay
15 child support if DNA proved that he was not the
16 father. He knew better.

17 He advised intermediaries of his
18 willingness to make support payments immediately
19 from day-one with the caveat that he could see
20 and hold his son Jacob.

21 Finally, the court hearing on visitation
22 arrived and the judge when learning of the
23 mother's actions awarded supervised visitation
24 for about a one-month -- could have been two or
25 three-week period -- followed by Wednesday

1 evenings as well as each Saturday from 9 a.m.
2 through Sunday evening at 5 p.m.

3 This remains the status quo. The judge
4 explained to both litigants that the customary
5 every other weekend partial custody would not be
6 fair to the paternal side of the family given the
7 fact that he was denied to even see his son for
8 a hundred and twenty-six days after going through
9 all of the prenatal agreements with the mother.

10 During the hundred-and-twenty-six-day
11 interval between the birth and first touch
12 between father and son, the child was named,
13 circumcised, christened, placed under a
14 pediatrician's care, et cetera, et cetera, et
15 cetera, all without the advice, consent, or
16 counsel of the father, my son.

17 During this period of time, he lost more
18 than 20 pounds as a result of the prolonged
19 anxiety awaiting the DNA results and finally the
20 court docket. Since visitation has begun, we
21 have enjoyed these weekly visits to our home
22 immensely, but even they have come with strings.

23 For example, the mother's attorney
24 initially petitioned the court to negate the
25 overnight visits as she, the mother, claimed that

1 she was going to breast-feed exclusively for a
2 period of eighteen months to two years.

3 The judge suggested that she purchase a
4 pump and that my son supply the approved freezer
5 bags. The mother also advised my son that the
6 baby was not to eat or drink anything other than
7 breast milk for an indefinite period of time.

8 During the first few weeks, it became
9 apparent that she would never supply enough
10 breast milk for an entire weekend. On some
11 occasions, a 3-ounce bag was all that he was
12 given.

13 During the course of these weekends, my
14 son would pick up additional small amounts of
15 breast milk at six- to ten-hour intervals. Weeks
16 later, we learned that the mother had been
17 supplementing Jacob's diet with formula and
18 cereal.

19 The mother did not impart this
20 information to my son. After many weeks of
21 attempts to discuss the baby's nutritional needs
22 with the pediatrician, my son's attorney was
23 finally told that the doctor had advised solids
24 including but not limited to cereals, juices and
25 other supplements be added to Jacob's diet many

1 weeks before we learned of this.

2 Recently, Jacob's health was at issue
3 during each pick up wherein the mother would
4 advise my son that he had a cold or an ear
5 infection, a rash, a sore throat and, most
6 recently, a penile yeast infection.

7 The baby's well-being required that my
8 son again attempt to learn more about what his
9 problems were from the pediatrician. The calls
10 were never returned.

11 With the custody hearing now scheduled,
12 my son's attorney sent a written request for a
13 full health workup to the pediatrician, which was
14 just received a few days ago.

15 We were astounded to learn that Jacob
16 had been diagnosed with an iron deficiency,
17 anemia, last December and was to be given an iron
18 supplement prescription on a regular basis since
19 that time.

20 Again, my son was not advised by his
21 former girlfriend or her pediatrician of this
22 directive. For all intents and purposes, each
23 weekend visit overnight he was deprived of this
24 formula -- or this prescription.

25 If Pennsylvania joins the many other

1 states where presumptive joint custody is the law
2 of the land, most if not all of these unfortunate
3 circumstances would have been avoided.

4 My son's rights as a father would have
5 been immediately recognized by his ex-girlfriend,
6 her attorney, the hospital, the pediatrician, and
7 the many other entities involved in this entire
8 matter.

9 Decisions could and should be made
10 through negotiations as opposed to confrontations
11 or court battles. The many thousands of dollars
12 which my son has spent on attorney's could have
13 and should have been spent on his son.

14 Many studies conducted by leading
15 universities and federal agencies have concluded
16 that the best interests of the children is served
17 by having two caring, participating parents. Too
18 often children in this Commonwealth are used as
19 tools or for purely vindictive purposes.

20 While I was unable to copy the data to
21 which I will refer in time for this hearing, I
22 will provide it to the Members in the near
23 future.

24 Once again, I thank you for the
25 opportunity to attend and participate in today's

1 hearing. And I think I read fast enough that I
2 have a few minutes left. I would like to read a
3 few other things.

4 My son made some tape recordings to his
5 son beginning day one, as soon as he found out
6 about the birth. They have been mailed back to
7 my home and have been sealed along with the tape
8 from the hospital and a few other items. They
9 will be opened on June 28th.

10 He also sent many letters. Beginning
11 about the 9th day or so, he began Emailing
12 himself -- or Emailing his son. And you
13 can't -- I have no knowledge whatsoever of
14 computers; but my understanding is you can't
15 screw with the dates, times, or anything else on
16 the bottom.

17 I would like to read just three of the
18 hundred and twenty-six letters. They're very
19 short:

20 Dear Son, well it has been 22 days since
21 your birth and I still have yet to hold you
22 in my arms. Your mother and her family have
23 yet to contact any of us.

24 This pain and suffering that they are
25 putting me and my family through is truly

1 unbearable. The good news is that she named
2 me as your father on the birth certificate.
3 I have just found out about your birth
4 certificate yesterday.

5 This entitles me to certain legal rights
6 that I have been denied and I'm getting
7 worked out right now with the lawyers. God,
8 son, I can't wait to see you. I can finally
9 see the light at the end of the tunnel, and
10 it shouldn't be much longer now.

11 The bad news is that on Friday, April
12 18th, your mother filed for full custody of
13 you. Another sign of her unwillingness to
14 let me have anything at all to do with you.
15 All she wants from me right now is the
16 support check.

17 I have no problem at all with giving her
18 money to help raise you, but I fear that she
19 wouldn't use this money on you but to finance
20 her expensive lifestyle. Unfortunately,
21 there is isn't a system in place in this
22 state to get receipts on what she uses the
23 money for.

24 I hope by now you see how messed up the
25 child custody system is. I know that this

1 custody battle over you is going to get ugly
2 because of your mother's unwillingness to let
3 me have anything to do with you.

4 It is truly a shame that the only one
5 paying for this in the long run no matter
6 what the courts decide is you. I will keep
7 you informed as to what happens. Even though
8 I haven't seen you, I want you to know I love
9 you and miss you dearly.

10 Please don't ever forget that I never
11 abandoned you. I would also like you to know
12 that I would never put your mother or her
13 family through what she has put me and my
14 family through.

15 It is a plain and simple fact that for a
16 child to grow up normally in society he needs
17 both parents equally. Unfortunately, the
18 courts and mothers rarely see it that way.

19 Well, son, I have to get going. I'm so
20 excited to be able to see you no matter what
21 the circumstances that I'm smiling from ear
22 to ear;

23 Dear Son, 28 days and I've still yet to
24 lay eyes on you. I haven't heard anything
25 from your mother or her family either. This

1 is a terrible thing to put someone through.
2 Sorry it has been a few days since I last
3 wrote to you, but I had a job test on Friday
4 morning and then I had to meet with my lawyer
5 in the afternoon.

6 I won't be at work tomorrow either
7 because I have a job interview in Harrisburg.
8 I hope that I get it. That way I can give
9 you everything that you deserve.

10 By the way, he has always worked. He's
11 just simply working without benefits, so he's
12 trying to get a job with benefits. He is a
13 college grad, an environmental scientist; but he
14 has -- he has worked 3 and a half years on a
15 contract basis for America Chemical and enjoys a
16 fairly healthy income.

17 Has never missed any work; but as I
18 said, he is not entitled to health and welfare
19 benefits or any of that. In fact, today he's
20 interviewing again for another job trying to get
21 health and welfare benefits for the benefit of
22 his son.

23 Last time that I wrote to you, I
24 informed you about the custody papers. Since
25 then, your mother has also filed for child

1 support. I have no problem with this at all,
2 but I know how your mother is and I fear that
3 she won't use that money for you.

4 I'm supposed to go to Domestic Relations
5 on Friday, but my lawyer says differently.
6 He wants us to have the blood test to
7 establish you as my child. This isn't a
8 problem, and don't think that I don't think
9 that you aren't mine. But this is how the
10 legal system works.

11 I'm starting to put money away for you
12 this week. According to my lawyer, I will
13 have to put away approximately \$90 a week.
14 This is outrageous. But since your mother is
15 unable to work, I will foot all the bills.

16 Like I said, Son, this doesn't bother
17 me; but I wish there was a way that she had
18 to show me the bills at the end of the week.
19 That way I would know that she was spending
20 the money on you.

21 Son, I hope that you never have to
22 experience the pain that I'm going through
23 right now and hurt so bad not holding you,
24 hearing you cry, rocking you to sleep and all
25 the other stuff that we should be sharing

1 together.

2 I've lost about 20 pounds since this
3 whole mess started, but I'm finally beginning
4 to gain some of it back. Me and my family
5 still hurt every day that we don't see you.
6 I'm still crying all the time too.

7 The only bright spot about this whole
8 mess is that I can final see a light at the
9 end of the tunnel. Once the blood test is
10 over with, I should be able to see you by
11 court order. I'm sure that they won't let me
12 have you for a whole day, but at least I'll
13 be able to spend a few hours with you.

14 I can't wait for that day, Son. I
15 really can't wait. One of our first trips
16 will be to take some pictures together. Then
17 I can bring them to work and brag about how
18 beautiful you are.

19 Just wish that things didn't end up like
20 this and you could have had a normal family.
21 But, unfortunately, I don't think that'll
22 ever happen.

23 Did you realize the only times that I
24 ever saw you was when your mother had her
25 sonagrams? You were so active and moving all

1 over the place. I loved watching you rock
2 and roll and kick and punch and twist. It
3 was so beautiful.

4 The last one that your mother had, the
5 doctor let us watch for pretty close to an
6 hour. It was truly amazing. Isn't that
7 weird? The only times I have ever seen you
8 were while you were in your mother's stomach.
9 Well, at least she lets -- let me experience
10 that and can't take that away from me.

11 Well, Son, I have to get some work done
12 right now; but I'll let you know what's going
13 on as soon as I find out. We all love and
14 miss you dearly. And don't ever think that
15 I'm giving up on you. I'm going to fight and
16 fight hard to have you in my arms.

17 A wise man once told me, Kids need
18 fathers, not visitors. I can't agree with
19 him more. Hopefully, Son, the courts will
20 agree with that.

21 And the final one is very short.

22 Well, it has been 75 days since your
23 birth and I've still not seen you. Your
24 mother has been adamant about that from the
25 beginning to -- will not change her tune.

1 There was a glimmer of hope that I would
2 have seen you before Father's Day, but my
3 lawyers were unable to contact your mother or
4 her lawyer. That, my Son, would have been
5 the best Father's Day gift I could have had.
6 I just can't wait to see you hold you, and
7 love you.

8 I know that your mother and I haven't
9 got along for quite a while; but to use you,
10 an innocent child who needs a father, against
11 me is beyond belief. I've done everything in
12 my power to see you and to be a father to you
13 but have been rejected every time.

14 All I've wanted to be is your father,
15 regardless of the situation between your
16 mother and I. So, Son, on your first
17 Father's Day, I promise you this: no matter
18 what the circumstances after our custody
19 battle, you will always have a home in my
20 heart and in my house.

21 There is one thing that no court in the
22 world can take from us, for you are my son
23 and I'm your father.

24 I have a stack of other letters here. I
25 would like to at some point talk about some data

1 that I think contradicts the previous speaker on
2 some nationwide studies. I stand ready for
3 questions.

4 CHAIRPERSON GANNON: Thank you,
5 Mr. Belfanti. Representative Williams, any
6 questions?

7 REPRESENTATIVE WILLIAMS: (No audible
8 response.)

9 CHAIRPERSON GANNON: Representative
10 Dally?

11 REPRESENTATIVE DALLY: No. I have no
12 questions. My legal mind, I'm going through the
13 scenario and I wonder what Mr. Goldsmith at some
14 point would have elaborated after -- I mean, I
15 wish he would have testified after your
16 testimony, Representative Belfanti, just so we
17 could have picked his brain. But I have no
18 questions, Mr. Chairman.

19 CHAIRPERSON GANNON: Brian.

20 MR. PRESKI: One question, Mr. Belfanti,
21 for you, follow-up to a previous question that I
22 asked and wonder if you could follow-up. In your
23 discussions with your son's lawyers, what kind of
24 pictures did they paint? What's the outlook?

25 REPRESENTATIVE BELFANTI: Absolutely

1 bleak. Again, they advised him because of the
2 court ruling on support that he had to be
3 absolutely 100 percent sure that he was the
4 father even though he continually told the
5 lawyer, I know I'm the father. We lived
6 together. Seven days a week we were with each
7 other until chronic demands on marriage split
8 them up to a degree because of his unwillingness
9 for many, many reasons I think which will be
10 discussed at the court hearing in June that he
11 was just unwilling and unable to agree to
12 marriage.

13 In any case, the attorney has advised
14 him that in Pennsylvania without any custody
15 award there is a presumption of full custody by
16 the mother the day of the birth.

17 For him and my mother -- his mother, my
18 wife to be thrown out of a hospital was
19 unbelievable to me. Yet the child's mother
20 knowing what the laws are, having friends who are
21 single mothers who advised her how she could do
22 many of these things, going to county Domestic
23 Relations offices and to be given free legal
24 advice by social workers on how to prolong the
25 visitation, how to get more in the way of child

1 support, how to utilize the baby as a tool in
2 whatever negotiations take place, these are
3 things that occur in all 67 counties.

4 And the Domestic Relations personnel do
5 not always think they're doing the wrong thing.
6 They're leaning on Pennsylvania law and the
7 presumption that the mother is in full control
8 and full custody from the day of the birth.

9 So in any case, my son's attorney
10 painted a fairly bleak picture as far as how long
11 it would be before he was able to see his son.
12 It may have been that I could have pulled a
13 string or two with the court and have things
14 moved up a bit as opposed to waiting for a DNA
15 test to be scheduled -- it took six weeks.

16 I wouldn't do that; my son didn't want
17 it done; his attorney didn't want it done. We
18 did not want it brought out in the visitation or
19 shared custody hearing or now the full custody
20 hearing because they're both going for full
21 custody that I used political influence and my
22 son's timetable on this coming to a conclusion
23 was any shorter than anyone else.

24 In Northumberland County, it's running a
25 year and a half from the day of the birth until

1 the father has his day in court. And that's the
2 timetable he's on right now.

3 Because of extenuating circumstances, we
4 are hopeful that he may win full custody. But
5 again, because of the laws as they are
6 written -- and I believe there is definitely a
7 gender bias that is permeating the Domestic
8 Relation system in this state -- I'm not sure
9 that's going to happen.

10 But he has spent many, many, thousands
11 of dollars on legal fees. The easy thing for
12 fathers in this state is to walk away. Just pay
13 your support. And if the mother lets you see the
14 child, fine; and if she doesn't, fine. Because
15 he's paid more in attorney fees than in -- not
16 custody, support. Probably three to one.

17 MR. PRESKI: Thank you.

18 CHAIRPERSON GANNON: I have no
19 questions, Representative Belfanti.

20 REPRESENTATIVE BELFANTI: I would
21 then -- I understand there's one witness that
22 isn't going to show up. This will take me about
23 two minutes to rattle through, if I have time.

24 CHAIRPERSON GANNON: Go ahead, you can
25 proceed.

1 REPRESENTATIVE BELFANTI: Thank you.
2 I'd just like to read from the U.S. Department of
3 Health and Human Services Office of Income
4 Security Policy statistics -- national statistics
5 on joint custody.

6 79.6 percent of custodial mothers
7 receive a support award. 29.9 percent of
8 custodial fathers receive a support award. 46.9
9 percent of noncustodial mothers totally default
10 on support. 26.9 percent of noncustodial fathers
11 totally default on support. 20 percent of
12 noncustodial mothers pay support at some level.

13 61 percent of noncustodial fathers pay
14 support at some level. 66.2 percent of single
15 custodial mothers work less than full time. 10.2
16 percent of single custodial fathers work less
17 than full time. 7 percent of single custodial
18 mothers work more than 44 hours per week. 24.5
19 percent of single custodial fathers work more
20 than 44 hours a week.

21 46.2 percent of single custodial mothers
22 receive public assistance, and 20.8 percent of
23 single custodial fathers receive public
24 assistance. 90.2 percent of fathers with joint
25 custody pay the support that's due. 79.1 percent

1 of fathers with visitation privileges pay the
2 support due.

3 44.5 percent of fathers with no
4 visitation pay the support due. 37.9 of fathers
5 who are denied any visitation pay the support
6 due. And 66 percent of all support not paid by
7 noncustodial fathers is due to their inability to
8 pay.

9 Also, just one other piece of data.
10 Again, the source of this is -- this is a
11 university study. 63 percent of youth suicides
12 are from fatherless homes. 90 percent of all
13 homeless and runaway children are from fatherless
14 homes.

15 85 percent of all children that exhibit
16 behavioral disorders come from fatherless homes.
17 80 percent of rapists motivated with displaced
18 anger come from fatherless homes. 71 percent of
19 all high school dropouts come from fatherless
20 homes.

21 75 percent of all adolescent patients in
22 chemical abuse centers come from fatherless
23 homes. 70 percent of juveniles in state-operated
24 institutions come from fatherless homes, and 85
25 percent of all youths sitting in prison grew up

1 in a fatherless home.

2 My final point is that in Texas which my
3 good friend, Bill DeWeese, seems to like to
4 allude to on the Floor quite often to the
5 Majority Leader, Texas first passed the rebuttable
6 presumption of joint custody in 1989.

7 And they provide a minimum possession of
8 child for a parent named as possessory
9 conservator or joint managing conservator is in
10 the best interests of the child.

11 There is typically one parent even in a
12 presumption of full joint custody that has the
13 child 58 percent of the time while the other has
14 the child approximately 42 percent of the time;
15 however, they do share in all the decision
16 making.

17 It has led to a reduction in divorces
18 and it has also forced negotiations to take place
19 on the very front end even prior to the delivery
20 on the front end when the mothers know that the
21 fathers enjoy a presumption of joint custody at
22 the very outset.

23 They are -- they have had very much
24 success with their legislation. Many other
25 states have since followed suit. And I believe

1 that statistical data shows that the number of
2 states that are moving in this direction are
3 increasing, not decreasing. Thank you.

4 CHAIRPERSON GANNON: I just have a
5 question. Is House Bill 1723, does that have any
6 similarities to what the Texas law is?

7 REPRESENTATIVE BELFANTI: Yes. I
8 believe that it is modeled after Texas and
9 Oregon's laws.

10 CHAIRPERSON GANNON: Now, you had said
11 that there was a presumption in Pennsylvania that
12 the mother would have custody, if I understood
13 you?

14 REPRESENTATIVE BELFANTI: Well, if you
15 look at the testimony that I gave, my son had
16 absolutely no way of seeing his son, in knowing
17 when the christening was to take place, in
18 selecting a pediatrician.

19 So for all intents and purposes, yes,
20 she receives 100 percent total custody upon
21 delivery even if the father had throughout the
22 pregnancy agreed that he was the father, agreed
23 to participate fully in the process, and entered
24 into agreements with the mother that they would
25 follow a process of joint custody and joint

1 decision making until and if they had to end up
2 in court.

3 It was his hope all along that that
4 would not be necessary because decisions had been
5 reached. And as I said, as a result of some of
6 the threats made weeks before the delivery, my
7 wife and I spent many evenings discussing these
8 threats with the mother's parents who assured us
9 that those threats would not be carried out; that
10 they weren't any happier about the prospect of an
11 unwanted marriage by both parties; and that we as
12 grandparents would certainly have a right to see
13 the child; that they would ensure that Bobby was
14 not kept away from the delivery room and many of
15 the other things that I alluded to in the
16 testimony.

17 So for all intents and purposes, for 16
18 months in Northumberland County -- and it may be
19 two years in Lancaster county; it may be three
20 years in some other county -- the father has
21 absolutely no rights.

22 All he is working under right now is an
23 emergency visitation which he applied for after
24 the results of the DNA. And then it took six
25 weeks to even schedule that hearing.

1 That was six long, excruciating weeks
2 from the day he knew he was the father and start
3 writing support checks directly to her as opposed
4 to banking them in an escrow account, six more
5 weeks, which seemed like an eternity to him.
6 That's just totally unfair.

7 CHAIRPERSON GANNON: I want to thank you
8 again for attending the hearing today and
9 presenting your testimony --

10 REPRESENTATIVE BELFANTI: Thank you.

11 CHAIRPERSON GANNON: -- in supporting
12 House Bill 1723. Thank you. You can join us up
13 here. Our next witnesses are Ms. Susan Wolpin
14 and Mr. Rolf Dinsmore.

15 MS. WOLPIN: Good morning, Chairman
16 Gannon, Members of the Committee, ladies and
17 gentlemen. My name is Susan Wolpin, and I am the
18 Chair of the Bucks County Chapter of FACE.

19 Fathers and Children's equality is a 501
20 (c)(3) designated nonprofit organization founded
21 in 1978 for the purpose of advocating children's
22 rights to full access to both parents and the
23 extended family and providing a self-help support
24 group for noncustodial and/or nonresidential
25 parents.

1 In February of this year, Governor Ridge
2 spent a lot of time and energy addressing the
3 problems of fathers who abandon their families.
4 His initiatives are excellent; his points right
5 on the mark. But he's told only a part of the
6 story.

7 The majority of parents who do not play
8 a role in their childrens' upbringing have been
9 forced into this position by being ejected from
10 their families by judicial rulings that place
11 them in the role of visitor.

12 Today in courtrooms around the
13 Commonwealth, the standard of child custody is
14 that the mother will be the residential parent,
15 the father will be the visitor.

16 How many of you would tolerate being
17 visitors to your growing children, to be unable
18 to take part in the daily goings-on which is part
19 of being a child -- the story reading, the
20 tucking in bed, the chasing away of boogie men,
21 the kissing of boo-boos? How would you feel
22 missing this part of your child's life?

23 We are here today to ask you to put a
24 halt to this practice, to disallow the ejection
25 of any loving parent from the life of their

1 child. It is a tragedy in society when a mother
2 and father divorce. Must we continue to compound
3 this tragedy by depriving their children of a
4 parent as well?

5 I have a close friend who spent many
6 bitter years as a visitor to his children. I've
7 often heard him say, How can I bond as closely
8 with my children in two days as she does in the
9 other twelve?

10 This is the truest tragedy our society
11 faces. We have a generation of children who are
12 being denied the love and nurturing of one of
13 their parents while the other parent is often
14 under a great deal of emotional stress from
15 children who should be a shared burden.

16 What do fathers do? Well, partly, of
17 course, it's simply being a second adult in the
18 equation. Bringing up children is demanding,
19 stressful, and often exhausting. Two adults can
20 support and spell each other. They can also
21 offset one another's deficiencies and build on
22 each other's strengths.

23 Beyond that, fathers, men, bring an
24 array of unique and irreplaceable qualities that
25 women do not ordinarily bring. Some of these are

1 familiar but often overlooked or taken for
2 granted. The father as protector, for example,
3 has by no means outlived his usefulness; and he's
4 important as a role model.

5 Teenage boys without fathers are
6 notoriously prone to trouble. The pathway to
7 adulthood for daughters is somewhat easier, but
8 they still must learn from their fathers as they
9 cannot from their mothers how to relate to men.

10 They learn from their fathers about
11 heterosexual trust, intimacy, and difference.
12 They learn to appreciate their own femininity
13 from the one male who is most special in their
14 lives, assuming, of course, that they do love and
15 respect their fathers.

16 Most importantly, through loving and
17 being loved by their fathers, they learn that
18 they're worthy of love. Fathers and mothers are
19 both important and special to childrens' lives.
20 You can dismiss neither role as inconsequential.
21 Further, there are necessary differences in the
22 way parents play with their children.

23 Fathers play tends to have a teaching
24 aspect to it such as let me show you how.
25 Mothers play, it's often of longer duration and

1 remains more at the child's level rather than
2 reaching higher. Mother provides the child with
3 an opportunity to direct the play. Father
4 promotes intellectual challenge.

5 Kids, at least in the early years, seem
6 to prefer to play with daddy. In one study where
7 2 and a half year olds given a choice, more than
8 two-thirds chose to play with their daddies.

9 Children who roughhouse -- according to
10 one expert, children who roughhouse with their
11 fathers usually quickly learn that biting, kicking,
12 and other forms of physical violence are not
13 acceptable. They learn when enough is enough.

14 At play and in other realms, fathers
15 tend to stress competition, challenge,
16 initiative, risk taking, independence. Mothers
17 as care takers express emotion, security,
18 personal safety.

19 On the playground, fathers will try to
20 get the child to swing higher than the person on
21 the next swing; mothers worry about the accident.
22 It has sometimes been said that fathers express
23 more concern for a child's long-term development
24 while mothers focus on immediate well-being.

25 It's clear that children have dual needs

1 that must be met. Becoming a mature and
2 competent individual involves the integration of
3 two often contradictory human desires:

4 One for communion or the feeling of
5 being included, corrected, related; and for
6 agency which entails independence, individuality,
7 and self-fulfillment. One without the other is a
8 denuded and impaired humanity, an incomplete
9 realization of the human potential.

10 Society's children need the
11 participation and impact of both of their parents
12 even when they live in different homes. Every
13 child deserves two parents. Thank you.

14 CHAIRPERSON GANNON: Thank you,
15 Ms. Wolpin. Mr. Dinsmore.

16 MR. DINSMORE: Good morning, Chairman
17 Gannon, Members of the Committee, gentlemen and
18 ladies. As you can see by my dress today, I have
19 conspicuously chosen to wear something that says
20 that I'm not a member of the Bar or a politician
21 or anybody who has a financial stake in the
22 current court system or the legislative process.

23 What I am is Mr. Rolf Dinsmore. I'm the
24 father of Michael and Joseph Dinsmore, ex-husband
25 of Mrs. Leslie Ramsey, and the information and

1 training officer for the Bucks County Chapter of
2 Father's and Children's Equality, Incorporated.

3 In early 1995, I asked my ex-wife to let
4 me spend some more time with our children because
5 Michael was starting to fall behind in school.
6 She said no. So I told her that I would ask this
7 honorable court, Montgomery County Court of
8 Common Pleas, to grant this request for more time
9 with my son.

10 She immediately moved the children to a
11 hidden address and two weeks later filed charges
12 of abuse against me with the police and with
13 Bucks County Children and Youth. After a
14 complete investigation, the police and Children
15 and Youth Services determined that the
16 allegations were unfounded.

17 I had filed an emergency petition for
18 custody with the court but had been turned down
19 because -- and I am quoting the judge
20 here -- just because Mr. Dinsmore is not seeing
21 his children doesn't make it an emergency. Now,
22 if he had nonrefundable tickets to Disney World,
23 that would be an emergency, unquote.

24 It's now three years later and I am
25 still waiting to have my protracted hearing to

1 decide custody of Michael and Joseph. Now, I'm
2 sure the question you're asking is why is it
3 taking so long? That's a question that the court
4 is going to have to answer.

5 But in the meantime, what's happening to
6 Michael and Joseph Dinsmore? I have filed
7 numerous petitions and requests for the children
8 to see me, but the court has been unwilling to
9 consider granting them even one day with me.

10 Mrs. Ramsey was charged with truancy for
11 keeping our son home 90 out of 180 days. After
12 the school won their truancy case, she
13 transferred Michael to a Catholic school where
14 they have continually refused to disclose any
15 information whatsoever to me.

16 Gentlemen and ladies, I am the result of
17 this Commonwealth's sole custody policy. A
18 father who loves his children, pays 100 percent
19 of his court ordered support, and does not know
20 where Michael and Joseph is right now today.

21 I'm sure that you've heard many reasons
22 for maintaining the status quo of custody in
23 Pennsylvania, so I would like to provide you with
24 what I call the case for joint custody.

25 There's a Georgia Superior Court judge

1 named Robert Nolan. He always gave custody of
2 the children to the mother. He explains, I ain't
3 never seen a calf following a bull. They always
4 follow the cow, so's I always give custody to the
5 mamas. Most judges think like Judge Nolan, that
6 mother-headed households are the natural order.

7 I was born in the Detroit ghetto. It
8 was common knowledge that apart from being sperm
9 donors men were completely unfit to be parents.
10 In 1965, that mind-set was confined to the mostly
11 poor, black parts of the inner cities; but now
12 it's spread throughout the entire country.

13 It's not just the poor welfare mothers
14 rejecting fathers anymore. It's the middle class
15 and well-to-do divorcees helped by strict child
16 support collections and welfare programs forcing
17 fathers out onto the street corners to complain
18 to each other, I've been wronged.

19 Judge Nolan may try a divorce case in
20 the morning and he'll place the children in the
21 mother's custody. He may try a criminal case in
22 the afternoon and send a man to prison for
23 robbing a liquor store.

24 But chances are three out of four that
25 the criminal he sends to prison grew up in a

1 female-headed household just like the one he
2 created himself that morning when he tried the
3 divorce case.

4 He's thinking that what he's doing is
5 right. After all, the biological link between the
6 mother and the children is closer than between
7 the father and his children and, therefore, the
8 mother is the natural biological choice for sole
9 custodian.

10 In a sense, he is right. Patriarchy or
11 father-headed households are not natural; they
12 are artificial; they're shaky constructs built to
13 separate us from Judge Nolan's cattle. He thinks
14 as Margaret Mead does, that the female role is a
15 biological fact and that fatherhood is a social
16 invention: man-made, artificial, and fragile.

17 When the social props it requires are
18 withdrawn, society reverts to a matriarchy, the
19 pattern of cattle and of the Detroit ghettos and
20 of the Philadelphia poor sections.

21 The creation of female-headed households
22 in place of joint parenting households has
23 resulted in what Senator Moynihan said on Meet
24 the Press in 1994. The larger society is coming
25 to take on the pattern of the ghettos.

1 Female-headed households, they are a
2 minority; but they do not generate the minority
3 of the criminal class nor just a simple majority
4 of the criminal class. They generate over 70
5 percent of the criminal class. It takes 815
6 intact homes to generate as much delinquency as
7 100 mostly female-headed, broken homes.

8 Now, ardent feminists and many of the
9 Common Court Pleas judges that I have met reply
10 that even though delinquency is eight times more
11 prevalent in a fatherless home, most fatherless
12 children do not grow up to be delinquents; so
13 there can be no objection to sole mother custody.

14 This is what I call the safe drunk
15 driver argument. Most drunk drivers don't get
16 into accidents. Most of them get home safely.
17 Drunks are, however, overrepresented among those
18 who do get into accidents; and therefore, we have
19 laws that discourage drunk driving.

20 Fatherless children by the same
21 reasoning are overrepresented among criminals,
22 drug addicts, mental patients, high school
23 dropouts, and teenage pregnancies; therefore, we
24 should have laws which discourage fatherlessness.

25 The high crime areas of my hometown

1 Detroit, my adopted city of Philadelphia, my
2 current home in Bucks County are the areas with
3 the largest numbers of fatherless children.
4 There are no exceptions.

5 The divorce courts exiling fathers from
6 families in divorce cases is the current social
7 policy, and it is a bad policy. According to
8 sociologist David Popenoe, The negative
9 consequences of fatherless are all around us.
10 They affect children, women, and men.

11 Evidence indicating damage to children
12 has accumulated in nearly tidal-wave proportions.
13 Fatherless children experience significantly more
14 physical, emotional, and behavior problems than
15 do children growing up in intact families,
16 unquote.

17 To reduce delinquency and violence, we
18 must keep the fathers fully involved in raising
19 their children. Here's what sociologist Henry
20 Biller says:

21 "Males who are father-deprived early in
22 life are likely to engage later in rigidly
23 overcompensatory masculine behaviors. The
24 incidence of crimes against property and people,
25 including child abuse and family violence, is

1 relatively high in societies where the rearing of
2 young children is considered to be an exclusively
3 female endeavor, unquote.

4 Why do judges routinely award custody to
5 the mother? There are three reasons: No. 1,
6 motherhood is more solidly based in biology than
7 fatherhood; No. 2, women, like children, are
8 perceived to be more dependent, therefore, they
9 need their rights more closely guarded; and No.
10 3, when given only the sole custody option,
11 judges must choose between creating a fatherless
12 household or a motherless household.

13 In their eyes, a fatherless household
14 does not carry as large a social stigma and is
15 therefore better for the mother, the father, and
16 the children.

17 With regard to the first excuse, I'll
18 agree, if biology does take care of the
19 matrimonial bond, then our laws need to seek to
20 strengthen the weaker bond so that the child may
21 have a father.

22 With regard to the dependency excuse,
23 women are no longer the dependent member of the
24 family. Mothers have the full force of law with
25 regards to divorce, custody, support and abuse

1 while men have almost no legal protection in
2 fact, if not in law.

3 With regard to the third excuse,
4 creating a joint custody arrangement would reduce
5 the lure of divorce. If custody can no longer be
6 used to punish the other parent and if both
7 parents will remain involved with the children,
8 then there is little benefit to be gained by
9 using the children as legal pawns.

10 We've been trying to rescue the
11 fatherless with more welfare and by hounding the
12 fathers to subsidize the mothers, which has
13 exacerbated the destruction of the family by
14 further emphasizing the single role of the
15 fathers, that of support.

16 What is needed is to make fathers who
17 want to have families and who signify their
18 commitment to family formation by marrying to
19 make their fatherhood irrevocable and precious by
20 force of law. Nothing except this will give them
21 a secure role.

22 Thus the father and mother will know
23 prior to marriage that the father is assuming his
24 responsibilities for the emotional and financial
25 support of the children regardless of the

1 stability of the marriage.

2 In conclusion, never before have fathers
3 been cast aside as they have been in Pennsylvania
4 during the last 30 to 40 years. Never before has
5 such a strong Commonwealth become as threatened
6 as we are for one solitary reason.

7 Regrettably, as long as we continue to
8 hold onto the relatively new idea that only
9 mothers are capable of being parents and ignore
10 the essential role of fathers, our children
11 remain at risk.

12 The single mother-headed household must
13 go the way of the slum high rise dwelling. Both
14 are human disaster zones. Both are exalted
15 attempts at social engineering that ignore the
16 basic facts of an ordered human society.

17 What is needed? I believe that joint
18 custody is needed. Good fathers here on earth
19 are needed. And our Father in heaven as well as
20 a society that values all of those includes them
21 and encourages their involvement in their
22 families. Thank you.

23 CHAIRPERSON GANNON: Thank you,
24 Mr. Dinsmore. Representative Belfanti.

25 REPRESENTATIVE BELFANTI: How long have

1 you been waiting for your court case?

2 MR. DINSMORE: I filed my emergency
3 petition for custody May 17th, 1995. I was just
4 down at the court administrator's office, and we
5 think there may be a possibility we will have our
6 protracted hearing in August of this year.

7 REPRESENTATIVE BELFANTI: So you're
8 talking over three years?

9 MR. DINSMORE: Over three years.

10 REPRESENTATIVE BELFANTI: That's typical
11 to Montgomery County or -- and again, it's a year
12 and a half in Northumberland County, as I
13 testified.

14 MR. DINSMORE: I think that Montgomery
15 County has a lot of difficulties brought on by
16 the fact that they do not have a family court
17 system of judges. It is much quicker in Bucks
18 County and in Montgomery County and perhaps in
19 Delaware and Chester County.

20 Montgomery County has just changed their
21 procedure, and I hope because of some influence
22 that I have exerted on them to create a family
23 court, which will stop this long wait, hopefully.

24 REPRESENTATIVE BELFANTI: And you
25 haven't had visitation for how long?

1 MR. DINSMORE: One year after she took
2 them I was allowed to see them in supervised
3 visitation. After having supervised visitation
4 for a year, she filed a Protection from Abuse
5 Order against me, moved, and has now hidden
6 somewhere near Norristown.

7 I do not know the location, and the
8 court will not tell me where she is. I appealed
9 that order to the Superior Court. I asked for
10 Request for Reargument, Reconsideration, which I
11 have included in your packets which outlines my
12 case as far as the PFA law.

13 But I don't believe that's the purpose
14 of us being here; so I would like to stay away
15 from that, concentrate on joint custody.

16 REPRESENTATIVE BELFANTI: We can maybe
17 at some point to look into false allegations as
18 PFAs are also -- once I became involved in this
19 issue, I'm receiving mail, Emails, and you name
20 it from groups such as yourself from all across
21 the state.

22 And PFA seems to be one of the main
23 tools that are used in this present system, but
24 that's not what today's purpose is.

25 CHAIRPERSON GANNON: Brian.

1 MR. PRESKI:. If I might to both -- let
2 me throw this out. Let me be the devil's
3 advocate for a moment. You're the best to answer
4 these kind of questions.

5 One of the things that we continuously
6 hear from the opponents of this legislation is
7 that mom and dad couldn't get along well enough
8 to stay married, to stay together.

9 How do you think that they're going to
10 be able to raise a child together when the two of
11 them can't even make a decision where to go to
12 dinner together or whether to be together or
13 anything else?

14 I understand the philosophical basis of
15 both your testimonies and the positions that it's
16 not right that one gets the benefit and the other
17 one basically just pays the freight. But how do
18 you respond to that kind of criticism of the
19 legislation?

20 MS. WOLPIN: May I?

21 MR. PRESKI: Please.

22 MS. WOLPIN: My response here would be
23 when we're trying to decide where to go to
24 dinner, it's between the two of us. When we're
25 trying to decide where to send our child, for

1 instance, to camp, it's for the child. It's got
2 nothing to do with the two of us.

3 And that's something that we should have
4 no problem agreeing on. If you can think about
5 the children and what they need, a lot of the
6 anger that evinces between a couple should
7 dissipate.

8 I realize that that's a little
9 idealistic, but I've seen it work in a lot of
10 cases. In my own family, my brother was just
11 divorced. From day of separation to signing of
12 the divorce took them about 45 days, including
13 the sale of the house because they both
14 completely agreed that is what they wanted to do.

15 They have a young daughter, and they
16 were both just worried about how it was going to
17 impact her. If you can think on that level, if
18 you can think about what's best for the children,
19 adults should be able to work out the
20 differences.

21 MR. DINSMORE: Can I continue that? Now
22 we'll take my case. There's no possibility of us
23 working it out.

24 MS. WOLPIN: Yes.

25 MR. DINSMORE: So it took me

1 approximately 45 minutes to create my four-page
2 parenting plan which is part of my memorandum
3 which will be introduced at my trial.

4 The purpose of preparing a parenting
5 plan is to see what both parents want and then
6 for a court to be able to look at that and say,
7 okay, which part of this is best for the
8 children?

9 The parents don't agree, they're not
10 going to work together, so we'll see what they
11 think and we'll take the best out of it. Rather
12 than simply saying a blanket thing that says
13 mother gets full custody, father gets every other
14 weekend and one evening during the day (sic).

15 As far as your arguments about well, who
16 decides where the child goes to the doctor,
17 that's a decision that can be made or not made.
18 For example, if my ex-wife wants to take my son
19 to a certain doctor to have him taken care of, I
20 can support that decision and go to that doctor.

21 If I have a problem with that doctor the
22 same way as I had a problem when I had my tonsils
23 out, I got a second opinion. I can have my own
24 doctor for the child.

25 If either parent thinks it's getting out

1 of hand, they have the right to petition the
2 court and the court has the right to sanction the
3 parent who is causing the problem. A sanctioned
4 parent will stop causing problems unless they
5 are, we'll say, a mentally unfit parent.

6 Yes, they can work together. If they
7 can't, they need to be shown. It won't take any
8 more time than the court spends now with these
9 protracted hearings to do this. And also it will
10 stop these people continually coming back into
11 court. No more slaps on the hand.

12 If you're the one causing the problem,
13 you pay their fees and you get your rear end out of
14 court and work it out. Does that answer your
15 question?

16 MR. PRESKI: Well, that leads to a
17 follow-up question. Again, as the devil's
18 advocate then, we heard earlier that right now
19 there's the possibility for agreements to be made
20 between parents to enter into a shared custody
21 agreement.

22 If people are so far removed from their
23 arguments when it comes to their kids when
24 they're able to rise above these types of things,
25 why don't we see more of them?

1 MS. WOLPIN: We need this bill as the
2 impetus for that. That's exactly what this
3 legislation would do.

4 MR. PRESKI: Okay.

5 MR. DINSMORE: You're asking a question
6 that we have to refer to the sociologist to say
7 why is it that the custody situation is so
8 volatile? Why is it that we have people filing
9 false allegations?

10 There are many reasons. I will present
11 one: No fault divorce. When people break up,
12 there's an inborn ability to want to blame the
13 other person. Custody is a great way to do it.
14 I can hurt him by taking the children.

15 That is the primary reason why I believe
16 we see many of the false allegations. Joint
17 custody, I think it might help curtail some of
18 that.

19 MS. WOLPIN: When we last met with
20 this Committee, you remember hearing from Mr.
21 Cook (sic) from California who talked about that
22 there is now in California among divorcing
23 parents a mind-set that joint custody is the
24 norm. As I said, this would be the impetus for
25 making people decide to work it out.

1 MR. PRESKI: Okay.

2 REPRESENTATIVE BELFANTI: I'd like to
3 respond to the same question since I was one of
4 the witnesses earlier today. Under today's law,
5 there is absolutely zero impetus, there's no
6 rhyme or reason for the mother of the child to
7 enter into negotiations.

8 The entire weight of the law is on her
9 side 100 percent in these matters, so there's no
10 reason for agreements to be reached and lived up
11 to under the present structure. So the question
12 answers itself.

13 This legislation is but one minor step
14 that needs to be taken, I think, to correct the
15 disastrous family situations that we are seeing
16 more and more of in this Commonwealth.

17 But presently without this legislation,
18 as at least a first step, there's no incentive by
19 one party, by the custodial party to enter into
20 any agreements.

21 And one other follow-up as far as the
22 two doctor argument: As I stated in my
23 testimony, until the courts decide whether my son
24 is going to be a joint legal custodian, joint
25 physical, or full physical, the doctor who has

1 been selected by someone who is presumed 100
2 percent custodial parent, the mother, is under no
3 obligation to even respond to my son's requests
4 or his attorney's requests for information so
5 that the child can be raised properly in those 20
6 hours a week visitations that are held in my
7 home.

8 So if a child is going without
9 nutrition, a child is going without a
10 prescription, a child is going without food and
11 is being fed food in one residence and being told
12 nothing about the breast milk in another, there's
13 no way for the noncustodial parent in today's
14 statutes to even legally demand an answer from
15 the appointed physician by the custodial parent.

16 Again, my son's story isn't a horror
17 story. I have horror stories in here. This one
18 came last week. Mine is sad and it hurts me
19 personally and my wife and my son, but is no way
20 one of the main horror stories.

21 And I don't think these hearings are
22 designed for people to come up, the mother, and
23 say, well, the court forced my child to live with
24 dad two weeks out of the month and look what
25 happened to him. Because we can have people on

1 both sides of the issue come up with horror
2 stories.

3 I'm just talking about in general terms,
4 this legislation is sorely needed so that a
5 noncustodial parent at least until such time as
6 the court awards custody -- partial, full, joint,
7 whatever -- both parents should be presumed as
8 sharing in the decision making and the custody of
9 the child even if the child is residing 64
10 percent of the time in one house and 36 percent
11 in the other.

12 CHAIRPERSON GANNON: Just a question.
13 You mentioned three states -- Texas, Oregon, and
14 California -- as having a law similar to what's
15 proposed in this bill. Is that fair to say that?

16 MS. WOLPIN: To the best of my
17 awareness, yes.

18 CHAIRPERSON GANNON: Are there any other
19 states that you know of that have adopted this?

20 MS. WOLPIN: I don't have data before
21 me.

22 MR. DINSMORE: Tennessee,
23 Louisiana -- after that I'm drawing a blank.

24 MS. WOLPIN: But I do know that I have
25 recently heard that 37 of the 50 states have

1 bills pending that address the same issue.

2 CHAIRPERSON GANNON: What I was getting
3 to, of those states, since we have a number of
4 them apparently that have legislation similar to
5 this enacted into law, you specifically mentioned
6 California where apparently the mind-set now is
7 shifting in one --

8 MS. WOLPIN: From primary to joint, yes.

9 CHAIRPERSON GANNON: -- from primary to
10 joint and that the laws seem to be the impetus
11 for doing that. And that's a good thing. Are
12 there any other states that have adopted
13 something like this where it's considered, it
14 really hasn't worked, it's a failure, and it
15 hasn't really improved the situation?

16 MS. WOLPIN: I have no data on that. I
17 have not heard any -- any complaints from any
18 other places that this has not worked.

19 CHAIRPERSON GANNON: Well, thank you
20 very much --

21 MS. WOLPIN: Thank you, Mr. Chair.

22 CHAIRPERSON GANNON: -- for coming today
23 and sharing your opinions and views and testimony
24 concerning House Bill 1723. What we would like
25 to do now is take about a 10-minute, 15-minute

1 break. Let's make it -- make it 12:00.

2 And we'll return and our first witness
3 will be Lynne Gold-Bikin, Esquire, from Wolf,
4 Block, Schorr, and Solis-Cohen. We'll reconvene
5 at 12:00.

6 (At which time, a brief break was taken.)

7 CHAIRPERSON GANNON: The Committee
8 meeting will reconvene. And I would like to call
9 our next witness, Lynne Gold-Bikin from Wolf,
10 Block, Schorr and Solis-Cohen. You may begin
11 when you're ready.

12 MS. GOLD-BIKIN: Thank you, sir. And
13 thank you for the opportunity. I'd like to
14 introduce myself to this body. I am the former
15 Chairperson of the American Bar Association's
16 Family Law section, so 94-95 was my year to chair
17 the largest organization of family law practitioners
18 in the country.

19 I spend a lot of time speaking out on
20 many issues throughout the country, and I write
21 and I have published in the field of family law.

22 I am currently the co-chair of the
23 American Bar Association's Commission on Domestic
24 Violence, which I will have to vacate in August
25 because I am now elected to the Board of

1 Governors of the American Bar Association.

2 I tell you this because of my national
3 involvement, I believe that I have some expertise
4 on what is and is not working in other states;
5 and I hope that you will ask me when I finish my
6 remarks.

7 I am also the head of the Family Law
8 Department of my 207-person law firm. I am also
9 the adviser to the American Law Institute's
10 Principles of Family Law which is being
11 introduced to that august body tomorrow and
12 Thursday in Washington.

13 We have drafted -- it can't be a
14 restatement of family law because there's never
15 been a statement, but with the help of
16 sociologists, history professors, professors from
17 all across the country, including Judge Judith
18 Wallerstein on whose research the original joint
19 custody acts were passed is part of our body.

20 I am -- I have practiced in this area
21 exclusively for 22 years and I represent both men
22 and women equally. And I will tell you as I sit
23 here today that I have won custody for both men
24 and women and I have lost custody for both men
25 and women.

1 I have been involved in over 15,000
2 family law cases, some as sad as some of the
3 stories as you have heard today. I am the mother
4 of four and the grandmother of five, so I am able
5 to tell you not only as a lawyer with an
6 expertise in family law but also as somebody
7 who's been in the wars and has raised the
8 children.

9 And I'm here to tell you if mothers talk
10 to each other there probably wouldn't be any
11 children in this world, because it is not an easy
12 thing to do.

13 But I would ask that you not make policy
14 based on apocryphal stories. Because in my
15 humble opinion, less than 1 percent of divorcing
16 couples ever litigate their custody cases. And
17 we can hear all kinds of sad stories.

18 To get to court fighting over your
19 children in my estimation is a failure. If you
20 and your spouse have not been able to work out
21 how you will parent your children, you have in
22 some way failed. But that doesn't mean that the
23 state should become involved to the level that
24 this Act would require.

25 I think this is bad legislation,

1 gentlemen; and here's why: I think the bill is
2 anti-family. It's the ultimate government
3 interference. It's -- there are federal laws and
4 existing laws that work well in terms of the
5 information section that you have here.

6 There is information under a federal
7 statute that requires schools, for example, to
8 give information to both parents, as well they
9 should; however, there are exceptions.

10 This is my domestic violence hat. There
11 are cases -- and I know that there are false
12 allegations; I know that. But most of the
13 allegations that are brought in domestic violence
14 cases are serious things.

15 We have seen thousands of women who have
16 been murdered by their spouses. There is some
17 kind of domestic violence in 40 percent of
18 marriages. It may be a push. It may be a shove.
19 But there is serious domestic violence in 25
20 percent of marriages.

21 Sadly, there is domestic violence or
22 some kind of violence in dating relationships.
23 Where there is domestic violence, serious
24 domestic violence, and fear of murder or serious
25 harm, some of these parents do disappear or they

1 are in hiding in a local area.

2 We do not want the records of where they
3 live to be given out. So you don't want to make
4 a blanket statement that all the childrens'
5 records are available, including where the parent
6 might live. I think that is a concern and it
7 should be taken into concern (sic) some way.

8 We have joint legal custody in this
9 state. And joint legal custody means that
10 parents who have children share in major
11 parenting decisions. This new Act proposes all
12 decisions.

13 I will give you one of my apocryphal
14 stories. It's not a apocryphal story. It's a
15 case in which I represented the mother in that
16 case where we were brought back to court no less
17 than six times on contempt of joint legal
18 custody, one of which had to do with what the
19 children were doing as far as caring for their
20 pet.

21 And the most outrageous one was where he
22 brought contempt against her because she had
23 allowed the children to stay up late on Monday
24 night to watch the Academy Awards and he thought
25 that was inappropriate. He thought it was a

1 violation of joint legal custody and brought her
2 back to court.

3 I cannot tell you the amount of monies
4 this woman's spent in spending (sic). I don't
5 think that's a major parenting decision. And
6 most of these people could not agree on what
7 wallpaper to use in the house or what toothpaste
8 to use in the bathroom, and now we're going to
9 mandate that they get involved in decisions like
10 this?

11 A mediator does not help when people are
12 fighting over whether it will be public or
13 private school. And believe me, that case is
14 litigated over and over again.

15 It calls for a quick decision. It
16 doesn't call for a mediator and then the mediator
17 talking to the judge and then the judge requiring
18 a parenting plan.

19 It calls for mom to come in and tell her
20 version and dad to come in and tell his version
21 and the judge to cut the knot. Because the
22 longer these cases go on, the worse it is for
23 children.

24 As long as mom and dad find things to
25 fight about and can propel this case through

1 mediators and arbitrators and parenting plans and
2 therapy and counseling, it goes on forever. It
3 is a boiling pot that will burn the children.

4 Get it into court and get it over with.
5 Now, I heard the gentleman who spoke before I;
6 and I know that cases go on a long time. I know
7 they do. Part of the reason is because the cases
8 are filling the courts.

9 We are failing in some way. We are
10 failing in helping people to stay together in
11 their marriages; we are failing in teaching
12 people how to communicate with each other. But
13 you don't solve the problem with an Act that now
14 interferes in places where we should not be
15 interfering. This is bad policy.

16 Section 503, an order for joint custody,
17 what does that mean? As a lawyer, I can litigate
18 these cases. I can spin 'em on and on forever.
19 I can bankrupt people with legal fees just over
20 this language.

21 That is a presumption that is built in
22 this Act. The presumption is for joint custody.
23 What does that mean? We already have a
24 presumption of some kind of joint legal custody.
25 But how we share the children is up to the

1 parties. If they can't agree, it's up to a
2 judge.

3 We do not need to put in three or four
4 layers in between, because the people who are
5 really caring for their children are going to
6 work it out. They're not going to end up in
7 court.

8 And most parents, most parents will work
9 with the other to work something out. But when
10 they can't, the best thing we can do for these
11 families is to get them into the court system and
12 get 'em out.

13 There is a conference beginning Thursday
14 night sponsored by the American Bar Association
15 called the Unified Family Courts Conference.
16 It's going to be down at, I think, the Society
17 Hill Towers in Philadelphia to talk about getting
18 a family court as a unified court in one place.

19 Part of the problem in the counties
20 across Pennsylvania is that we have not had
21 family courts. And it does take a long time to
22 get to court. And I am frustrated as well as
23 your prior speakers about the length of time it
24 takes.

25 But this Act does not solve that

1 problem. All it does is turf the responsibility
2 to other people who are not elected and who have
3 no training. What is a qualified professional?

4 When we passed the Divorce Act in 1980,
5 we laughed about the fact that there were three
6 counseling sessions by qualified professionals.
7 What does that mean?

8 If you're talking about psychiatrists,
9 psychologists, it ought to say so. But if you're
10 talking about a qualified professional, there has
11 to be some kind of definition. Even then you
12 have to look at what their expertise is.

13 For example, the American Psychological
14 Association recently after five years of very
15 intensive study passed the American Psychological
16 Child Custody Evaluation Guidelines, which are
17 guidelines directing psychologists as what role
18 they should play in evaluations for court
19 purposes.

20 And what they stress is, No. 1, that
21 they should be comments to the court about the
22 psychological functioning of the parent and the
23 bonding between the parent and the children. But
24 it really advises against making recommendations
25 as to placement.

1 Last year, the ABA Family Law Section
2 had a conference in L.A. with 800 lawyers and
3 psychologists. And one of the questions that was
4 put to them is, Does it make a difference in how
5 the child comes out at the end if the children
6 are with mom ten days and dad four days or mom
7 nine days and dad five days or dad eight days and
8 mom six days? And the answer is no, it doesn't.

9 So that bringing these psychologists in
10 costs the parties a lot of money but, frankly,
11 doesn't help a darn. What we've done is we've
12 imposed another layer, an additional expense on
13 litigating parties.

14 And one party who may be of good faith
15 married to a manipulative person, be it male or
16 female, can be dragged through the court system,
17 dragged through mediation, dragged through
18 counseling with no result other than a lot of
19 money out of their pocket into the pockets of the
20 lawyers, who really are trying to settle the case.

21 The answer is get it into court and get
22 it out of court. Don't keep putting all these
23 layers in. Now, looking at Section 503 (a) (1),
24 under the existing statute, which parent is more
25 likely to provide access is already there. The

1 kicker that's been put in here is, From a
2 proposed parenting plan.

3 Why not look at the history? Because as
4 we all know, viewing the history is more likely
5 to project the future than anything else. A
6 parenting plan means nothing. I will tell you
7 about the parenting plan and my thoughts about
8 that in a minute.

9 But to put in the fact that which parent
10 is more likely to provide access based on their
11 parenting plan completely takes away all of what
12 has been done in the past. Where you have a
13 parent who has been providing access but now
14 someone doesn't like their parenting plan, that
15 doesn't make a whole lot of sense, especially
16 since there are many factors that may impact on
17 cooperation between parents.

18 First of all, if there has been
19 manipulation or control by one or the other, this
20 kind of thing encourages that continuation of
21 control and manipulation.

22 A new spouse may cause lots of problems
23 in cooperation, a mother-in-law or a
24 father-in-law may cause lots of problems in
25 cooperation, and the manipulative behavior of one

1 parent may cause lots of problems in the ability
2 to cooperate. Parenting plans are not the
3 answer.

4 Section 4, the ability of parents to
5 encourage love and affection for the other
6 parent. It sounds wonderful. I represent a
7 father right now who has been the primary parent.
8 Mom is the one with the money, and she is
9 demanding equal physical time with the children.

10 But when she has the children, she
11 spends little or no time with them. She's busy
12 with her boyfriend, she's busy with her work, and
13 she's busy with her friends; and the children are
14 hostile.

15 Is it dad's fault that these children do
16 not show love and affection to mom?
17 Respectfully, it is not. It is mom's behavior.
18 When both parents work actively with their
19 children, you don't need one parent or the other
20 to encourage that. They're doing it. What you
21 need is one parent or the other not to discourage
22 it. This does not help.

23 Section 5, you toss in very lightly "a
24 representative of the child." There is a
25 proposed statute, again, passed by the American

1 Bar Association Family Law Section on guardians
2 ad litem.

3 And in Michigan, we have something
4 called the Friends of the Court. But what are
5 they? Are they the lawyers for the children? Do
6 they speak for the children based on what they
7 think is in the best interests of the children?
8 Or do they listen to the children as to what the
9 children feel?

10 Nowhere in here is there anything about
11 the needs of the children to express their
12 opinion. And too often when a child says I don't
13 want to spend anymore time with mom or I don't
14 want to spend anymore time with dad, somebody
15 yells brainwashing, brainwashing; and the judge
16 says, well, I'm not going to do that.

17 I'll tell you a horror story that just
18 happened outside of Pittsburgh. There were three
19 children of this family who did not want to see
20 their father. An expert was brought in; somebody
21 whose name we all know.

22 His name is Richard Gardner; and he is
23 the one that coined the phrase, Parent alienation
24 syndrome. And, incidentally, there is no such
25 syndrome.

1 Without seeing the children, he saw the
2 father and testified in court that the children
3 should be required to see the father and that the
4 mother should be jailed if the children did not
5 go, without ever talking to the children as to
6 why they didn't want to go.

7 And Dr. Gardner bated this judge and
8 said, If you had the strength of your
9 convictions, you would require this. And so the
10 judge did. And the oldest boy, Nathan, rather
11 than seeing his mother go to jail, committed
12 suicide.

13 You cannot force children to go where
14 they don't want to go. There are bad results.
15 And there are many reasons why children become
16 alienated from one parent or another, not
17 necessarily because of the parent who's in
18 custody but often because of the behavior of the
19 other parent.

20 This bill doesn't touch on that. It
21 tries to fix something that is not broken. Now,
22 Section B -- and there's a whole list of criminal
23 behaviors, offenses.

24 But now it says that a parent has to
25 encourage love and affection to a parent who has

1 sexually abused the child, who has raped a child,
2 who has committed incest with a child and then
3 you're going to punish that parent perhaps
4 because in their parenting plan they don't
5 encourage access? It doesn't make any sense.

6 If my husband had sexually abused my
7 child and you required me to put in a parenting
8 plan, I promise you his name wouldn't be in it.
9 Would I be penalized for that?

10 And let's talk about parenting plans.
11 As I say, I raised four children. I could no
12 more have given you a plan day to day as to what
13 was going to happen with those children than I
14 could fly, because things change.

15 So somebody proffers a parenting plan
16 and they change it. Does that give the other
17 person the right to find them in contempt? I
18 promise you, it will. They will be in court.
19 Because a parenting plan is an unrealistic
20 suggestion.

21 But in this parenting plan, this Act has
22 suggested that if a parent cannot come up with a
23 plan or if the parties can't agree on a plan that
24 the judge will decide with the help of a mediator
25 who doesn't know this family, who may not have

1 children, who may not have any skills in
2 parenting at all.

3 But as part of this, we have said that
4 they will tell these children how to worship?
5 Are we going to pass an Act that gives a judge
6 the right to tell people how their children
7 should have religious practices? I don't think
8 we want to do that.

9 And there's a mandatory plan. These are
10 mandatory things you're imposing. This does not
11 solve a problem. There are problems with our
12 existing custody statute, but part of the problem
13 is not being addressed by this Act.

14 It is we don't have enough judges; we
15 don't have enough training of judges. To decide
16 on a custody case takes a lot of skill. It takes
17 a lot of patience.

18 I practice in nine counties. We're
19 sitting in one of them. And we've got some
20 judges who are really extraordinary in giving the
21 time and listening; but there are other judges
22 who don't want to be there, who feel that being
23 relegated to family court is not the place they
24 want to be or ought to be.

25 We have judges who are sitting on the

1 bench who are going through divorces who are in
2 their own custody fights who shouldn't be sitting
3 on the bench at that time because they have
4 hostility; they have their own personal axe to
5 grind.

6 But on the whole in the long run, we've
7 got judges who care and who do listen. We don't
8 need to change that. We need to get the cases in
9 faster and out faster.

10 We need to hold psychologists to their
11 own APA guidelines so that when they are told
12 that they should not become involved in making
13 recommendations as to a custody plan or what you
14 might call a parenting plan, they ought to be
15 held to it.

16 They ought not to say, well, they're
17 just guidelines. They are promulgated by their
18 own professional organizations. We ought to do
19 that. Equal access to records, we already have
20 it. You don't have to add that to your Act.

21 Respectfully, this is one of those, if
22 it ain't broke, don't fix it. I can give you
23 stories of times that the court doesn't work, but
24 you shouldn't be letting the tail wag the dog and
25 making a bill that will cause more problems than

1 you can ever imagine because of those unhappy
2 cases that can be fixed another way: more
3 judges, more time. Not this Act. Thank you.

4 CHAIRPERSON GANNON: Thank you very
5 much, Mrs. Gold.

6 MS. GOLD-BIKIN: Bikin.

7 CHAIRPERSON GANNON: Bikin.
8 Representative Belfanti.

9 REPRESENTATIVE BELFANTI: Permission to
10 treat the witness as hostile.

11 MS. GOLD-BIKIN: I'm not hostile, sir.
12 I feel badly. I wish your son had used a condom
13 before he married this girl.

14 REPRESENTATIVE BELFANTI: I'll talk to
15 you sidebar about exactly how the pregnancy
16 transpired. You may understand a little better
17 then.

18 First of all, I personally believe that
19 every single objection, every single horror story
20 that you pointed out is covered in the bill by
21 virtue by the fact that there is a rebuttable
22 presumption of joint custody in the case of rape
23 or in the case of incest.

24 With or without this legislation, the
25 parents are going to court. And you know it and

1 I know it. With or without this legislation, if
2 there was abuse of the child, abuse of the
3 mother, rape or incest, they're going to court no
4 matter what. True or untrue?

5 MS. GOLD-BIKIN: Untrue.

6 REPRESENTATIVE BELFANTI: Explain.

7 MS. GOLD-BIKIN: Look at the percentage
8 of cases that are actually litigated. It is a
9 very small percentage. I have not had one case
10 in which a parent has been accused of incest or
11 rape that they have taken that case to court,
12 none. It's a crazy thing to do.

13 REPRESENTATIVE BELFANTI: I'm saying
14 that the passage of this legislation would
15 absolutely not impact on the mother's desire or
16 willingness, those that choose to go to court
17 because of rape, incest, battering or et cetera,
18 this bill is not going to change that whatsoever.

19 MS. GOLD-BIKIN: But the parenting plan,
20 why would you expect somebody whose child has
21 been sexually abused by her husband to come up
22 with a parenting plan that would encourage access
23 to this man? I wouldn't.

24 REPRESENTATIVE BELFANTI: Well, you're
25 reaching down to the people who have horror

1 stories. I want to -- I would like to at least
2 stick momentarily to those persons who are both
3 good people --

4 MS. GOLD-BIKIN: Both good people?

5 REPRESENTATIVE BELFANTI: -- and both
6 are utilizing the tool of the child for some
7 vindictive reason. Let's stick with that
8 category at least initially.

9 First of all, the section that you
10 mentioned on the court giving weight to the
11 parent in a custody hearing who provides -- who
12 is more likely to provide access to the child --

13 MS. GOLD-BIKIN: Yeah, which is in our
14 Act now.

15 REPRESENTATIVE BELFANTI: -- it is law
16 now.

17 MS. GOLD-BIKIN: Yeah.

18 REPRESENTATIVE BELFANTI: My information
19 from at least six attorneys is that it is largely
20 ignored by the courts. It's one of those
21 sections that's in there that is ignored.

22 MS. GOLD-BIKIN: Remember what a judge
23 does. They decide based on the evidence that's
24 put before them. Many people try custody cases
25 who shouldn't be trying them. We do not enable

1 people to specialize.

2 But I can't think of a custody case that
3 I have tried or any of my office has tried where
4 there is an issue where it has not been brought
5 to the court.

6 If nobody says to the court, Your Honor,
7 I'd like to give you some examples of how if you
8 have sole custody, this guy's never going to see
9 his kid or this women's never going to see her
10 kid. That's an issue that's brought before the
11 court.

12 But it doesn't -- I mean, people can
13 come in and say, oh, well, the judge -- the court
14 ignores it. Ask them to show you in the
15 transcript where they raised it.

16 REPRESENTATIVE BELFANTI: Okay. I'll
17 accept that answer. Again, my information from
18 many other attorneys is that, in general, it is
19 ignored by the courts.

20 Again, let's stick to people who have a
21 hateful and spiteful relationship either prior to
22 the birth of the child or in the child's early
23 years.

24 Is it or is it not typical for the
25 mother to attempt to receive full custody in

1 those types of relationships, and does that not
2 require the father in most of those instances to
3 also petition the court for full custody?

4 MS. GOLD-BIKIN: Okay. First of all, in
5 the 15,000 cases that I've had in my 22 years, I
6 don't know of a single case in which full
7 custody, whatever that means, has been awarded.

8 Since 1982 when the Joint Custody Act
9 was passed, I would say that almost every
10 case joint legal custody is awarded in almost
11 every case.

12 As a matter of fact, I can think of a
13 case where I represented a woman whose husband
14 was -- had joint legal custody and was utilizing
15 it to prevent this child who needed a special
16 plan in school, an IEP plan, from getting it.

17 And I had to go to court and litigate
18 for three days to undo the joint legal custody
19 because it was clear that he was using it
20 to -- how do I say this on television? -- to
21 manipulate the other parent.

22 So, quite frankly, nobody goes to court
23 these days and expects to get what you call sole
24 custody unless what you mean by that is primary
25 custody. But I don't think of -- I can't think

1 of a judge who's ever given one parent 100
2 percent of the time, ever.

3 REPRESENTATIVE BELFANTI: You are giving
4 me what the courts have decided; but, however, it
5 was not responsive to my question. Is it typical
6 during a breakup of a marriage or a breakup of a
7 relationship where a very young child is being
8 used as a tool for both parents to seek full
9 custody in court --

10 MS. GOLD-BIKIN: I don't think so. I
11 don't think so because when they go to --

12 REPRESENTATIVE BELFANTI: -- and sell
13 the court -- sell the court the joke that is
14 commonly known as joint legal custody?

15 MS. GOLD-BIKIN: This is not a joke.
16 You know, you can parade in here a thousand
17 people who have bad stories and they all belong
18 to different organizations and they encourage
19 each other.

20 But the fact is any competent lawyer who
21 practices in this area will set them straight
22 pretty quick. Because anybody who comes in to me
23 and says I want sole custody, I'll say to them,
24 It's not going to happen. Your child was born
25 with two parents and it's going to grow up with

1 two parents. Now, give me one good reason why he
2 or she should not have good access.

3 That's the way we teach, that's the way
4 we lecture, that's the way we write, and that's
5 the way we try our cases. Now, you may bring
6 someone in who doesn't have a lot of experience,
7 but anybody with experience is going to say save
8 your money because if what you're trying to get
9 is a hundred percent of the time, it's not going
10 to happen.

11 No judge is going to do that unless you
12 can show this guy has been guilty of incest with
13 this kid or is in jail or has raped this kid.
14 And then those cases don't go to court.

15 REPRESENTATIVE BELFANTI: The next
16 question was answered by that answer; and that
17 is, what percentage of fathers who enter your
18 office would you advise have the possibility of
19 being awarded full custody?

20 MS. GOLD-BIKIN: I don't use that word.
21 I use primary custody. I have three cases
22 pending right now where I represent dads. Two of
23 them I expect to win; one of them I expect to
24 lose. But I think I should win all three.

25 I mean, I think that the father was the

1 primary parent and should be awarded the primary
2 parenting. And, incidentally, just so you know,
3 I heard some comments about the fact that this
4 state awards primarily mothers custody.

5 That's not correct. And as a matter of
6 fact, I think if you look at the cases that are
7 litigated you will find that the statistics may
8 be closer to 55 percent 45 percent. The
9 statistics in Massachusetts are that 74 percent
10 of litigated custody cases are won by fathers.

11 REPRESENTATIVE BELFANTI: My remarks
12 were relegated only to new births.

13 MS. GOLD-BIKIN: New births?

14 REPRESENTATIVE BELFANTI: That's
15 correct. I was talking strictly about the fact
16 that for the first year, year and a half, two
17 years, depending on what county you're in, there
18 is an automatic, unawarded presumption of custody
19 by the mother --

20 MS. GOLD-BIKIN: That's. Look --

21 REPRESENTATIVE BELFANTI: -- before --

22 MS. GOLD-BIKIN: That's wrong.

23 REPRESENTATIVE BELFANTI: -- you get to
24 court --

25 MS. GOLD-BIKIN: That's wrong.

1 REPRESENTATIVE BELFANTI: I wasn't
2 talking about court. I never mentioned the word.
3 That the court awarded primary custody the vast
4 majority of times to mothers.

5 I'm saying that the vast majority of
6 times a child is born without any litigation
7 while waiting for litigation is an automatic --

8 MS. GOLD-BIKIN: The kid goes home with
9 the mother?

10 REPRESENTATIVE BELFANTI: Yes.

11 MS. GOLD-BIKIN: Well, I guess until
12 dads learn to nurse that probably would be true.
13 And I am not offended by that, by the fact that
14 the mother who carried the baby for nine months
15 would take the baby home.

16 REPRESENTATIVE BELFANTI: I am not
17 either.

18 MS. GOLD-BIKIN: I'm not offended by
19 that at all. However, I represent a dad of an
20 18-month old. We've been litigating that case
21 for 17 and a half months; and he now has Monday
22 night, Wednesday night, and every other weekend
23 but returns the child home because the child was
24 nursed for a year.

25 And what we did was we had her manually

1 express milk so the baby would be raised on
2 breast milk, which most doctors will tell you is
3 better for the child.

4 REPRESENTATIVE BELFANTI: And that's
5 exactly where my son is.

6 MS. GOLD-BIKIN: See, we can't make
7 legislation for your son, as tragic as it may
8 seem. We can't.

9 REPRESENTATIVE BELFANTI: I think my
10 son's case pointed out the shortcomings of the
11 legislation. I'm sorry, Mr. Chairman, I'm not
12 trying to turn this into a debate.

13 It pointed out to me the shortcomings at
14 least in the infancy stages of the child. And,
15 of course, more and more data comes my way on a
16 weekly basis because of the fact that my son has
17 a bid on the internet and trying to get
18 suggestions from other people who have gone
19 through similar circumstances.

20 MS. GOLD-BIKIN: But do you think that
21 the Email that he sends is in the best interest
22 of the child?

23 REPRESENTATIVE BELFANTI: Well, I think
24 the best interests of the child was that even if
25 his mother had primary custody and care for the

1 first hundred and twenty-six days -- I'm not sure
2 you were here for all of my testimony -- he
3 should have been immediately granted an award to
4 see his child. He should not have been thrown
5 out of the hospital with my wife.

6 MS. GOLD-BIKIN: Sir, was there a
7 paternity issue?

8 REPRESENTATIVE BELFANTI: No.

9 MS. GOLD-BIKIN: So there was no
10 question that he was the father?

11 REPRESENTATIVE BELFANTI: He admitted
12 paternity and attended LaMaze classes and went
13 through and paid for all of the -- all of the
14 health and welfare costs --

15 MS. GOLD-BIKIN: I feel badly for your
16 son. And the best way to have resolved that
17 perhaps was to have a sit-down with everyone, but
18 not to change the law in Pennsylvania.

19 REPRESENTATIVE BELFANTI: That happened
20 as well. We had a sit-down --

21 MS. GOLD-BIKIN: We will have a sidebar.

22 REPRESENTATIVE BELFANTI: -- and many
23 agreements.

24 MS. GOLD-BIKIN: I'd be happy to talk to
25 you after the hearing.

1 REPRESENTATIVE BELFANTI: -- between
2 them and the parents as well. One final point,
3 Mr. Chairman.

4 My son probably talked to five or six
5 attorneys who were family practitioners prior to
6 selecting the one that he, you know, has
7 representing him. I know all of these attorneys.
8 I'm friends with all of them.

9 And because of my position, I guess they
10 all know me and respect the fact that even though
11 they would not agree to represent my son at least
12 to the degree he wanted, primary custody, they
13 all, in fact, gave him the typical shortcomings,
14 the way the weight of the law is in this state,
15 and they were unwilling to represent him honestly
16 and tell him that he had a very, very good chance
17 of being awarded primary care of the child. And
18 they all gave him the reasons why. And they were
19 all because of the legislation that exists
20 presently in Pennsylvania.

21 They were not all males either. The
22 attorney that did end up representing him used to
23 practice a great deal in family law and, in most
24 instances, represented the father and in a few
25 instances one custody for grandparents away from

1 both parents.

2 But he now limits his family law
3 practice to 15 -- or 10 percent of all that he
4 takes. And the reason is because he believes the
5 odds are so greatly stacked in favor of one
6 party, one party's attorneys than the other, that
7 he, I believe, grew frustrated with that
8 particular law.

9 He and the other five, however, were
10 quick to point out to me that the domestic
11 relations laws in this state lead to one of the
12 greatest cash cows for attorneys of any type of
13 practice that you can get into, that changes such
14 as this would lead probably at least on the front
15 end to less litigation, more cooperation; and,
16 therefore, I should expect that if we got around
17 to drafting legislation, that I will hear from a
18 great deal of attorneys who are family
19 practitioners and who are able to take -- get a
20 lot of cases.

21 In almost every case, there's guarantees
22 of repeat business too. There's appeals; there
23 are modifications. There's every reason to leave
24 the laws in this state the way they are because
25 from the attorney's, the family practitioner's

1 standpoint, there's a lot of litigation.

2 It's repeat business. And if there is a
3 presumption of full custody which may lead to a
4 one or two sit-down arbitration between the
5 parties involved and parenting plans that might
6 be agreed to by both parties with a mediator as
7 opposed to a judge, that that would lead
8 to -- that would cause the swell on the court
9 system to begin to evaporate.

10 MS. GOLD-BIKIN: Would you like to hear
11 a response, because that is so far wrong that
12 it's almost offensive. If I may --

13 REPRESENTATIVE BELFANTI: I received
14 that from attorneys who practice.

15 MS. GOLD-BIKIN: I'm sure you did. Now,
16 if I may, No. 1, I don't know if you've heard
17 about the Partners Program, but it's a program
18 that I developed to teach kids about
19 relationships in high school to try to cut down
20 the divorce rate.

21 We're now in 31 states. It was
22 recognized in the book It Takes a Village by
23 Hillary Clinton as the outstanding program
24 because the ABA Family Laws Section wants to cut
25 down on divorces, not make money off peoples'

1 miseries.

2 As a matter of fact, I personally have
3 paid to adopt four schools in the Pennsylvania
4 area. And I hope that one of the things you
5 gentlemen will do will mandate those kinds of
6 communications skills programs in high schools to
7 teach kids about relationships, the
8 responsibility of parenting, and the fact that
9 premarital sex causes problems.

10 That's No. 1. No. 2, there is a program
11 called P.A.I.R.S. which teaches couples how to
12 have a better marriage. We send people to that
13 all the time. As a matter of fact, there's one
14 going on right now.

15 Three couples that came to me for
16 divorces are now in the program in the hopes of
17 saving the marriages. I don't make money by
18 sending people to get their marriages back
19 together again.

20 So to suggest that I am here opposing
21 this bill because I think it will take money out
22 of my pocket is offensive, sir. And I will tell
23 you that I will make more money on this Act
24 because if you think that two people who were not
25 going to agree before are now going to agree

1 because you mandate they go into arbitration for
2 two, six, or twenty-five sessions is simply
3 naive.

4 The only people who will make money on
5 top of the lawyers will be the therapists, the
6 counselors, and the qualified professionals who
7 will now be paid for having the sessions that we
8 all know are not going to work.

9 Remember what we did in the Divorce
10 Code? We've now got 18 years of experience. We
11 have mandated three counseling sessions to try to
12 put the marriage together. Who are we kidding?
13 What we've done is we've given these people money
14 for three sessions. It didn't bring them
15 together.

16 The fact is the lawyers who were
17 testifying to you to tell you this is a bad bill
18 are the people who work with it. I will tell
19 you that we try to settle every case. Quite
20 frankly, I make more money when I settle. I make
21 less money when I go to court.

22 But the repeat business that I get is
23 not from people who litigate over and over again
24 but from people who are satisfied with the fact
25 that when their divorce is over I have not left

1 them with a scorched earth, that they have been
2 able to go on with their lives.

3 Because I tell people all the time, you
4 two people better get along because when this
5 case is over, you have to deal with each other.
6 You're not going to be calling me to solve your
7 problems.

8 So the fact is my repeat business comes
9 from recommendations from satisfied clients who
10 know that I didn't over pad the bill, who know
11 that I didn't take them to court when they didn't
12 have a chance of winning, who know that I
13 encouraged them to settle, and who know that I
14 sent them to communications skills classes when I
15 thought it would help them save their marriage.

16 So I resent on behalf of myself and
17 other people in my field that you think that we
18 would oppose this bill to make more money. That
19 is not what we do. We work every day in the
20 trenches to try to make things better for people
21 who have made a mess of their lives. We try to
22 help them, not hurt them. This bill will hurt
23 parents and children.

24 REPRESENTATIVE BELFANTI: Those comments
25 were certainly not meant personally; but they

1 were comments imparted to me by, as I said,
2 attorneys who are good friends of mine.

3 MS. GOLD-BIKIN: Don't believe
4 everything you hear.

5 REPRESENTATIVE BELFANTI: That is your
6 opinion.

7 CHAIRPERSON GANNON: Brian.

8 MR. PRESKI: Just one quick question.
9 The testimony we had before talked about all the
10 other states that have adopted or are moving to
11 this type of custody agreements and how that
12 those agreements in those states that either have
13 already moved to presumptive joint custody or
14 such a situation have basically changed the
15 philosophies of the parties before they go into
16 the divorce and makes them more amenable to it
17 and such.

18 Given your nationwide experience, would
19 you tell me about the other states where this is?
20 I guess a two part question: What are the other
21 states, because we're not sure? Right now we
22 have a Texas, Oregon, California, and Illinois,
23 if there are anymore; and then if these states
24 that have adopted this type of arrangement, has
25 there been this change in the philosophies?

1 MS. GOLD-BIKIN: Number 1, to my
2 knowledge at least up until yesterday, there was
3 not another state that has adopted a presumption
4 of joint custody any greater than what we already
5 have in the bill -- than what we already have in
6 our existing Act, not one.

7 As a matter of fact, California, which
8 was the first state to go up with joint legal
9 custody, did it based on the Judith Wallerstein
10 studies.

11 And Judith Wallerstein has now come
12 around to the idea that mandating joint legal
13 custody on parents who don't get along does not
14 work. And much of the work that they've done is
15 going away from that.

16 There is a hot line. And when we
17 finish, I will give you the Email address. There
18 is a family law hot line that is -- it's a list
19 serve, I'm sorry -- that's sponsored by the ABA
20 Family Law Section. And you can just send out
21 an Email -- I think there are 7,000
22 subscribers -- and just say, tell me what's going
23 on in your state. And you can find out in a
24 heartbeat. And I will give you that when we
25 leave.

1 But in terms of the attitudes, most
2 lawyers who practice and who have a specialty in
3 this field will tell their clients that the
4 courts today will probably always award joint
5 legal custody unless there is a good reason and
6 not even to bother fighting it.

7 And the only time that I have ever in
8 all my years of practice fought against it is
9 that one instance that I told you about where the
10 dad was absolutely interfering in the IEP plan.
11 And without getting him off the ability to
12 prevent it, this kid couldn't go ahead.

13 She was a special needs child. And the
14 teachers came in and they begged the judge to
15 keep this guy out of it so they could move ahead
16 with their plan. That's the only time I know of
17 in my years of practice.

18 Most people recognize the fact no matter
19 how much they don't like their ex that they're
20 not divorcing him or her because he wasn't a good
21 parent or she wasn't a good parent.

22 And so they acknowledge that joint legal
23 custody. Joint physical custody may not be
24 realistic in many cases. And if you speak to the
25 professionals, in many cases, it's not in the

1 best interests of children.

2 MR. PRESKI: Thank you.

3 CHAIRPERSON GANNON: Thank you very
4 much, Mrs. Gold-Bikin. I appreciate your being
5 here today and sharing your testimony.

6 MS. GOLD-BIKIN: Thank you for the
7 opportunity, sir.

8 CHAIRPERSON GANNON: Our next witnesses
9 are Frederick Cohen, Esquire, Chief Support
10 Conference Officer for the County of Montgomery;
11 and Mr. Albert Momjian, Esquire, Schnader
12 Harrison, Segal and Lewis.

13 We'll proceed first with Mr. Cohen and
14 then with Mr. Momjian.

15 MR. COHEN: Morning. By way of
16 background so that there's on the record at least
17 some commentary of my background in this area,
18 let me say that I've been specializing in the
19 area of family law since 1961 when I was admitted
20 to practice. I'll leap ahead, however, to more
21 significant times.

22 I was the Chairman of the Philadelphia
23 Bar Association Divorce Committee in 1980, the
24 year that the new Divorce Code was enacted. In
25 1981, then Chief Justice O'Brien appointed me

1 together with 33 other members to a newly
2 established Domestic Relations Committee of the
3 Supreme Court.

4 Since that time, I've served as the
5 Chair of the Pennsylvania Bar Association Family
6 Law Section, a member of the board of directors
7 of DRAP, the Domestic Relations Association of
8 Pennsylvania, as an officer of the Pennsylvania
9 Joint Family Law Council, and as President of the
10 Family Law at Doris Jonas (phonetic) Free
11 Chapter, the Americanance (phonetic) of court.

12 I'm the Fellow in the American Academy
13 of Matrimonial Lawyers and the International
14 Academy of Matrimonial Lawyers. I now serve as
15 the Support Master or Support Conference Officer
16 for the Montgomery County Court of Common Pleas
17 and I'm off counsel to the Philadelphia law firm
18 of Obermayer, Rebmann, Maxwell and Hippel.

19 I'm a member of the Advisory Committee
20 on Domestic Relations Law to the Joint State
21 Government Commission which is a bi-camera group
22 enjoying the support of both the Senate and the
23 House.

24 I emphasize these organizational
25 affiliations because I want to make it abundantly

1 clear that any opinions I express today are
2 solely those of my own and not reflective of any
3 organization to which I may belong.

4 I have reviewed the proposed bill, 1723,
5 dealing with custody and find that following
6 Ms. Gold-Bikin is always a tough act to follow.
7 But I do share with her some concerns about this
8 approach to legislation of joint custody.

9 If I can leap to the end of my
10 conclusion and then come back to explain it, I
11 think any presumptions in the area of custody
12 have proven with the school of experience to just
13 simply not work.

14 When I started practicing family law
15 back in the old days, there were numerous
16 presumptions which served merely as excuses to
17 not make decisions based on the facts of the
18 particular case.

19 There's no area in law that is more fact
20 oriented than a custody case. As these
21 presumptions fell by the wayside, what happened
22 was we came up with a guiding rule that has
23 simply worked as custody cases have evolved that
24 the only rule to govern the final decision in a
25 custody case has to be the best interests of the

1 child.

2 To try to rectify decisions which were
3 bad decisions or systems which aren't working by
4 saying that we'll come to legislate a different
5 rule by which the case should be decided is not
6 the right approach.

7 If I were going to draft presumptions
8 for custody law, I would make just two: (1),
9 mother and father come to any custody dispute on
10 equal footing and it's error to treat them any
11 way other than that; (2), the best interests of the
12 child must be the governing rule to determine the
13 outcome of any custody decision.

14 As I sit here hearing horror stories, as
15 I sit hearing people who have had bad results in
16 court, all of those are addressed by these two
17 simple rules if they were applied and applied
18 correctly.

19 To draft law to pass or enact
20 legislation predicated on the extremes of bad
21 experiences will only give proof to the old adage
22 that bad cases make bad law. We will make rules
23 to govern the vast majority of cases where those
24 rules do not fit.

25 The concerns I know of House Bill 1723

1 were considered by the Custody Subcommittee of
2 the Joint State Government Commission of which I
3 spoke previously. And I have with me today the
4 notes of the April 27th meeting of the Committee
5 up in Hershey, Pennsylvania.

6 That concludes that, quote, The
7 consensus of the Committee was that there should
8 be no presumption of shared physical custody.
9 I also am concerned that to the extent that we
10 have concepts now of shared physical custody and
11 concepts of shared legal custody, we now add a
12 new phrase in the proposed Act of joint custody.

13 I think that perhaps there is some
14 clarification of the benefits or responsibilities
15 that flow from the definitions that have evolved
16 from joint legal custody or joint physical
17 custody, but I have no idea of what joint custody
18 means separate and apart.

19 And by the way, I do have to just on a
20 drafting approach suggest maybe there ought to be
21 another look at the definitions given to joint
22 physical custody and joint legal custody in the
23 proposed Act.

24 They start off with the phrase that, The
25 state in which the court has entered an order."

1 I'm not -- I don't think that is clear or clearly
2 indicating to that which whatever was intended
3 there.

4 Because I think the introductory state
5 there of the state seems to imply we're talking
6 about Pennsylvania or one of the states rather
7 than some atmosphere with which we're dealing.

8 On the subject of this parenting plan, I
9 don't know that legislation is the way to
10 introduce this. Judges in my experience who want
11 that type of an approach to a custody case are
12 not bashful to ask the parents to submit a plan.

13 The Act as it's drafted seems to imply
14 that parents should submit a joint plan. Well, I
15 submit to you that parents who are in custody
16 litigation if they could submit a joint parenting
17 plan wouldn't be in custody litigation.

18 By definition, it's something that just
19 doesn't work. The submission of a written plan
20 on people who are hostile to one another are
21 simply going to be plans which obviously are
22 going to be a world apart, and it's going to be
23 the function of the judge to make a determination
24 of what's in the best interests of the child or
25 children.

1 On the issue that comes up with the
2 mediation, there are numerous concerns that come
3 to mind on reading it. I am very concerned on
4 the privacy issues that come with this mediation.

5 If this mediator is to report to the
6 court and you're going to take away the privacy,
7 then what parent coming in there is going to feel
8 free to really speak their hearts and speak their
9 minds.

10 I suspect you'll take away whatever real
11 tools or benefits a qualified mediator might have
12 to achieve something by having people fearful
13 that whatever they say is going to go right back
14 to the judge.

15 I think they're also adding into there
16 some way of watering down the ultimate authority
17 of the trier of fact, this judge, who is
18 experienced and learned in the area to make the
19 ultimate decision.

20 Because where do we stand and what will
21 we have if we have a judges disagreeing with the
22 mediator and coming up with a different decision
23 than the mediator has made in writing? All we've
24 done is added another step along the appeal
25 process for a remand and a retrial of the case.

1 I just want to conclude by urging that
2 maybe the simpler approach to this: Namely, a
3 direction that parents, fathers and mothers, must
4 come into the custody arena on equal footing and
5 that the best interests of the child should be
6 the guiding light would suffice to take care of
7 many of the issues.

8 I would, however, add one area in my
9 experience that I find to be of extremely common
10 occurrence that is not addressed by legislative
11 fiat in this state and maybe could be or should
12 be or at least considered, and that is de facto
13 custody.

14 What we have in most divorce cases is a
15 separation of people who at least initially have
16 their children in some custodial arrangement that
17 exists unless or until there is a dispute that
18 will then be brought to the courts in custody
19 litigation.

20 We have a law now that says if there's a
21 custody order, the noncustodial parent will be in
22 contempt of court if he self-helps or she
23 self-helps and does something different than the
24 terms of the custodial order.

25 However, where did that leave the

1 parent, the custodial parent, who has lived with
2 a situation of providing for, caring for a child
3 who then gets in an economic or another dispute
4 perhaps a year, two years, three years or what
5 have you later with a noncustodial parent who
6 knows where the button is, who knows how to get
7 'em and says, Hah, I'll take the child for
8 visitation and not return him.

9 That parent is not in contempt of any
10 court order. That parent has no less right under
11 the present state of law to that child than the
12 custodial parent has had who has lived with that
13 situation for a period of time.

14 Perhaps there should be a certain impact
15 or force that's given to a de facto arrangement
16 with which the parties have lived for a
17 protracted period of time to say that any
18 modification or change of that needs judicial
19 decision and cannot be done on a self-help basis.
20 Thank you.

21 CHAIRPERSON GANNON: Thank you very
22 much, Mr. Cohen. Mr. Momjian.

23 MR. MOMJIAN: Thank you very much.
24 Could I respectfully suggest that you adopt a dry
25 cleaners relief act which would prohibit more

1 than seven consecutive days of rain in any
2 county? That would be wonderful.

3 I would like to express my appreciation
4 to the Members of the Committee for giving me the
5 opportunity as you have others to comment on
6 House Bill 1723.

7 Moreover, I'm grateful to the Committee
8 for its diligence in proposing new and important
9 custody litigation. Of all of the legal work
10 done by divorce layers throughout the
11 Commonwealth, the most important aspect of our
12 work is the handling of custody disputes between
13 separated or divorcing parents.

14 And in most divorce cases, economics
15 take a back seat to the importance of the
16 resolution of custody issues between parents.

17 The Commonwealth has had a good history
18 of promoting in its legislation and decisional
19 law the best interests of children, and
20 continuing efforts made by the Legislature to
21 improve the state of custody law in Pennsylvania
22 should be applauded.

23 My public remarks will be limited. I
24 have appended to my brief public statement five
25 pages of detailed comments and personal views

1 relating to the various provisions of House Bill
2 1723, and they reflect my personal views and
3 humbly are intended to communicate to the
4 Committee my thoughts that may be helpful to the
5 Committee Members or staff in making changes to
6 the proposed legislation that might be helpful.
7 And I do it in the spirit that you've asked us to
8 appear before you to give our comments.

9 First, as the Committee needs from
10 others, the Domestic Relations Committee of the
11 Joint State Government Commission has been
12 working diligently on a total overhaul of current
13 custody law.

14 Much of their issues raised in the House
15 Bill 1723 are also covered in one form or the
16 other in what the Domestic Relations Committee is
17 considering.

18 I am not sure how the legislative
19 process works and how it should relate, if at all,
20 to the important work being done by the Custody
21 Subcommittee of the Domestic Relations
22 Subcommittee.

23 However, my fond hope would be that the
24 two groups could get together, collate their
25 ideas so that what finally comes before the

1 Legislature is representative of the work product
2 of those who sponsor House Bill 1723 and those
3 lawyers and judges who have been working
4 diligently for several years to shape the
5 overhaul of custody legislation in Pennsylvania.

6 In my respectful opinion, it would be
7 wrong for this Committee to endorse House Bill
8 1723 in one form or other and to have House Bill
9 1723 become the law of the Commonwealth only to
10 have the Legislature later consider other
11 proposed legislation intended to make
12 comprehensive changes in Pennsylvania's custody
13 law.

14 Now, with respect to House Bill 1723
15 itself over and above the very specific and
16 detailed comments which were appended to my
17 written statement, I'd like to make my own
18 following comments:

19 (1), the proposed legislation defines
20 joint legal custody as the state in which parents
21 or parties share decision making rights relating
22 to health, education, and welfare of the child.

23 I prefer the current definition of legal
24 custody, which is the legal right to make major
25 decisions affecting the best interests of the

1 minor child including but not limited to medical,
2 religious, and educational decisions.

3 Secondly, on a personal basis, I am not
4 a fan of presumptions in family or divorce
5 matters. For that reason, I am quite uneasy
6 about the rebuttable presumption provided in
7 Section 5303.

8 Nonetheless, to the extent that the
9 Committee wants to favor joint custodial
10 arrangements between parents, maybe I should
11 change my attitude and try to become a fan of
12 rebuttable presumptions; but, thus far, I haven't
13 come that far.

14 Thirdly, in the factors set forth for
15 the court's consideration in Section 5303, while
16 the factors are noninclusive as they should be,
17 there's no expressed factor that in appropriate
18 cases the preference of a child ought to be
19 considered.

20 Fourthly and, again, consistent with
21 what Mr. Cohen said, in the area of counseling
22 and mediation, in the APA guidelines for child
23 custody evaluations in divorce proceedings, the
24 American Psychological Association guidelines 7,
25 a copy of which I have appended to my detailed

1 comments makes it clear that the professional
2 should avoid multiple relationships.

3 There are ethical considerations which
4 the Committee must consider that may place
5 qualified professionals in a position of
6 compromise inconsistent with their own ethical
7 requirements.

8 Five, while counseling under Section
9 5305 is good, the mandate of requiring parents by
10 the use of the word "shall" to attend counseling
11 sessions can present a practical nightmare in
12 terms of cost, time, and delay in getting custody
13 issues resolved in court.

14 I don't know what the solution is on an
15 issue as difficult as this one but call to the
16 attention of the Committee how expensive the
17 court proceedings currently are.

18 And the payment of a qualified counselor
19 is going to be a problem in many cases which
20 divorce lawyers handle where there's hardly
21 enough money for the litigants themselves let
22 alone for mandatory counseling.

23 Six, I support the concept of parenting
24 plans to be submitted to judges who may make
25 decisions in custody cases not on a joint basis

1 but individually because this is a good way of
2 making parents focus in on exactly what it is
3 they want for their child in the context of
4 custody disputes.

5 And seven, with respect to Section 5310
6 which deals with the modification of any order
7 for the custody of a child of a marriage or
8 adoption, you have to give consideration to
9 custody orders dealing with nonparents and
10 unmarried parents.

11 That could be uncles, aunts,
12 grandparents, or parties who are just cohabiting
13 with children who are not married. And, again,
14 I'm grateful for the Committee's allowing me to
15 appear before you today, however briefly, and to
16 express my views on the objectives which are
17 being sought by the Committee in proposed House
18 Bill 1723.

19 CHAIRPERSON GANNON: Thank you very
20 much, Mr. Momjian. Representative Belfanti.

21 REPRESENTATIVE BELFANTI: Yes. Thank
22 you very much. I'll limit my comments to just a
23 few issues. The timetable -- I was intrigued by
24 your two-point correction of today's custody
25 because, one being that both parents arrive at

1 equal footing and the other is that the best
2 interests of the child are always given the
3 greatest weight.

4 The timetable on implementing -- let's
5 say we can draft legislation as simplistic as
6 that, what would be the timetable for
7 implementing that?

8 Would those decisions be made, let's say,
9 in the case of a newborn prior to the birth? a
10 year after the birth? six months later? later
11 when the child is not being breast-fed? What
12 kind of timetable do you put on that equal
13 footing provision?

14 MR. COHEN: Well, I suspect that the
15 issue of custodial arrangements of the child
16 could not be put before the court until the child
17 was born and viable. None of us have a
18 crystal ball and know what we're going to
19 be blessed with or what misfortunes may be for a
20 newborn child or what that child's needs may be.

21 If we're going to be going under the
22 assumption -- not presumption,
23 assumption -- the best interests of the child be
24 the -- that will direct the decision. Then I
25 think the child has been -- before that can be,

1 before the time.

2 The issue I think is to how it would be
3 implemented or what would be implemented will
4 depend on what that infant's needs are and how
5 those parents can best address them at the time
6 they come before the court.

7 The beauty if I use the word of custody
8 decisions in the State of Pennsylvania is the
9 concept that they are never etched in stone.
10 They are ever changing as circumstances change.

11 The court's door is always open to
12 litigants to come before the court and to try to
13 get or to obtain a ruling that fit the
14 circumstances, that will fit at that moment to
15 contrast to something that existed at an earlier
16 date. I hope that is responsive to your
17 question.

18 REPRESENTATIVE BELFANTI: To a degree it
19 is. Although in Texas and in California, I
20 believe that both parties with the presumption of
21 joint custody enter into certain written
22 agreements prior to the birth of the child,
23 written agreements that -- assuming, again, that
24 the child is born viable -- on the name, on the
25 religion, on a number of very early decisions

1 that are made in this state exclusively by the
2 mother immediately after the birth or within
3 weeks after the birth.

4 And as we heard today, in Montgomery
5 County it's taken one gentleman sitting back
6 there three years, three years of waiting to even
7 have his day in court on custody. And in my
8 son's instance, 16 months will have gone by. So
9 that's why I'm asking.

10 The timetable on a newborn, if we were
11 to artfully and skillfully draft a two-point law
12 and an Act that would give both parents equal
13 footing, when would that be implemented and how
14 could that be implemented immediately upon the
15 birth of the child without scheduling yourself
16 for an 18-month or a three-year wait in court?

17 MR. COHEN: The filing of the claim, of
18 course, could be made at any time. But the
19 question you raise which is how do we deal with
20 court backlogs or court delay is not going to be
21 changed by House Bill 1723 or by my approach of a
22 more simplistic approach, to use a different word.

23 And by the way, there's nothing wrong
24 with simple. You know, New Jersey has a whole
25 divorce code that's one paragraph, period. And I

1 suspect or I submit to you that it has worked
2 every bit as well as Pennsylvania's, neither one
3 having worked better.

4 So you can have especially in as
5 fact-oriented a situation as custody disputes a
6 more direct or simplistic legislative approach.
7 The court backlog is terrible. The length of
8 time in the system we have to deal with in many
9 cases cannot be justified, is an embarrassment
10 and a disgrace; and I don't take issue with that.

11 I just submit to you that House Bill
12 1723 in its present form doesn't change or
13 rectify that, nor would my proposal be any better
14 in getting that resolved.

15 REPRESENTATIVE BELFANTI: I am not the
16 principle drafter of the bill. Representative
17 Veon is. And I think he took a bit from this
18 state and a bit from that state. The language
19 that I would like to see added to the legislation
20 would be similar to that of Texas and California
21 where once the father made a full admission that
22 the fetus is his and he is willing to assume
23 full joint legal obligations, whether it be
24 support or anything else, when that father makes
25 that admission that the court orders both parents

1 at that point to come up with a parenting plan.

2 And that brings me to part B of my
3 question. The previous offer of testimony and
4 both gentlemen here, you both seem to have some
5 problem with a predetermined parenting plan.

6 Now, I want to give a little bit of my
7 background. I've been in the General Assembly 18
8 years. I've been on the Labor Relations
9 Committee for all of these 18 years, served as a
10 majority chairman for two terms, and I'm now in
11 the second term of the minority chairmanship.

12 I consider myself somewhat of an expert
13 in labor law and in labor arbitration. And in
14 the case of -- I don't know if any of -- if
15 either of you deal with labor law or arbitration
16 other than family arbitration; but in labor law,
17 we have what's called binding arbitration and we
18 also have last best offer binding arbitration.

19 In the instance where last best offer
20 binding arbitration is law, the opposite effect
21 occurs as to what I believe was just alluded to
22 by both gentlemen here.

23 They don't both come to the table with
24 outlandish and tilted offers because they know
25 that the arbitrator -- the third arbitrator is

1 going to look at both plans and look at the one
2 that's the most reasonable.

3 If they're both way out of whack, the
4 arbitrator will draw up a plan that might be a
5 hybrid of the two. But that's very often
6 not -- well, in most instances can't take place
7 because it is a last best offer binding
8 arbitration requiring the third arbitrator to
9 select one or the other of the two plans.

10 It's different than binding arbitration
11 where both parties come in with two plans and the
12 third arbitrator can take a piece of this and a
13 piece of that, a piece of this and a piece of
14 that. And that's a fairly long, protracted
15 process.

16 Most people who are arbitrators will who
17 do that professionally, as I probably will once I
18 leave my life in the Legislature, like
19 last -- like binding arbitration and not last
20 best offer because last best offer binding
21 arbitration typically requires a one-day hearing.

22 You're going to look at two proposals.
23 And if one is so tilted and so extreme and the
24 other's a side -- let's say it's a teachers
25 union, a school board, or whatever -- one plan

1 seems to approach middle ground, that is most
2 likely the plan that is going to be selected in
3 last best offer binding arbitration.

4 And I believe the concept of the
5 parenting plan in this legislation is to try and
6 move in that direction where both parents are
7 required to come up with a parenting plan and
8 then the court has the ability to say which of
9 those two plans is the most reasonable, most
10 rational and in the best interests of the child,
11 most in the best interests of the child.

12 And so that's why.

13 MR. MOMJIAN: Representative, I agree
14 with the concept of the parenting plan because as
15 you indicate, it brings out this: If a judge in
16 a custody dispute sees the proposals from each
17 party -- and keeping in mind that one of the
18 primary considerations in making a custody
19 decision is which parent is more likely to give a
20 better relationship of the child to the other
21 parent -- that's what's going to make people
22 honest in telling the judge rather than the
23 process that we have now, which is walking to
24 court, start putting on your evidence and going
25 hour after hour, day after day on a position.

1 But I don't think you're necessarily
2 supporting the idea that it's one or the other
3 because I think as the parents -- child, the
4 court has to make its own judgment as to what's
5 best.

6 But it will flush out the integrity of
7 people and what they really feel about it because
8 if someone comes in with an outlandish proposal
9 where the father's going to see a child of the
10 other parent but for a minute a week, the judge
11 will know that that's not the parent that's
12 likely to promote harmony with the other parent.

13 So I understand the concept of a
14 parenting plan. I think one of the other
15 problems is that most divorce lawyers don't see
16 the issues and concerns that you've expressed
17 except in the context of a divorce.

18 We rarely see happily related people,
19 cohabiting people, or married people working out
20 plans because they never come to us and by and
21 large not going to put anything in writing.

22 It comes to us either in the context of
23 people who are separated or divorced and for the
24 first time the dispute arises. Now, I can see
25 that that dispute can arise one second after

1 birth because perhaps the child is wonderful and
2 an infant and maybe belongs with the
3 breast-feeding parent; but on the other hand,
4 there might be something wrong with the parent
5 that would require custodial interference or
6 custody resolution.

7 The problem is with the backlog. It is
8 true that you may have to wait months and months
9 before your case goes down the pike and comes up
10 for resolution by somebody, and that's what
11 creates a problem.

12 It creates a lot of distress and is not
13 in the best interests of children or a child to
14 have a delay in the administration of justice
15 with respect to a custody dispute.

16 MR. COHEN: If I may, I -- we're all the
17 products of our own experience. And the only
18 experience I had with the parenting plan type of
19 approach was here in Montgomery County where I
20 tried a long and difficult custody case before a
21 Judge Brody before she left the State Court to go
22 to the Federal Court.

23 At the conclusion of our trial, Judge
24 Brody directed both parties to submit to her two
25 parenting proposals: One, your best case

1 scenario; and, second, your worst case scenario,
2 what you think the court should do even if the
3 court didn't buy everything that you were
4 selling.

5 And that's what we did. And the Judge
6 selected one of those as the framework for her
7 order. That was awful because what we ended up
8 with, we ended up with people who were reticent
9 to say what they really thought was best for the
10 children because they -- if the judge agreed with
11 them, they didn't want to run the risk of getting
12 their order rejected.

13 And so they compromised their own
14 principles in putting together a proposal, and
15 that's what we ended up with. And I submit to
16 you that you have confidence in your ultimate
17 decider, your ultimate trier, your judge, which
18 is a whole underlying problem here.

19 But if you have that, then that judge
20 has to decide what's in the best interests of the
21 children. Now, what I could or might suggest in
22 the issue of expediting a resolution, albeit on a
23 temporary basis, we have -- and again, we're
24 products of our own experience and I'm looking at
25 what we have here in Montgomery County.

1 We have support masters. Now, what
2 happens in recognition that there has to be
3 something in place until the people can get the
4 court to try their case. There's a hearing
5 before a support master that comes up fairly
6 quickly and an order is put in place that the
7 people have to live with at least until such time
8 as it gets before the court to be litigated.

9 We have again in Montgomery County a
10 custody conciliator, a gentlemen by the name of
11 Logan Bullet (phonetic), who is as experienced
12 and knowledgeable in the field of custody law as
13 anybody I have encountered anywhere, anytime in
14 my life.

15 Mr. Bullet hears these cases as they
16 come in before they come to court to try to get
17 people to work out settlements, agreements,
18 resolutions; but he has no authority, no
19 authority to make a recommendation that will
20 result in an interim order.

21 Why? The issuance of an order regarding
22 custody of the children is something that's been
23 very zealously, and maybe rightfully so, guarded
24 by the courts.

25 But perhaps if we are looking to

1 expedite the process and get something by a
2 decision of a third party rather than something
3 that the parents are fighting about in place for
4 and interim period until you can that there could
5 be legislation that would authorize those
6 counties who chose to set up this system of
7 custody conciliators for the custody
8 conciliator's recommendations to become, if
9 approved by the court, temporary orders until
10 such time as the issues are litigated in full
11 with the court.

12 And I'm very curious to know what
13 Mr. Momjian's experience or reaction to that
14 would be. We've not discussed it, and I know
15 that he's been before Mr. Bullet as often if not
16 more than anybody.

17 MR. MOMJIAN: If you have a qualified
18 person, Members of the Committee, such as
19 Mr. Bullet, I think it would be a wonderful idea
20 as long as it's treated seriously, has extensive
21 experience.

22 He's been involved in these things, and
23 I think it would be great to bridge the time gap
24 between the initiation of a custody dispute and a
25 resolution in court.

1 I was in a court proceeding in another
2 county where it was an important case involving
3 which parent would have primary custody. The
4 judge allotted three hours for both parties, said
5 that was all that he could afford, and started
6 trying my case.

7 In the middle of the direct testimony,
8 the judge said, well, that's enough for that
9 witness. The other witness -- the other lawyer
10 would then have a right to cross-examine.

11 And the thing was so truncated into a
12 measure of three hours for something involving
13 the importance of children and where they should
14 reside. And we're talking about children of a
15 sufficient age to express their own preference.

16 And the judge was apologetic about the
17 fact that he constrained us with such time
18 limits. I objected to it and said, Your Honor,
19 you can't allow an equitable distribution case to
20 take place for day after day after day and with
21 matters of such great importance of the custody
22 of children and their welfare, innocent children
23 who for the most part in Pennsylvania don't have
24 advocates representing themselves, the children,
25 but rely upon the court system to do what's in

1 the best interests of the children. You gave me
2 three hours and I object to it.

3 But the judge wouldn't budge, and I and
4 my adversary had but three hours collectively to
5 try a case before the judge in another situation.

6 REPRESENTATIVE BELFANTI: Thank you,
7 Mr. Chairman. I appreciate, gentlemen, thank you
8 for your answers. I agree with you.

9 MR. COHEN: Thank you very much all of
10 you. Thank you so much.

11 MR. PRESKI: Mr. Momjian, I have a
12 question. Apart from this hearing, you talked a
13 lot about child preference. We've seen many
14 child preference proposals come before the
15 Committee, some which would give an automatic
16 preference to the child of a particular age;
17 others that would make it a sliding scale kind of
18 thing. What are your thoughts on that?

19 MR. MOMJIAN: I think it should be left
20 just as it is, that the judges for the most part
21 are extremely sensitive to taking child
22 preference.

23 They will determine whether the child is
24 of sufficient age to give cogent reasons for
25 expressing a preference, and I really think

1 that's something that the court system handles
2 well.

3 They're not going to take the preference
4 of a 3-year-old kid who puts his or her thumb in
5 the mouth and says nothing or babbles. And if
6 there's a 15- or 16-year-old child who expresses
7 a preference that's meaningful and for cogent
8 reasons, why should it not be given
9 consideration?

10 Whether it should be presumptively what
11 the child wants, I doubt. There can be a lot of
12 brainwashing in the context of child custody
13 cases and a court would be sensitive to that.

14 In a way, I like what Mr. Cohen says
15 that the broader the parameters in allowing the
16 decisional law to make its own course as it's
17 already done is probably not a bad way to go in
18 the area of custody because it is so intricate,
19 so fact sensitive, and so emotionally charged
20 that the minute you become involved in specifics
21 such as House Bill 1723, you're going to have
22 problems and a complete turnabout in terms of
23 definitions and faces.

24 Even the idea of legal custody, the
25 current legal custody definition says major

1 decisions affecting children. House Bill 1723
2 just says decision making with respect to health,
3 education, and welfare. And I can see disputes
4 taking place over the most minute issues.

5 This is carried in my more detailed
6 analysis of the law. I could see parents just
7 balking at one another because they're
8 emotionally charged to begin with over you didn't
9 tell me about this or that.

10 And it could be so counterproductive
11 that it would be a nightmare for the children and
12 for the parents themselves: Relocation, health,
13 religious changes, education.

14 But by and large, if a child is with one
15 parent in the custodial care of that parent,
16 during that time certain decisions have to be
17 made.

18 You can't say, look, I'm going to spank
19 the child today because the child is a discipline
20 problem and have to report it to another spouse
21 who may be remarried to somebody else who may not
22 even invite the call.

23 MR. PRESKI: Thank you.

24 CHAIRPERSON GANNON: Thank you very
25 much, Mr. Cohen, and thank you very much,

1 Mr. Momjian, for coming before the Committee
2 today and offering your testimony on House Bill
3 1723.

4 MR. COHEN: Thanks for the privilege of
5 allowing us to do that. I appreciate it very
6 much.

7 CHAIRPERSON GANNON: Carol Urban,
8 Esquire, was scheduled to testify before the
9 Committee. She could not be here today; and we
10 will take written testimony -- written comments
11 from her in lieu of her testimony before the
12 Committee.

13 With that, this hearing of the House
14 Judiciary Committee concerning House Bill 1723 is
15 adjourned.

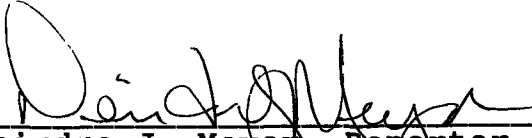
16 (At or about 1:25 p.m., the deposition
17 was concluded.)

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C E R T I F I C A T E

I, Deirdre J. Meyer, Reporter, Notary Public, duly commissioned and qualified in and for the County of Lancaster, Commonwealth of Pennsylvania, hereby certify that the foregoing is a true and accurate transcript of my stenotype notes taken by me and subsequently reduced to computer printout under my supervision, and that this copy is a correct record of the same.

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Deirdre J. Meyer, Reporter,
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