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**HOUSE OF REPRESENTATIVES  
COMMONWEALTH OF PENNSYLVANIA**

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**Domestic Relations Task Force**

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**House Judiciary Committee  
Task Force on Domestic Relations**

**Philadelphia Bar Association  
1101 Market Street, 11th Floor  
Philadelphia, Pennsylvania**

**Friday, March 13, 1998 - 9:00 a.m.**

**--oOo--**

**BEFORE:**

**Honorable Lita Indzel Cohen, Majority Chairperson  
Honorable Al Masland**

**IN ATTENDANCE:**

**Honorable Thomas Caltagirone  
Honorable Harold James  
Honorable Babette Josephs**

**KEY REPORTERS  
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**1998-101**



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**ALSO PRESENT:**

**Karen Dalton, Esquire  
Majority Counsel**

**John Ryan, Esquire  
Minority Counsel**

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1                   CHAIRPERSON COHEN: Good morning. I'm  
2 State Representative Lita Cohen, the Chair of the  
3 Domestic Relations Task Force from the  
4 Pennsylvania House of Representatives.

5                   We have been conducting hearings on all  
6 aspects of the Pennsylvania Divorce Code. We've  
7 been conducting these hearings for the last three  
8 to four years.

9                   We started dealing with the issue of  
10 no-fault divorce and discovered that there were  
11 other issues that absolutely needed our attention  
12 such as equitable distribution, child custody,  
13 issues of court administration, masterships, et  
14 cetera.

15                   This is a very difficult topic. We're  
16 dealing with an issue that obviously to the  
17 participants involved is an emotional issue. It  
18 is often, very often not pleasant when  
19 relationships break down.

20                   We're obviously exceedingly concerned  
21 about effects, not only on the parties involved  
22 in divorce issues, but the effects on children as  
23 well.

24                   We've been working with the court system  
25 to coordinate our efforts and whether or not

1 certain legislation is needed or if reforms can  
2 be instituted by the courts or perhaps working  
3 together.

4 We're here on a fact-finding mission.  
5 And those of you that know who I am know that we  
6 run a very, very tight schedule. So if you're  
7 scheduled, you will be called upon at your  
8 scheduled time.

9 I'd like to introduce our fellow Members  
10 up here. And I think they can introduce  
11 themselves. We'll start with Representative  
12 Caltagirone.

13 REPRESENTATIVE CALTAGIRONE: Tom  
14 Caltagirone, Berks County.

15 REPRESENTATIVE MASLAND: Al Masland,  
16 199th District in Cumberland and York Counties.

17 CHAIRPERSON COHEN: I might say that  
18 Representative Caltagirone is the Minority  
19 Chairman of the Judiciary Committee under whose  
20 auspices these hearings are being conducted.

21 MS. DALTON: Karen Dalton, Counsel to  
22 the Committee.

23 MR. RYAN: John Ryan, Counsel to the  
24 Minority Chairman.

25 CHAIRPERSON COHEN: Thank you. We have

1 the first person to speak with us this morning is  
2 Homer Davis. Dr. Davis, if you take the chair up  
3 here, please, you may begin any time at all.

4 DR. DAVIS: Thank you.

5 CHAIRPERSON COHEN: And you are allotted  
6 20 minutes. We would hope that you would speak  
7 to us for a shorter time so that you can allow  
8 questions from the Panel.

9 DR. DAVIS: All right.

10 CHAIRPERSON COHEN: Thank you.

11 DR. DAVIS: Okay. My name's Homer  
12 Davis. I'm the father of a 14-year-old, at this  
13 point --

14 CHAIRPERSON COHEN: Get the mike a  
15 little closer to you so you don't have to lean  
16 over.

17 DR. DAVIS: I'm the father of a  
18 14-year-old daughter at this point. At the time  
19 that I began to have my troubles, my daughter was  
20 2 and a half.

21 This is the reason I'm here is because  
22 I've guess -- gotten involved in this so far that  
23 I've been asked to sort of relay some of the  
24 story of what happened to me.

25 I don't think I'm going to have time to

1 do it all, so I'll provide you with a summary in  
2 the end. Twelve years ago, I woke up one day to  
3 hear, I don't want to be married anymore.

4 I asked, What about my daughter's  
5 family? And what I heard was, She will adapt.  
6 So kind of unbelievable thing to hear that the  
7 person that wants you to trust them doesn't  
8 really care whether your child and you have a  
9 normal relationship for the rest of your life.

10 The "me generation" unilaterally avoids  
11 the concept that parents have an obligation to  
12 their children and to the extended family. I'm  
13 here because 12 years ago, the enlightened gurus  
14 degraded the idea of obligation to family and  
15 providing children with intact families to the  
16 mode of outmoded and obsolete thinking.

17 Personal gratification of the parent was  
18 essential and justification for an optimization  
19 of a life experience in the "me generation." The  
20 dependent two-year-old had rights only after the  
21 parent achieved self-gratification and could  
22 spare enough time to take care of others.

23 I'm also here because I was shocked by  
24 the values and the mentality of the Domestic  
25 Relations appointed psychology evaluator that I

1 encountered.

2 And I'm here because I'm infuriated by  
3 the treatment that I received at the hands of  
4 Chester County Domestic Relations Courts, its  
5 judges, and its lawyers who appropriately are  
6 named actors. I'm also here because if this can  
7 happen to me as a doctor, it can happen to  
8 anyone.

9 Now I'd like to tell you why I felt I  
10 had to do this. I'm privileged to have 25 years  
11 of formal education, I have a stable lifestyle, I  
12 had higher than average income, I had the age and  
13 experience to deal with intimidating systems, I  
14 had a computer to keep accurate records, I had  
15 time to confront the system, and I had the  
16 patience to persist in a system which functions  
17 in stonewalling, lying, endless delays to  
18 dishearten the victims, blatant denial of known  
19 facts, passive-aggressive behavior which is  
20 designed to ignore domestic relations problems  
21 and drive them into oblivion, and intimidation of  
22 parents who dare to assert their authority  
23 against the omnipotent judges of the system.

24 I was stunned by a lack of values, the  
25 lack of attention to the best interest of the



1 child, the lack of logical attention to facts,  
2 and any knowledge of the case beforehand. Seemed  
3 that you walked in there and nobody knew really  
4 what had happened.

5 There was no respect for the spirit of  
6 the law, and there was no compunction about  
7 evicting a 20-year-old father from the life of  
8 his child while screaming that men don't care  
9 about the involvement with their children.

10 I'm tired of the lies and the twisted  
11 statistics that are used to drive fathers out of  
12 the lives of their children and redistribute  
13 funds according to the politically correct  
14 agendas of the time.

15 I want to make it clear what my position  
16 was. And this is where I was at the time my  
17 child was taken away from me after eight years of  
18 having equal custody time. And all I'm asking  
19 for is equal custody time.

20 I'm not trying to drive the mother out  
21 of the life or anything. Twenty-five years of  
22 experience, 20 years on the same job, 11-year-old  
23 daughter with an 94 average in school. I don't  
24 smoke, drink.

25 I don't have any women running around my

1 house. No legal problems, no drugs. I've not  
2 missed any support payments. I'm the only parent  
3 who's paying real support payments, which  
4 interestingly makes me the only parent who can  
5 show up on the deadbeat rolls on the deadbeat  
6 poster.

7 I was the only single parent who worked  
8 full time, and I was paying \$450 for one child  
9 for 15 days. And I wasn't even asking someone to  
10 take care of this child for me. I could have  
11 done it.

12 I had half-time custody and no support  
13 order from the mother. I was the only parent who  
14 was required to work during the week, and I  
15 needed weekend time to be with my child.

16 The mother had \$450 given to her each  
17 month to free her up to have time during the week  
18 and didn't hold a job. I paid for dental and  
19 health care benefits. I paid for day care so  
20 that the mother could advance her career, which  
21 didn't happen.

22 I offered to pay to send my daughter to  
23 a private school so there would be no conflict  
24 about whose school and whose township she was  
25 going to go to school in during the school week.

1                   This meant that we could have a divided  
2 week and everyone would have equal time. My  
3 daughter and I were the only parties who never  
4 had a choice to decide that our life would be  
5 divided in half.

6                   I was the parent who purchased the  
7 marital residence to stabilize my daughter's life  
8 and environment when my wife walked out. This  
9 cost me \$72,000. I paid \$11,000 to have the  
10 facts presented to a court, and then I had my  
11 time given away in a back room.

12                   I had half-time custody of my daughter  
13 for eight years, during which time the school and  
14 psychologists and evaluators indicated that she  
15 was flourishing and wished the schedule to remain  
16 equal.

17                   I provided swimming pool memberships,  
18 clothing, possessions at home. And this was made  
19 essentially inaccessible to my daughter when I  
20 finally found out that every other week I'd have  
21 her one and a half days during the week starting  
22 on Wednesday night and I'd have to drop her off  
23 on Friday morning.

24                   I was expected as the working parent to  
25 exchange my daughter one-half way through Friday.

1        Somehow I was supposed to get out of work and  
2        exchange my daughter at 2:00 in the afternoon.

3                There are no maids or housekeepers in my  
4        house. I was the only single working parent in  
5        the family. Apparently Chester County Department  
6        of Domestic Relations finds this to be  
7        insufficient to allow me to have equal parenting  
8        time.

9                Now I want to tell you about my  
10       daughter, a child who asked for equal parenting  
11       time and was ignored. This is a child with a 94  
12       average in a private school.

13               She took the SATs in 7th grade and  
14       scored higher than 50 percent of the  
15       college-bound seniors. She was misquoted in the  
16       court by the appointed psychologist, who was  
17       caught doing this in the transcript. And I have  
18       a copy of it because I paid \$700 for the  
19       transcript.

20               I was questioned -- she was questioned  
21       for 27 pages of transcript by the judge who  
22       offered method after method of altering the  
23       schedule to an unequal schedule and never once  
24       told my daughter that it could remain equal.

25               My daughter made one concession. The

1       questioning was terminated, and that concession  
2       was elaborated into a mother-preferential  
3       schedule. My daughter has an IQ significantly  
4       above 140, and I mean significantly above it.

5                She was very, very clear about what she  
6       wanted. This is what I ran into in the court,  
7       and I wish you would just kind of take a look at  
8       this and see whether any of this sounds  
9       legitimate to you.

10               A female judge, a female lawyer, a  
11       female appointed psychologist, a lawyer who was  
12       the wife of one of the county judges of Chester  
13       County was the opposing lawyer.

14               The second lawyer was reported in the  
15       newspaper to be waiting possible appointment to  
16       the Domestic Court judgeship in the same court  
17       where the female judge's husband was a  
18       lawyer -- was a judge, excuse me.

19               We have altered documents submitted by  
20       the psychologist by abridging portions which  
21       didn't agree with her -- with her conclusions.  
22       We have three communications to my lawyer saying  
23       don't give away my time.

24               We have a statement by my lawyer saying  
25       the court expected us to give away this time and

1 we had to do it. We have numerous requests from  
2 me for both a Petition to Review and a decision  
3 for further appeal of the matter.

4 We have a statement from my lawyer  
5 saying he cannot appeal the case because he would  
6 be sanctioned by the court as this would be  
7 unethical.

8 We have a court order which was signed  
9 on May 4th and which took eight days to get to  
10 me, a distance of 20 miles, with a ten-day  
11 limitation on the Petition to Reconsider.

12 CHAIRPERSON COHEN: Excuse me,  
13 Dr. Davis.

14 DR. DAVIS: Sure.

15 CHAIRPERSON COHEN: As you know, we  
16 asked to you speak for ten minutes to allow us to  
17 questioning for ten minutes. You could  
18 submit -- obviously, you're reading what you've  
19 written.

20 Unless there are no questions from the  
21 Panel Members -- but you could just summarize  
22 quickly; and then we'll move to the Panel's  
23 questioning.

24 DR. DAVIS: At any rate, what has  
25 happened here is time has been given away by the

1 system and I was told that it was expected that I  
2 would give this away.

3 I want to know why, if we're so worried  
4 about fathers not being involved with their  
5 children, why after eight years I had to give up  
6 this time. And nobody can tell me why after 39  
7 complaints to the court.

8 I'm told I simply will not answer your  
9 questions. I have plenty of other things here  
10 which I will give you. Just let me take a quick  
11 look here a minute.

12 I guess what the question is, How is it  
13 possible for this to happen, for me to ask the  
14 question of why it was done, to be told that I  
15 have to return to court with no idea what  
16 questions to address in order to get my child  
17 back again?

18 This means that if you do not appeal a  
19 case in Pennsylvania as a poor person, you never  
20 know why your child is taken away.

21 CHAIRPERSON COHEN: Thank you,  
22 Dr. Davis. Before we turn to the Panel for  
23 questions, I'd like to welcome Representative  
24 Josephs, who actually is welcoming us to her  
25 district today. Thank you. Representative

1 Caltagirone, any questions?

2 REPRESENTATIVE CALTAGIRONE:

3 (No audible response.)

4 CHAIRPERSON COHEN: Representative  
5 Masland?

6 REPRESENTATIVE MASLAND: Yes. Thank  
7 you. I would like to basically -- we have gotten  
8 some of your background. I'm sure you'll submit  
9 some more testimony that we can review, which may  
10 go into a few more details.

11 Obviously, we're not here to act as a  
12 judge who can, with 20-20 hindsight, redetermine  
13 what should have happened in your case; but I  
14 would like to know what you believe the solutions  
15 are.

16 You do have on your outline, No. 6,  
17 Solutions. When you say Family Court reform, I'm  
18 basically interested in if you have any specifics  
19 about that, what you're talking about?

20 DR. DAVIS: Well, I think that -- I  
21 think that maybe we should have mandatory  
22 counseling prior to divorce and mandatory  
23 mediation so that the people know what they're  
24 getting into before they even initiate a divorce  
25 and so they can't claim that they never knew that



1 they were going to lose time with their child on  
2 an equal basis or whatever.

3 I think that if the mandatory mediation  
4 does not result in a solution, then the  
5 presumptive solution should be joint, 50-50  
6 custody provided both parents want that.

7 That means that the support compliance  
8 with people who have total contact with their  
9 child is about 90 percent. The compliance for  
10 support on those who have no contact with their  
11 child is 44 percent.

12 This means that not only would it solve  
13 problems for the child, but the state wouldn't be  
14 chasing after people because you don't have to  
15 figure out where they are if they already have  
16 custody of their child and you know where they're  
17 living.

18 I think we should have enforceable  
19 penalties for people who lie in court, including  
20 the lawyers. I think we should have review of  
21 the psychologist's report by the clients before  
22 it's turned in because my report has information  
23 in there that's totally wrong. And it's in the  
24 permanent record for the next judge to look at.  
25 And it'll never be rebutted.

1                   Protection From Abuse Orders, I think,  
2                   should be monitored because they're being used to  
3                   remove fathers from the lives of their children.  
4                   Whether the claims are legitimate or not, it  
5                   takes you four months to get back and get your  
6                   child. And then you hear it will be disrupting  
7                   for the child to go to see their father because  
8                   he hasn't been there for four months.

9                   And violation of visitation orders  
10                  should be just as offensive as violation of  
11                  support orders.

12                  REPRESENTATIVE MASLAND: Let me just  
13                  kind of -- obviously, you're talking about  
14                  mandatory counseling and mediation when there are  
15                  children of the marriage.

16                  DR. DAVIS: When there are children -- I  
17                  don't know about the -- the other part is not a  
18                  part of my life; so I don't know.

19                  REPRESENTATIVE MASLAND: Specifically,  
20                  when you said that we should be monitoring the  
21                  PFAs, Protection of Abuse Orders --

22                  DR. DAVIS: Protection From Abuse Orders  
23                  at this point can be obtained ex parte. Somebody  
24                  walks in and says, I want a Protection from Abuse  
25                  Order, they get it, and the child is removed from

1 the child's (sic) life. You don't go in the next  
2 day and say, Wait a minute. Wait a minute. We  
3 want to talk about that.

4 It'll take you a long time to get back  
5 into that court. In the meantime, you don't have  
6 contact with your child. And, you know, then the  
7 claim in the court can be, Well, this child  
8 hasn't seen the father for, like, four months.

9 And it's a very young child, it'll be  
10 very disruptive to send them over there. And we  
11 don't even know whether the father committed a  
12 penalty.

13 There should be some limited amount of  
14 time when they have to go back to that court and  
15 find out what the real facts are from both  
16 parties, not just the one who wants custody of  
17 the child.

18 REPRESENTATIVE MASLAND: I guess every  
19 county's a little bit different. I know in my  
20 county, Cumberland County, if you do get an ex  
21 parte PFA order, you are in court relatively  
22 shortly thereafter to basically see whether the  
23 facts are as they were in the request.

24 I don't have any more questions. I know  
25 to keep things moving, I'll pass at this point.

1 Thank you.

2 CHAIRPERSON COHEN: Thank you. Thank  
3 you very much, Dr. Davis. Anything -- I know  
4 that you've been corresponding with us. And  
5 anything further that you'd like to submit in  
6 writing, please feel free to do so. Thanks for  
7 your time to speak with us.

8 DR. DAVIS: Yes. Thank you.

9 CHAIRPERSON COHEN: The next person to  
10 speak with us is Frank Cervone, is the Executive  
11 Director, Support Center for Child Advocates.  
12 And I would also ask the court reporter to let us  
13 know when you need a break. Welcome back. Any  
14 time you --

15 MR. CERVONE: Good morning. You  
16 ready?

17 THE COURT REPORTER: (No audible  
18 response.)

19 MR. CERVONE: Good morning, and  
20 welcome to Philadelphia and to the Philadelphia  
21 Bar Association. It's a pleasure to be with you  
22 again. As you may know, the Support Center for  
23 Child Advocates is Philadelphia's lawyer pro bono  
24 program for abused and neglected children.

25 We offer the skills and dedication of

1 lawyer-social worker teams, and we represent more  
2 than 500 children each year. Our work is focused  
3 in four core programs: Abuse and Neglect,  
4 Medically Needy Children, Kinship Care, and  
5 Adoptions.

6 For more than 20 years, we've served as  
7 a resource for this Legislature and its staff.  
8 And I thank you for the invitation to serve in  
9 this role once again.

10 When asked, we attempt to offer you a  
11 balanced, candid, and constructive assessment of  
12 how we're all doing for our kids and what our  
13 kids might need.

14 I'd like to address three areas of need  
15 in our courts today and certainly answer any  
16 questions in other areas. I know you have a full  
17 agenda.

18 First, children and violence; then  
19 representation of children in custody cases; and  
20 finally, the concept of unified courts.

21 One of our experienced child advocate  
22 lawyers commented recently that custody courts  
23 look much like dependency court these days.

24 Families are hurting; children are  
25 hurting -- the range of complex needs. But in

1 those cases, there's no children and youth  
2 agency. There are rarely services available to  
3 provide for kids and families.

4 I'd like to call attention to the  
5 children in domestic relations cases, the custody  
6 and divorce, and Protection from Abuse or PFA  
7 cases.

8 In particular, we need to examine as a  
9 community and certainly as a Legislature the  
10 connection between child abuse and domestic  
11 violence.

12 Child victims of domestic violence and  
13 child abuse remain an invisible population in our  
14 community, a population needing recognition,  
15 protection, and service.

16 They face physical and emotional risks  
17 from living in violent homes. They're served by  
18 a sometimes polarized professional community as  
19 people in the same families are served by  
20 professionals who don't get to talk and sometimes  
21 aren't interested in talking to each other.

22 Their needs are frequently addressed  
23 inappropriately or not at all. Two recent  
24 support center cases demonstrate the range of  
25 problems these children face.

1           In a domestic disturbance, the husband,  
2 Robert, struck mother, Susan, in her face and her  
3 head. Susan obtained a temporary protection  
4 order and eviction of Robert.

5           Two weeks later while 3-year-old  
6 Christopher was being seen at the local community  
7 mental health center, he acted out severely.  
8 Following a psychiatric exam, this young child  
9 was admitted to a psych hospital where he  
10 remained for more than a week without any contact  
11 by Child Welfare authorities.

12           The hospital psychologist observed that  
13 Christopher spoke of violence in his home, an  
14 indication that he was responding to conditions  
15 at home.

16           The family had a history of violence  
17 with the father slapping the child as well as PFA  
18 orders against one or both parents since 1992.  
19 Hospital staff attempted to find a more  
20 appropriate, less restrictive setting.

21           But more than 30 referrals were  
22 rejected. A request for specialized family  
23 preservation services was dismissed with, quote,  
24 That's a custody case.

25           Eventually, a child advocate from the

1 Support Center pressed hard to obtain wrap-around  
2 services from the community mental health system  
3 for the child and the family. Christopher was  
4 discharged from the hospital back to his mother's  
5 care.

6 Another case, both real life cases: A  
7 couple became embroiled in the latest series of a  
8 series of fights. Angry at her boyfriend, Rocco,  
9 Maribel began to strike his car with a baseball  
10 bat. Seeing this, Rocco took the bat and began  
11 to beat Maribel.

12 Maribel's 12-year-old son, Vincent, came  
13 to the protection of his mother; And Rocco began  
14 to hit the boy. Rocco was arrested and both  
15 mother and child were treated at a hospital and  
16 released.

17 Over the next two months, Maribel and  
18 Vincent, the son, failed to come to successive  
19 preliminary hearings; yet no one notified DHS or  
20 the police child abuse unit, and the case was  
21 eventually dismissed for failure to prosecute by  
22 a complainant.

23 Informed professionals tell us that the  
24 number of these cases is staggering. The bottom  
25 line from our perspective is that we desperately



1 need both the symbolic metaphor and the model of  
2 service that treats the linkage between domestic  
3 violence and child abuse.

4 The American Bar Association has  
5 estimated that 87 percent of the children in  
6 homes with domestic violence witness that abuse.  
7 In our own work in Philadelphia, we see what  
8 experts have seen in other locales.

9 Child witnesses of domestic violence  
10 develop a variety of behavioral, affective, and  
11 cognitive problems; and this exposure to violence  
12 can be psychologically abusive.

13 Most troubling perhaps because the  
14 violence is often hidden, the origins of the  
15 child's problems are not always apparent. Unlike  
16 the typical victim of child abuse, these children  
17 often display no physical injuries.

18 Their injuries and scars are harder to  
19 detect and they last significantly longer.  
20 Cultural differences and the confusing dynamics  
21 of abusive families complicate the child's  
22 experience and our intervention efforts.

23 Across the state, we have failed to  
24 bridge this gap. For example, when a child is  
25 involved in a DV case, the only way for him or

1 her to obtain the protection of the court is to  
2 be the subject of physical violence or threat and  
3 to be identified as such in the court petition.

4 Child Welfare officials are rarely  
5 informed by Domestic Relations intake workers or  
6 court staff of instances of a domestic violence  
7 in the home not directed specifically at the  
8 child.

9 If, for example, a county agency is  
10 notified, the current solutions will likely be  
11 limited to removing the child and separating him  
12 or her from his family members or ensuring that  
13 the perpetrator is at least temporarily out of  
14 the home and subsequently closing the case for  
15 lack of risk.

16 In both extremes, the lasting effects  
17 and the deep-seated causes of the abuse are left  
18 untreated. What should you do? We joined the  
19 American Bar Association in recommending that  
20 domestic violence laws require police and the  
21 courts to adequately protect children.

22 You should support enhanced education  
23 treatment and awareness efforts related to  
24 domestic violence and children, including  
25 providing specialized mental health services for

1 appropriate children, prohibit firearms purchases  
2 and possession for all perpetrators of domestic  
3 violence and child abuse.

4 You can ensure through legislation that  
5 domestic violence is properly considered in all  
6 domestic relations actions involving custody and  
7 visitation.

8 For example, you might include  
9 presumptions that custody not be awarded to a  
10 parent with a history of inflicting domestic  
11 violence; that visitation be awarded to such a  
12 parent only if the safety and well-being of the  
13 abused parent and children can be protected; and  
14 all awards of visitation incorporate explicit  
15 protections for the child and the abused parent.

16 The Legislature, the courts, and the Bar  
17 should establish or support the formation of  
18 community-based, supervised visitation centers  
19 with a range of supervision and security.

20 I make note -- I was going to skip; but  
21 I thought you ought to know that in Philadelphia  
22 we're making some strides forward. The  
23 professional child welfare communities and  
24 domestic violence communities have been involved  
25 in a really neat dialogue for a number of years

1 in trying to bridge this gap. And I think we're  
2 actually a model in some ways.

3 My second area of comment about the  
4 representation of children: While abused and  
5 neglected children often lack effective advocacy  
6 in their best interest, the legally under or  
7 unrepresented child whose caregivers are involved  
8 in domestic violence most often falls through the  
9 cracks of the system.

10 I hope you'll support the development of  
11 resources to provide for representation of  
12 children in custody and other domestic relations  
13 cases. This is a hot topic in the law community.  
14 And it's not a hot topic totally for lack of  
15 attention and resources, I think, in the judicial  
16 community.

17 Courts don't have money to pay for  
18 lawyers for parents, and so they feel like they  
19 can never get to lawyers for kids. I'm not one  
20 to go so far as to say that every kid ought to  
21 have a lawyer; although, there are many who do.

22 And there are some reasonable arguments  
23 why every kid in these cases should. But I think  
24 there is an appropriate middle ground that will  
25 bridge this gap of resources and politics and

1 law.

2 And so we recommend at least three  
3 grounds for the appointment of representation for  
4 children in these cases: First, when the failure  
5 to make such an appointment would impede the  
6 judge's capacity to decide the case properly.

7 For a variety of reasons, there will be  
8 custody and visitation cases in which a court's  
9 capacity to decide the case will be jeopardized  
10 without a more child-focused framing of the  
11 issues or without the opportunity for additional  
12 information concerning the child's best  
13 interests.

14 For example, conflicts between the  
15 parents may work to impede the information  
16 available to the court because of the adversarial  
17 process.

18 Parents are actually entitled to act in  
19 their own interest and to have their lawyers  
20 zealously advocate those ends, sometimes in  
21 detriment to the child; and in ways, that may  
22 never be revealed to the court.

23 In such cases, one valuable procedural  
24 device available to the court is to appoint a  
25 representative for the child who is charged with

1 the responsibility of ensuring that material  
2 information about the case is presented to the  
3 court in order to place the court in the  
4 strongest position to decide the case based on  
5 complete information.

6 Remember, it's the court's job to make a  
7 best interest determination. It's not a guardian  
8 ad litem's job. It's certainly not a parent's  
9 lawyer's job or even a parent. That's why they  
10 went to court. They can't do it on their own.  
11 But the court can't do it on its own if it's not  
12 given all the information.

13 Second, when the failure to make such an  
14 appointment would risk harm to the child. It's  
15 imperative that children are not harmed by the  
16 very process of deciding a case.

17 Representative for the child may serve  
18 to reduce tensions between parents thereby  
19 increasing the child's sense of security and  
20 safety.

21 Many custody cases should be Child  
22 Welfare cases; but the parties, the court, and  
23 the child welfare system fail or decline the  
24 transfer of the case.

25 CHAIRPERSON COHEN: Excuse me,

1 Mr. Cervone.

2 MR. CERVONE: Yes.

3 CHAIRPERSON COHEN: Could you sum up if  
4 you would? We have the testimony, and  
5 it's -- obviously, everything you're telling us  
6 is vital. We'd like to provide time for some  
7 questions.

8 MR. CERVONE: Great. I'll just add that  
9 in summary, a third reason for representation  
10 would be when the child's voice becomes a more  
11 prominent part of the case. You'll hear, I'm  
12 sure, later today from other speakers about the  
13 unified courts movement.

14 And I've laid out a set of  
15 recommendations to that end. Those  
16 recommendations are adapted, borrowed almost  
17 wholly from the ABA policy on unified courts  
18 which I can provide to staff. I actually have  
19 with me, if the court --

20 CHAIRPERSON COHEN: Thank you.

21 MR. CERVONE: If the Panel is  
22 interested.

23 CHAIRPERSON COHEN: To work with us, as  
24 you know, we spoke with you when we were here  
25 having our adoption hearings. And, indeed, some

1 of us are members of both panels because,  
2 obviously, they do overlap. I believe that  
3 Representative Masland has some questions for  
4 you.

5 REPRESENTATIVE MASLAND: Thank you,  
6 Madame Chairman. I have basically one question  
7 to try to leave room for some other folks up  
8 here, regarding the representation of children.  
9 And I know you're talking about having an  
10 attorney formally appointed to represent the  
11 child.

12 Are you familiar at all with the CASA  
13 program that is around the United States,  
14 Court Appointed Special Advocate? And if so, I'd  
15 like to hear some comments on what you think of  
16 that program.

17 MR. CERVONE: I'm very familiar and a  
18 friend of CASA. I serve on the board of advisors  
19 of Philadelphia CASA. I Co-Chair the American  
20 Bar Association's section of Litigations Task  
21 Force on Children which promotes the adoption of  
22 CASA programs around the country along with pro  
23 bono programs.

24 A couple of things about CASAs: One,  
25 national CASA has been fairly clear with its



1 local subordinates that it ought not to get  
2 involved in domestic relations cases, that they  
3 believe they are better suited for abuse and  
4 neglect cases perhaps because there is a children  
5 and youth mechanism available for resources  
6 development, for services and the like.

7 Second, CASAs work very effectively in  
8 jurisdictions where -- well, effectively, they're  
9 the only line of defense for kids in many  
10 jurisdictions.

11 In Florida and North Carolina, for  
12 instance, there's no right to counsel in abuse  
13 and neglect cases. CASAs are all kids get in  
14 those places. In Pennsylvania under the Juvenile  
15 Act, kids who are parties to dependency cases get  
16 lawyers.

17 And we think that's a very, very good  
18 idea. I would think that CASAs could be a  
19 welcome addition in the domestic relations arena,  
20 the several types of cases that I've been talking  
21 about today.

22 We've not been able to invite them in,  
23 in a sense, mostly because of their own resources  
24 and their limitations. But I think it's a very  
25 good idea. And if you can help us pressure them

1 to expand their service, I think that would be  
2 fine.

3 REPRESENTATIVE MASLAND: Thank you very  
4 much.

5 MR. CERVONE: Sure.

6 CHAIRPERSON COHEN: One of the things  
7 that we try to balance is whether we need  
8 legislation or whether the court itself can  
9 provide the needed services  
10 unification -- unified services, et cetera.

11 Can you give us -- and as I listen to  
12 you and read through your testimony and your  
13 suggestions in the back, it seems to me that  
14 most, if not all, of your suggestions are  
15 directed to a court system rather than mandating  
16 any of these procedures by legislative action.  
17 Can you just give us your professional feel of  
18 what direction you would head?

19 MR. CERVONE: And you're asking  
20 particularly about the unified court questions or  
21 about the others as well?

22 CHAIRPERSON COHEN: The other issues.

23 MR. CERVONE: Comprehensively?

24 CHAIRPERSON COHEN: Yes.

25 MR. CERVONE: I think that there are

1 some constitutional issues that need to be  
2 reckoned with. We have separate and co-equal  
3 branches of government, and there are some  
4 aspects of reform that need to happen from the  
5 court. We can't get around those.

6 I've tried in my recommendations in each  
7 of the three areas to distinguish those in which  
8 you ought to encourage the courts or the Bar as  
9 compared with those in which you have province,  
10 for instance, in creating legislation.

11 We -- courts are -- there are 67  
12 counties and 67 sets of court systems in  
13 Pennsylvania; and there ought to be some  
14 direction, in a sense, from the Legislature.

15 At the same time, those courts are  
16 different because the people are different around  
17 the state. And having, in a sense, a broad-scale  
18 model would probably do disservice.

19 To try to treat Philadelphia like  
20 Crawford County or vice versa would probably do  
21 both a disservice. I would not at the same time  
22 shirk from your responsibility where I -- in your  
23 shoes, to take the lead for those areas where  
24 entitlements need to be articulated, where  
25 standards need to be articulated, or even where

1 reporting requirements.

2 For instance, in the areas where the  
3 Department of Public Welfare has an  
4 administrative function, this Panel and this  
5 Legislature ought to be calling for setting up  
6 performance standards or at least reporting  
7 requirements.

8 You'll see this in the new Adoption and  
9 State Families Act, the federal legislation  
10 dealing with adoptions. The states are going to  
11 be required to report on performance.

12 Why is this? This isn't because the  
13 feds are necessarily going to tell 'em what to  
14 do, but rather that the light of day will bring a  
15 pressure to bear on administrative agencies.

16 They don't want to tell them exactly  
17 what the marks all should be. But they want  
18 reporting, they want the community to know. In  
19 the family court arena, there's lots of talk  
20 about opening up the family courts.

21 You've already opened up the juvenile  
22 delinquency courts. And that has, I think, a  
23 mixed message. It tells us as a community that  
24 we need to be involved in those proceedings.

25 But it also tells those families that

1 they can't keep things private. I believe that  
2 those proceedings need the light of day. Too  
3 much is happening in our family courts that is  
4 not acceptable by any standard of jurisprudence  
5 or good practice.

6 And we ought to have some light into  
7 those proceedings. But should an abuse  
8 proceeding be public? It's very, very hard for a  
9 kid to get up and talk about the abuse  
10 perpetrated by a parent in a criminal proceeding.  
11 I'd hate to see them have to do it in the civil  
12 proceedings as well.

13 CHAIRPERSON COHEN: Okay. Okay. Thank  
14 you very much. Obviously, we'll be receptive to  
15 any other information that you can provide us.  
16 We thank you for being here today.

17 MR. CERVONE: Thank you. Thank you for  
18 your invitation and your interest in children.

19 CHAIRPERSON COHEN: Thank you. The next  
20 person to speak here before us is Elizabeth  
21 Bennett, an attorney. I would like to say with  
22 Ms. Bennett here that I had mentioned that many  
23 of us are on the Panel to rewrite adoption laws  
24 in Pennsylvania, which obviously overlaps this  
25 issue.

1                   Additionally, I am the Chair of the  
2                   Pennsylvania Futures Commission Task Force on  
3                   Families which includes divorce, adoption, issues  
4                   of families, senior citizens. And Ms. Bennett is  
5                   also a member of that commission and task Force.

6                   So there is also the Supreme Court  
7                   independently through the Futures Commission  
8                   dealing with the same set of circumstances. Good  
9                   morning. Welcome. Thank you.

10                   MS. BENNETT: Thank you. Thank you for  
11                   inviting me. I'm Libby Bennett. I was formerly  
12                   a partner at Dilworth, Passen, Kalish and  
13                   Kauffman and now have a family law practice in  
14                   Radnor.

15                   I was a single mom and an attorney. So  
16                   I know somewhat what our clients lives are like.  
17                   And I was Co-Chair of the Childrens' Rights  
18                   Committee of the Pennsylvania Bar Association.

19                   And in that capacity, our Committee  
20                   proposed and obtained the adoption of a  
21                   resolution by the Pennsylvania Bar Association  
22                   supporting unified family court.

23                   The unified family court concept has  
24                   been propounded by the National Council of  
25                   Juvenile and Family Court Judges as well as the

1 American Bar Association in their Unmet Legal  
2 Needs of Children's Report, which appeared about  
3 eight years ago.

4 There are now at least nine states that  
5 are adopting one form or another of unified  
6 family court. The basic concept behind unified  
7 family court is that a family should be entitled  
8 to have one person follow their case in a  
9 consistent and coordinated way, reducing  
10 confusion, the potential for conflicting orders,  
11 et cetera.

12 Now I've brought today these charts  
13 which I originally prepared at my own expense and  
14 the Committee was kind enough to reimburse me for  
15 out of -- in an act of desperation.

16 If you look at the process, you will see  
17 this is on the divorce side: There are 15  
18 different hearings before 15 different  
19 individuals on 15 different days, which is more  
20 than two weeks off from work to have a fully  
21 adjudicated divorce case.

22 This does not include dependency  
23 hearings if there are any, which includes  
24 six-month reviews and team meetings or  
25 delinquency matters.

1           Now, if you have a family that has child  
2 support and custody and also perhaps a  
3 delinquency matter or originally came in with a  
4 dependency matter that's ended, they could be  
5 before half a dozen different judges.

6           And every time they have to go to court,  
7 they have to tell their story again to a new  
8 person who doesn't know what the history is.  
9 This is psychological abuse of the clients. And  
10 I believe that the one way that we can help  
11 children is to give them emotionally available  
12 parents.

13           When you burden the parents with a  
14 process like this, their parents are strung out  
15 and unable to be emotionally available to them.  
16 Not only that, the dependent parent who has the  
17 least economic resources is going to get beaten  
18 out by this system and will drop out before the  
19 parent with more resources because the cost of  
20 this is beyond the capacity of even the upper  
21 middle class.

22           Now, I'm going to leave these with you  
23 today and hope that you will take them around the  
24 state with you.

25           CHAIRPERSON COHEN: Eventually, they'll



1 be returned.

2 MS. BENNETT: Okay. Hopefully, they  
3 won't need to be returned to me. That's the  
4 divorce side. I'm now going to show you the  
5 concept that was built into the Pennsylvania Bar  
6 Association resolution, which was to create  
7 adjudication units where you would have a judge  
8 with a master and hearing officers and staff in a  
9 team so that because we have -- we don't have  
10 enough judges to hear all these matters and we  
11 use masters, now this creates a team.

12 And the family would always go back to  
13 the same unit. In our one-judge counties, we  
14 have judges hearing criminal, civil, everything.  
15 We certainly can have judges who can manage  
16 dependency, delinquency, and divorce law with the  
17 assistance of masters who hear the preliminary  
18 hearings.

19 So the core of the concept is the  
20 adjudication unit which would give one family/one  
21 judge. Then you could reduce the procedures so  
22 it would be just like the kind of procedure IBM  
23 gets, lucky IBM, with one judge who has a  
24 pretrial hearing or injunctive relief and then  
25 the final hearing.

1           And that's it. If you collapse the  
2           number of hearings, for instance, if you wanted  
3           to go before a master and then a judge, you could  
4           have it on the same day. If you had a unit, you  
5           could coordinate your schedules.

6           And the mother and father would not have  
7           to lose that time from work, which is very  
8           important in light of the fact that we're making  
9           those welfare moms go to work.

10           How many times are they expected to  
11           leave work to come to our courts? And this is  
12           the overall structure of unified family court.  
13           And this is the adjudication units.

14           You could have several in any given  
15           court. And each adjudication unit would have  
16           available to it child support functions,  
17           mediation, counseling, psychological and testing  
18           services, et cetera.

19           And you could coordinate. And I  
20           understand dependency and delinquency departments  
21           are already coordinating services because if the  
22           child -- studies have shown that there is an  
23           overlap 43 percent of the time.

24           If the child is in dependency court,  
25           they will end up in delinquency. If a child

1 starts in dependency and then is adjudicated  
2 delinquent, the whole case plan started by the  
3 dependency side is dropped and the delinquency  
4 plan takes over and they're shifted to a whole  
5 new group of people.

6 With a system like this with the one  
7 family/one judge, the same judge would hear the  
8 delinquency matter, could craft the probation  
9 arrangement in a way that was intelligent based  
10 on the previous dependency plan. And you  
11 wouldn't have so much duplication and costs.

12 Now, I want to ask how many Members of  
13 this Committee are Republicans or consider  
14 themselves new Democrats? Republicans?

15 CHAIRPERSON COHEN: Why?

16 MS. BENNETT: Because there is a lot of  
17 talk about shifting government responsibility to  
18 the private sector; and yet, we never take the  
19 wisdom of the private sector and use it with the  
20 taxpayer's dollar.

21 And there are three elements to what  
22 corporate America does which we never do in the  
23 courts. One is customer satisfaction. No focus  
24 groups, no questionnaires, no analysis.

25 We don't ask these moms and dads what it

1 feels like to go through a system like this,  
2 ever. We don't ask them what helped them the  
3 most. We don't ask them what saved their money  
4 the most.

5 We never ask them anything. And I as a  
6 single mom who is a member of the Family Law Bar  
7 can assure you I've never even been asked by the  
8 Family Law Bar what it feels like being a single  
9 mom, let alone by the judiciary.

10 So if we don't start to listen to the  
11 clients of the system just like the private  
12 sector is forced to listen to the buyers of their  
13 product, we're not going to improve the system.  
14 That's one.

15 Two is cost effectiveness. We don't do  
16 any cost effective analysis because the truth is,  
17 ladies and gentlemen, that patronage is built  
18 into this system.

19 And there are a lot of reasons why you  
20 guys have a lot of power. By misspending tax  
21 dollars wastefully -- I happen to be from  
22 Delaware County and know how many committee  
23 people are sitting in the courthouse.

24 And this is not a Bar Association  
25 position, by the way. This is just my personal

1 observation. Leadership, individual leadership  
2 encouraged could help ameliorate this particular  
3 problem.

4 The third thing the corporate sector  
5 uses is measures to determine whether or not  
6 they're accomplishing their goals. I recently  
7 spoke with a man who worked for IBM and now  
8 consults and recently did a huge corporate  
9 culture change for Kodak.

10 He said, You cannot have corporate  
11 change without establishing measures to see  
12 whether or not the individuals in the  
13 organization meet your goals.

14 So we have to have more sophistication.  
15 We have to go to the corporate sector for the  
16 tools and we have to put our money and our  
17 efforts where our mouths are and help the kids  
18 and the moms and dads who are struggling.

19 There are a couple of things that you  
20 should be alerted to: This proposal doesn't deal  
21 with the issue of abuse. I think there should be  
22 a fire wall between abuse and other proceedings  
23 because the physical safety of our clients is so  
24 important.

25 Right now I have a woman who was raped

1 postseparation by her husband. There was a  
2 criminal conviction. This man lost one child for  
3 a year because he beat him up so bad and molested  
4 a daughter and he has regular visitation with a  
5 third child.

6 And she doesn't have any particular  
7 assistance in going back to court. And he keeps  
8 taking her back to court. And she has to deal  
9 with him and has, like, posttraumatic stress.

10 So one thing about a coordinated system  
11 with one judge is someone in that position could  
12 be protected. You want to look at the 4-D  
13 dollars and the child support system.

14 The federal government is going to drive  
15 a wedge here in the unified family court concept  
16 by pushing for administrative child support  
17 proceedings. I believe you can have  
18 administrative child support proceedings and  
19 still have a more coordinated system.

20 And the measure for whether we're  
21 succeeding is have we eliminated days of  
22 hearings? And have we cut the cost to the  
23 clients? And, um, the other issue here is the  
24 mediation movement.

25 I would remind you that in the 19th

1 century there was a complete void around the  
2 family. There was no legal protection from  
3 anyone. And mediation leaves a void.

4 It is not -- people who are trained in  
5 mediation as I am know it is not meant for  
6 everyone. If you have it -- if you have  
7 mandatory mediation, you are forcing someone who  
8 may be in an abusive situation to go to court one  
9 more day, lose one more job for nothing because  
10 the person who's forcing her knows that he can  
11 exert, or she, more control on that day than they  
12 could if they were the judge.

13 So it sounds good and everybody loves  
14 it. And isn't it sweet? We'll all love each  
15 other. But the fact of the matter is we have  
16 more serious problems with our families than to  
17 treat them in a broadbrushed, generalized way  
18 without looking at the individual needs of each  
19 family.

20 And, finally, we desperately need  
21 support for our judiciary. No one wants  
22 to -- very few people want to sit in family  
23 court. And why would anyone want to sit in  
24 family court?

25 A list of 30 cases long of people

1 fighting and in pain. It's worse than being in a  
2 day-care center. And we've got mostly older  
3 judges sitting hearing these cases, and they need  
4 support.

5 It's too much psychologically to do. So  
6 it's no wonder that this system has evolved in  
7 this way. The Judiciary's protecting itself  
8 because they're human beings and they can't see  
9 that much pain without help themselves.

10 CHAIRPERSON COHEN: Thank you very much.  
11 I think Representative Masland has some  
12 questions.

13 REPRESENTATIVE MASLAND: Thank you,  
14 Ms. Bennett. Just a couple questions. First,  
15 you mentioned 4-D dollars towards the end of your  
16 testimony. I'm not familiar with that. What do  
17 you mean 4-D dollars? Is that type of federal  
18 funding?

19 MS. BENNETT: Yes. It is a source of  
20 concern to me that the public does not know about  
21 the 4-D system. And why it has not been revealed  
22 to the public by our leaders in Washington is  
23 sort of amazing to me.

24 But, basically, unlike Medicare for  
25 older people and social security disability or



1       whatever, with welfare, the government has taken  
2       the position that it's entitled to be indemnified  
3       for the dollars that it pays to welfare moms.

4               And it collects those dollars from poor  
5       fathers. And it keeps most of those dollars. It  
6       pays large portions of those dollars to the  
7       court.

8               And one of the single largest growing  
9       sources of budget to the court was the 4-D  
10       dollars, which are basically the money from poor  
11       fathers collected to reimburse the court system  
12       or the Welfare Department for what they paid.

13               There are a lot of upper middle-class  
14       benefits that we don't see getting reimbursement  
15       for. And there is a law in Pennsylvania that  
16       children are responsible for dependent, older  
17       people; so -- but we don't apply that uniformly.

18               Poor families are treated differently.  
19       And those children do not see the benefits of  
20       most of those dollars. They go to the court  
21       system. And ultimately, the big political fight  
22       is going to be who gets the 4-D dollars.

23               REPRESENTATIVE MASLAND: Maybe you can  
24       explain a little bit more. I'm not sure I'm  
25       getting it. I know that in support cases, if

1       somebody -- that the recipient is receiving  
2       welfare benefits --

3               MS. BENNETT: Right.

4               REPRESENTATIVE MASLAND: -- that the  
5       Department of Public Welfare collects those  
6       dollars?

7               MS. BENNETT: Right.

8               REPRESENTATIVE MASLAND: Now you're  
9       saying that right now that stays in the  
10      department as opposed to being sent back to the  
11      court system?

12              MS. BENNETT: It is shared between the  
13      Department of Welfare and the court system. The  
14      court system gets a percentage of what it  
15      collects.

16              And if there are certain programs, it  
17      gets -- there are certain incentives, bonuses  
18      they also get from those funds; but it's a huge  
19      amount of money that's collected.

20              REPRESENTATIVE MASLAND: How do you  
21      propose it go back to these families, in what  
22      shape or form? If it goes directly back, then  
23      conceivably they're getting paid twice for the  
24      same support.

25              MS. BENNETT: This is a huge

1 issue -- let me just say, last night I went to a  
2 program at the Balch Institute about the man who  
3 is investigating the 75,000 to 100,000  
4 descendants of his family's plantations in the  
5 south, some of whom I believe I'm related to, the  
6 Ball (phonetic) family from South Carolina.

7 And many of the descendants are  
8 mixed-race descendants. And until this country  
9 realizes that white men were the first parents to  
10 neglect their children by acting like they didn't  
11 exist because they were mothered by a black  
12 woman, we're in big trouble.

13 And I don't think -- this is my personal  
14 opinion. It's not the Bar Association's. But  
15 you cannot disentangle race and prejudice from  
16 the welfare system.

17 REPRESENTATIVE MASLAND: I'm not going  
18 to dispute that. But that still doesn't answer  
19 my question.

20 MS. BENNETT: The question about the 4-D  
21 dollars? Well, you have to go to Washington.  
22 It's a huge -- you've got to make the public  
23 know. The public has to care and want poor  
24 fathers to be able to see their dollars used and  
25 given directly to their children.

1           They have to feel that it's important  
2           that if you're going to force responsibility on  
3           poor families that those families get to see the  
4           benefit of it. And that's a moral and a social  
5           decision.

6           REPRESENTATIVE MASLAND: But how do we  
7           do it? You don't have any specific proposal?

8           MS. BENNETT: I think we should start a  
9           dialogue like was proposed last night about these  
10          issues because the fact that you would not know  
11          about the 4-D system and most of the public --

12          REPRESENTATIVE MASLAND: I know  
13          about -- I don't know what you call it. I know  
14          that money collected for support goes there. I  
15          don't remember numbers of bills that I've  
16          introduced. I'm certainly not going to remember  
17          4-D from IBM.

18          MS. BENNETT: Right. But the fact that  
19          the public as a whole does not know that the big  
20          talk about child support dollars has basically  
21          been to raise money to put back in the coffers of  
22          local courts, which are basically the reservoirs  
23          of the greatest inefficiencies.

24          REPRESENTATIVE MASLAND: One quick  
25          question. Early on, you mentioned --

1 MS. BENNETT: But I am not speaking for  
2 the Bar Association. I want to repeat that.

3 REPRESENTATIVE MASLAND: Okay. You  
4 mentioned early on, and I think it was in  
5 connection, but I want some clarification because  
6 at least it sounded a little ambiguous to me.

7 Certainly, before you started talking  
8 about the wisdom of the private sector, you had  
9 said that -- with connection, with one family/one  
10 judge that that's the procedure that IBM gets.

11 Now, I don't know whether you meant IBM  
12 gives that procedure when it deals with its  
13 clients as they service them. But if you  
14 mean -- I don't think you mean that IBM gets the  
15 one judge/one family --

16 MS. BENNETT: No. I would just urge you  
17 to walk through federal court, which is a  
18 building laden with marble and so heavy that I  
19 believe it had a problem sinking, and then walk  
20 through family court.

21 CHAIRPERSON COHEN: Representative  
22 Josephs has a question. We have a few minutes  
23 left.

24 REPRESENTATIVE JOSEPHS: I'm not sure  
25 this is exactly a question, but I'm wondering

1       whether what you're suggesting is that in support  
2       and welfare cases that when the absent parent is  
3       located and pays support, that that should go to  
4       the custodial parent as it does in nonwelfare  
5       cases?

6                   And if the custodial parent still has an  
7       income that in some way is a poverty income, that  
8       we support her -- usually her -- with money as we  
9       support people who send their children to school  
10      on grants and so on and that we do not try and  
11      support our welfare department by collecting  
12      money from poor, noncustodial parents?

13                   MS. BENNETT: Well, if we do collect  
14      from poor, noncustodial parents, then I think we  
15      should do it across-the-board for middle-class  
16      and upper middle-class families who have parents  
17      who are on Medicare.

18                   We should be collecting from their  
19      children who can pay for those parents, for  
20      instance. Just be evenhanded about it. We're  
21      not evenhanded. And if we're not evenhanded,  
22      then we're hurting the most vulnerable.

23                   All I can say to the gentlemen on the  
24      Panel, if you have the full-time care for  
25      children 24 hours a day and a full-time job, how

1 many men in our State Legislature have had those  
2 two jobs at once?

3 REPRESENTATIVE JOSEPHS: I actually can  
4 think of one.

5 MS. BENNETT: Good. Okay.

6 REPRESENTATIVE JOSEPHS: He's no longer  
7 in the Legislature.

8 MS. BENNETT: It's a lot of work.

9 REPRESENTATIVE JOSEPHS: And he was one  
10 of the most sympathetic men to women's causes in  
11 my entire history there. But I think we're out  
12 of time.

13 CHAIRPERSON COHEN: Thank you very, very  
14 much. We appreciate it and certainly we --

15 MS. BENNETT: These are yours.

16 CHAIRPERSON COHEN: Thank you very, very  
17 much. I think it's a perfect segue now that we  
18 mentioned the court, the Honorable Paul Panepinto  
19 is here to make a presentation to us.

20 Judge Panepinto is the Administrative  
21 Court, Family Court Division of Philadelphia  
22 County Court of Common Pleas. And welcome, Judge  
23 Panepinto. We certainly are honored to have your  
24 presence today.

25 HONORABLE PANEPINTO: Madame Chair, I

1 thank you very much. It's a pleasure to see you  
2 and a pleasure to be here, Representatives on  
3 this Committee.

4 I know Representative Josephs, of  
5 course, from Philadelphia. And the other  
6 Representatives I'm not too familiar with, but  
7 I'm very happy to be here.

8 CHAIRPERSON COHEN: We are happy to have  
9 you.

10 HONORABLE PANEPINTO: I've provided  
11 copies of my testimony, formal remarks, which  
12 your staff has. And I know you haven't had too  
13 much time to look at that, but I would like to go  
14 through those remarks now and then would be happy  
15 to address your questions.

16 CHAIRPERSON COHEN: Thank you.

17 HONORABLE PANEPINTO: Since June of  
18 1990, I served as a Philadelphia Court of Common  
19 Pleas Judge. And I've been assigned to the  
20 Family Division since that time.

21 But on April 1st, 1996, I was appointed  
22 Administrative Judge of the Philadelphia Family  
23 Court. That appointment's by the Supreme Court  
24 of Pennsylvania.

25 The Family Court Division is comprised



1 of a juvenile branch which deals primarily in the  
2 delinquency and dependency matters, the adoption  
3 units, and the Domestic Relations branch.

4 I am pleased that you have invited me to  
5 address the Task Force on Domestic Relations of  
6 the Judiciary Committee of the House of  
7 Representatives.

8 And I will limit my comments to the  
9 challenges we face in the Domestic Relations  
10 branch. Of the 22 jurists assigned to the family  
11 court division, 11 preside on a full-time basis  
12 in the Domestic Relations branch.

13 The current list of our family court  
14 judges is included in the attachment. And the  
15 Domestic Relations branch is responsible for  
16 processing cases involving issues of the  
17 establishment of paternity, financial support of  
18 children and spouses, child custody and  
19 visitation, domestic violence, and divorce.

20 During calendar year 1997, the Domestic  
21 Relations branch received 64,968 filings and  
22 disposed of approximately 51,000 pending matters.  
23 The number of filings in the Domestic Relations  
24 branch increased 18 percent in '96 and an  
25 additional 14 percent in 1997.

1           That's referenced in the materials that  
2 I provided. And there is a statistical  
3 comparison to findings and depositions (sic) for  
4 the period '95 through '97.

5           Although the number of filings steadily  
6 increases as does the number of out-of-wedlock  
7 births and divorces, the staffing of the  
8 employees of the Domestic Relations branch  
9 remains at approximately 350 in addition to  
10 judicial staff assigned to the Domestic Relations  
11 branch.

12           Therefore, our Domestic Relations  
13 employees are challenged with the onerous task of  
14 doing more for many in an expeditious and  
15 competent manner.

16           It is important to understand the  
17 demands made by the public on Philadelphia's  
18 Domestic Relations Branch. For example, each day  
19 some 570 people enter our court facility at 34  
20 South 11th Street between the hours of 8 a.m. and  
21 11 a.m.

22           While, obviously, the traffic continues  
23 throughout the remainder of the day, the volume  
24 of traffic each morning is staggering. Our  
25 domestic relations data base includes

1 approximately 739,000 members of which less than  
2 8 percent are listed as having attorneys of  
3 record.

4 Some 79,500 of our members have multiple  
5 cases involving other parties and/or spouses and  
6 children. The existence of many cross-reference  
7 cases presents certain impediments to  
8 implementing a one family, one fact finder method  
9 of case processing in Philadelphia.

10 Therefore, we are presently utilizing  
11 our Consolidated Case Management Program to  
12 afford parties special oversight by a single  
13 judge for the ultimate resolution of all issues  
14 in a multifaceted domestic relations case.

15 Meeting the demands of answering or  
16 responding to telephone inquiries is itself a  
17 unique challenge. Currently, the Client Services  
18 Unit of the Bureau of Accounts which processes  
19 financial transactions responds to 400 telephone  
20 inquiries per day.

21 In addition, our voice response system,  
22 available 24 hours per day, seven days per week,  
23 handles 4,845 telephone inquiries daily.

24 The never ending barrage of  
25 correspondence and telephone inquiries from

1 disgruntled clients and counsel who cannot find  
2 their way through the domestic relations system  
3 motivated our establishment of a new customer  
4 service unit, which will be located on the first  
5 floor of the Domestic Relations branch at 34  
6 South 11th Street.

7           The new customer service unit will be  
8 the gateway through which clients and other  
9 concerned parties obtain the information they  
10 need to address their domestic relations issues.

11           In addition to processing payments and  
12 other financial items, the expanded unit will  
13 communicate with individuals and agencies on all  
14 other aspects of domestic relations.

15           The goal of the customer service unit is  
16 to funnel all inquiries and complaints to a  
17 designated unit for clarification, response,  
18 follow-up, and corrective action.

19           In order to provide adequate physical  
20 space for the new customer service unit, we have  
21 expanded and completed renovations to enable the  
22 Bureau of Accounts to move from the first to the  
23 fourth floor at 34 South 11th Street.

24           The ever increasing volume of work  
25 causes us to continue our efforts to acquire

1 additional space so that we can provide  
2 reasonable accommodations for the masses that we  
3 service.

4 With the impact of welfare reform, the  
5 mission of the Domestic Relations branch to  
6 ensure that children receive the financial  
7 support they need so that the family can emerge  
8 from dependence on public assistance is greatly  
9 heightened.

10 To better accomplish this mission, the  
11 Domestic Relations branch established a new unit,  
12 the sole function of which is to process 643  
13 referrals from the Department of Public Welfare.

14 The 643 is the form that DPW uses to  
15 alert the court to a new welfare recipient child,  
16 one of whose parents is not residing in the  
17 household.

18 Upon receipt of the 643 referral, the  
19 court can proceed to file a complaint for support  
20 against the parent who is absent from the  
21 household. It is the financial support that is  
22 gained from this process that allows many  
23 families the wherewithal to become financially  
24 independent.

25 Philadelphia's Domestic Relations Branch

1 receives approximately 6,300 applications for  
2 child support in the form of 643 referrals each  
3 month.

4 Philadelphia has been granted a waiver  
5 of the requirement that all welfare applicants  
6 personally appear before the Domestic Relations  
7 office prior to authorization for assistance as a  
8 result of our effective, electronic system of  
9 processing these paper referrals.

10 My administration is keenly aware of the  
11 challenging role family court must play in  
12 dealing with the ramifications of welfare reform  
13 in an urban environment and the impact of welfare  
14 reform on impoverished children in need of  
15 support.

16 Statistics provided by the Mayor's  
17 office indicate that as of this month, March,  
18 1998, 75 percent of Philadelphia's 136,000  
19 temporary aid to needy family cases will be  
20 within 30 months of losing assistance.

21 The size of the population needing  
22 employment greatly exceeds the number of jobs  
23 available in Philadelphia. Family Court is now  
24 actively engaged in becoming a conduit for  
25 unemployed parents to find job opportunities and

1 training programs.

2 For the first time, Philadelphia's  
3 Family Court is undertaking endeavors with the  
4 Mayor's office, the Private Industry Council of  
5 Philadelphia, and many independent agencies to  
6 develop training and employment opportunities for  
7 the domestic relations case members.

8 As we launch our Networking for Jobs  
9 Program, we are committed to assisting parties  
10 who genuinely seek to find employment and  
11 financial independence which will directly  
12 benefit our children in need of support.

13 The goal of this employment strategy is  
14 to create access to employment opportunities with  
15 family-sustaining wages for unemployed parties  
16 which domestic relations services.

17 While our support collections steadily  
18 increase and total a staggering 138 million-plus  
19 dollars in 1997 as shown in the attachment, we  
20 are still confronted by many delinquent support  
21 orders.

22 If parties are able to secure  
23 employment, domestic relations can effectively  
24 enforce child support orders. The Philadelphia  
25 Automated Recovery Enforcement Network Tracking

1 System, it's called P.A.R.E.N.T.S., commenced  
2 operation in February 1995 to assist the Domestic  
3 Relations branch in the establishment and  
4 enforcement of child support and custody orders  
5 as a precursor to the statewide automated system.

6 Since its inception, P.A.R.E.N.T.S. has  
7 been enhanced to process the case types of  
8 divorce and domestic violence. The development  
9 of a comprehensive computer system that maintains  
10 the demographics of dependents, plaintiffs, and  
11 defendants has proven to be an asset in the  
12 collection of child support monies and the  
13 resolution of family issues brought before the  
14 court.

15 In addition, the system modifications  
16 required for forms or procedures as a result of  
17 changes in the Rules of Civil Procedure or to  
18 facilitate case processing can be accomplished in  
19 a timely manner by the Philadelphia Domestic  
20 Relations Branch.

21 The federally-mandated, statewide  
22 Pennsylvania Child Support Enforcement System  
23 that's called PACSES, is scheduled for rollout in  
24 Philadelphia in December of 1998.

25 The PACSES design does not accommodate



1 the categories of divorce or domestic violence  
2 and is limited in its functionality with custody  
3 cases; therefore, only our support and possibly  
4 our custody cases will be converted.

5 PACSES will be maintained by the  
6 Commonwealth of Pennsylvania. Requests for  
7 system modification must be submitted to the  
8 Commonwealth, approved, and contracted by the  
9 Commonwealth for development.

10 It is anticipated that these issues  
11 alone will delay case processing and require  
12 changes in the daily business operations of the  
13 Philadelphia Domestic Relations Branch as it will  
14 elsewhere in the Commonwealth.

15 However, we in Philadelphia are  
16 committed to working with the Commonwealth and  
17 the Bureau of Child Enforcement Support section  
18 in every way possible in this endeavor.

19 The resolution of child custody disputes  
20 is one of the more sensitive and  
21 emotionally-charged functions performed by the  
22 Domestic Relations branch.

23 Beginning in 1997, custody cases are  
24 referred to a newly created custody masters union  
25 where conferences or hearings are conducted by

1 custody masters who are attorneys.

2 Through the use of evidence such as home  
3 investigation reports compiled by probation  
4 officer assigned to the branch as well as  
5 conducting settlement conferences and record  
6 hearings, the custody masters make  
7 recommendations to the court for orders governing  
8 the custody, partial custody, and visitation of  
9 children who are the subject of the complaints.

10 The utilization of custody masters to  
11 dispose of many cases enables the domestic  
12 relations judges to conduct the custody, support,  
13 and domestic violence hearings where judicial  
14 intervention is required.

15 Never before has a Domestic Relations  
16 branch been faced with so many challenges in  
17 attempting to provide services to the ever  
18 increasing needy population.

19 I greatly appreciate the opportunity to  
20 present this distinguished Committee my  
21 observations and concerns with respect to the  
22 programs implemented in the Domestic Relations  
23 branch consistent with Family Court's mission.

24 Only through continued dialogue and  
25 communication with all branches of government can

1 we hope to successfully meet the many challenges  
2 that lie ahead.

3 I think you will note the Members of our  
4 judiciary and the attachments and some statistics  
5 which would give you some idea of the numbers we  
6 are dealing with, the types of cases that we  
7 have, and the demographics scheme for the  
8 collections that are being made here in the  
9 Philadelphia County.

10 I would be happy to answer any questions  
11 and discuss some issues with you to the extent  
12 that I can.

13 CHAIRPERSON COHEN: Thank you,  
14 Judge Panepinto. We've been certainly  
15 appreciative of your being here. As you know,  
16 this Panel, this Task Force has also been working  
17 with Judge Baer in Allegheny County who has  
18 instituted some reforms in the Allegheny court  
19 system as well. So we appreciate your being  
20 here. I know that Representative Josephs has  
21 questions.

22 HONORABLE PANEPINTO: Thank you very  
23 much.

24 REPRESENTATIVE JOSEPHS: Thank you.  
25 Every time -- and I have to thank you for

1 bringing these statistics and these facts forward  
2 in this forum.

3 Every time I think about the fact that  
4 is less than three years whereby you can  
5 have -- your figures are as good as anybody  
6 else's; I think they're conservative,  
7 136,000 -- mostly women with little kids and no  
8 cash support. It makes my blood run cold.

9 I cannot imagine why in the world we are  
10 doing this. I mean, I -- and it was -- I have to  
11 blame my own democratic president for signing  
12 that insanity.

13 What do you think is going to happen in  
14 Philadelphia? I mean, what's going to happen to  
15 the foster care system? What's going to happen  
16 to crime?

17 What's going to happen to -- I mean, I  
18 keep thinking Philadelphia and across the state.  
19 I think -- keep thinking of pictures I used to  
20 see of men standing in line in the Great  
21 Depression, you know, hopeless and homeless and  
22 no place to go and no job. It's going to be, it  
23 seems to me, the same except it's going to be  
24 women with little kids.

25 HONORABLE PANEPINTO: Representative, I

1 think we don't know what's going to happen. I'm  
2 also a member of the Futures Commission appointed  
3 by the Supreme Court, and I work in many areas to  
4 look ahead.

5 Of course, we have to deal with what we  
6 have today. We are dealing with welfare reform  
7 which -- and reacting to federal legislation  
8 also. It's not just our state and some of the  
9 laws passed.

10 What I think we really need to do  
11 because we always have to deal today, we have to  
12 be working together. The judiciary must work.  
13 And that's why I'm very happy to be here.

14 I saw you from time to time because  
15 you're in Philadelphia and Representative Cohen,  
16 maybe at a dinner or whatever at times. And I  
17 say, Anything that I can do to help you before  
18 legislation is passed and discuss with the  
19 Legislature is very important.

20 I wish the federal government would do  
21 the same thing, I mean, because what we're  
22 dealing with is a reaction. And how it's going  
23 to turn out, I really don't know.

24 I indicated to you that I've been a  
25 judge since 1990, appointed and elected and

1 serving as Administrative Judge. But I've been  
2 in the family court system since 1971, my whole  
3 history in dealing with juvenile delinquency and  
4 all the changes that were made there.

5 And as I look back, I can see over a  
6 26-year period what changes we had. And most are  
7 good. And we've dealt with it, but we are  
8 reacting to the legislation.

9 We are driven by where the money is  
10 going. So in Philadelphia to address this  
11 problem with the needy, we have to get  
12 able-bodied men back to work. To that extent, we  
13 are developing the training centers.

14 REPRESENTATIVE JOSEPHS: Sir, it's the  
15 women that are going to be cut off.

16 HONORABLE PANEPINTO: No. The women  
17 will be cut off. The legislation is passed.  
18 That I can't change. But if I can get the men  
19 back to work, I can get them to pay the support  
20 to the women who need it because they're going to  
21 be off welfare.

22 That's one way of dealing with it.  
23 That's not going to solve the problem because,  
24 obviously, there are going to be many people hurt  
25 in the process. But we have to find ways and

1 means to get the able-bodied to work. And that's  
2 the idea of the welfare reform.

3 REPRESENTATIVE JOSEPHS: I asked  
4 you -- let me go to another topic. If I say a  
5 mother, a custodial parent, is on welfare, she  
6 doesn't get any of the support from her -- from  
7 the father of her children except for \$50 that we  
8 insisted upon and which the Department of Public  
9 Welfare will end in a minute if it can -- that  
10 money goes elsewhere -- how does she get off  
11 welfare?

12 How does support get her off welfare?  
13 The money goes to you and it goes to the  
14 Department of Welfare.

15 HONORABLE PANEPINTO: Well, the  
16 Department of Public Welfare certainly gets the  
17 money. But she -- if the state so deems it, will  
18 be able to assist her for her needs. And if they  
19 cut her off, the court has no responsibility at  
20 that point.

21 But what we do is insist that fathers  
22 pay support for their children. We collect that  
23 money and disperse that money accordingly to the  
24 mother. So she will collect the money directly  
25 from us if we can collect it from the identified

1 father.

2 REPRESENTATIVE JOSEPHS: If she's on  
3 welfare though, she only gets \$50 no matter how  
4 much gets paid in. That's true.

5 HONORABLE PANEPINTO: I don't -- maybe  
6 I'm not familiar with the process as to what the  
7 State's doing and what welfare's doing. But  
8 we're collecting the dollars from the dads to  
9 give to the moms.

10 REPRESENTATIVE JOSEPHS: Which I commend  
11 you for. And all of your efforts to find  
12 employment, I commend you for. But -- and it's  
13 something that I have been asking every cabinet  
14 secretary on the state level, What are you doing  
15 to employ 240,000, or thereabouts, families  
16 across Pennsylvania who a year from now have to  
17 have 20 hours of work or they're going to lose  
18 their grants and three years from now,  
19 approximately, or if they've been on public  
20 assistance for 60 months or five years are going  
21 to lose all their cash grants?

22 And I'm not -- I'm getting answers that  
23 say, Oh, we have this wonderful program. And  
24 they'll tell me they put 80 people through it or  
25 a hundred people or they have two programs and



1 they've gotten jobs for 75 welfare recipients.

2 There are 240,000, at least.

3 CHAIRPERSON COHEN: We have a question  
4 from --

5 REPRESENTATIVE JOSEPHS: I'm sorry.

6 CHAIRPERSON COHEN: Counsel Dalton has a  
7 couple of quick questions for you.

8 HONORABLE PANEPINTO: Sure. Thank you.

9 MS. DALTON: Good morning, Your Honor.

10 HONORABLE PANEPINTO: Good morning.

11 MS. DALTON: Can you more fully explain  
12 the Consolidated Case Management Program, please?

13 HONORABLE PANEPINTO: Yes. There are  
14 a -- in a divorce when there's a support action  
15 filed, then maybe there's a divorce and the  
16 family has problems with custody, there are a  
17 number of different actions.

18 What we have in Philadelphia is the  
19 opportunity for counsel to ask the administrative  
20 judge to consolidate the actions before one judge  
21 because we would have a hearing that involves  
22 support.

23 And later, it not only comes down to  
24 support and there's a custody issue because maybe  
25 the parties are agreeing how custody should be,

1       you know, dealt with; but then later they  
2       disagree.

3               So then another action is filed later in  
4       the system for custody. And then maybe they  
5       decide they're going to get a divorce and finally  
6       they get it.

7               Based on the -- in order to consolidate  
8       the actions, we try to accept -- we accept the  
9       petition. And if granted, we consolidate it  
10      before one judge. And that judge would hear all  
11      of those actions and be assigned to that one  
12      case.

13              I think that's our way of getting to the  
14      one judge/one family system. Because as you can  
15      see by the staggering numbers of cases, it's very  
16      difficult for us to control that because we can't  
17      control the timing of when you, either on your  
18      own as a pro se litigant or when you as a lawyer,  
19      decide to file a petition.

20              So in a big system, you'll have lawyers  
21      coming in using the system to get what they want  
22      to do, for delays, for whatever reason. So we do  
23      afford them that opportunity.

24              I think they should be using it more.  
25      From what I hear about the one judge/one family

1 system, I am for it because I can see the  
2 benefits.

3 But sadly enough, I don't think we get  
4 enough lawyers that actually do file for  
5 consolidated case management because I'd grant it  
6 where I can.

7 MS. DALTON: Would you be willing to  
8 make it a mandatory system then? That's the way  
9 it works in Allegheny County, my understanding  
10 anyway -- not in terms of consolidation, but in  
11 terms of getting one judge.

12 HONORABLE PANEPINTO: Well, I have to be  
13 honest. When you start mandating in a large  
14 county system, you really have problems, like,  
15 with mediation.

16 If you mandate everybody to go with the  
17 large numbers we are dealing with, we may go  
18 under. I'm not sure. I'd have to look at it.  
19 I'm open-minded about it.

20 And I really believe that we should take  
21 a hard look at it. But I want to compare us a  
22 moment with Allegheny County. Judge Baer is a  
23 fine gentleman, a colleague, and a friend as  
24 Administrative Judge.

25 I just want to mention to the Committee

1       because I think you need to know this when you  
2       deal with legislation and when it's passed. Not  
3       that we're different in Philadelphia, all  
4       counties should work together and be together.

5               And we're all the same because we're all  
6       Pennsylvanians and we're all united for a good  
7       system in family court. But I have 11 judges  
8       working in just domestic relations.

9               Allegheny County has 44 judges in the  
10       entire county, only eight judges in the family  
11       division. And they do juvenile, dependent,  
12       adoption, and domestic relations.

13               So if I have 11 working just in domestic  
14       relations, Judge Baer doesn't even have 11  
15       judges. I have 22 judges in the whole division.  
16       So I have 11 in domestic relations, 11 in  
17       juvenile.

18               So when you get to a county -- and even  
19       when you take Delaware County, one judge/one  
20       family, they only have two judges working in  
21       domestic relations.

22               So it is almost a one judge/one county  
23       system when you think of it that way because  
24       you'd only get your case heard before judge A or  
25       judge B. But when you're in Philadelphia County,

1       there are 11.

2                   And it's very hard for me to say, Well,  
3       you can only be heard by judge so and so. It's  
4       just a different -- the volume is so great.  
5       That's what I wanted to indicate to you in my  
6       remarks.

7                   MS. DALTON: Okay. And, Judge, would I  
8       be able to contact your staff later to go over  
9       some other things because my time is cut short?

10                  HONORABLE PANEPINTO: Oh, yes, very  
11       much. As a matter of fact, we have a large  
12       number of items that we could share and want to  
13       share with you and the Committee.

14                  CHAIRPERSON COHEN: Thank you,  
15       Judge Panepinto. We have many more questions.  
16       I know staff has some questions. And we have  
17       some more questions. And we appreciate your  
18       willingness to talk to us. We obviously take our  
19       charge very seriously. And this is a very  
20       difficult issue; you are correct.

21                  It's a very diverse Commonwealth. And  
22       we appreciate your openness and your willingness  
23       to give us more time. Thank you very much.

24                  HONORABLE PANEPINTO: Thank you very  
25       much.

1                   CHAIRPERSON COHEN: We'll take a  
2 5-minute break, only five.

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

4                   CHAIRPERSON COHEN: We'll resume our  
5 procedures here. The next person to appear  
6 before us is Catherine McFadden, who's the Senior  
7 Master for the Bucks County Court of Common  
8 Pleas. Ms. McFadden, welcome to our Task Force.

9                   MS. MCFADDEN: I'm grateful for the  
10 opportunity to testify today and pleased to  
11 listen to everyone else testifying as well  
12 because I think it helps us all broaden our  
13 knowledge.

14                   A couple of weeks ago, two or three  
15 weeks ago, the New Jersey Supreme Court Committee  
16 on Matrimonial Litigation published a long series  
17 of recommendations for family courts. There's, I  
18 think, 54 recommendations here.

19                   This Committee worked for about two  
20 years. And it was established when another  
21 committee found that there were intense  
22 criticisms of family courts and matrimonial  
23 proceedings within the state.

24                   The Supreme Court Committee found the  
25 same thing in public hearings and mentions

1 repeatedly in the report that the public was  
2 saying matrimonial proceedings take too long and  
3 cost too much.

4 I think that the same is true in  
5 Pennsylvania. I don't think that there's any  
6 doubt about that. Certainly, sometimes the delay  
7 is the result of the way the parties behave or  
8 the way the attorneys behave; but there's no  
9 doubt that some of the delay is the result of the  
10 way family court delivers its dispute resolution  
11 services.

12 It's clear to me when I look at the  
13 people that we work with in Bucks County in my  
14 office that certainly matrimonial proceedings, no  
15 matter how reasonably priced, when you think with  
16 the cost of lawyers and the cost of expert  
17 witnesses, are unaffordable.

18 There's a large group of -- our  
19 population in Bucks County, a well-to-do suburban  
20 county that cannot afford traditional litigation  
21 as a means of resolving disputes about their  
22 children or their property.

23 We studied in my office, our custody  
24 litigants, the people who come to the masters  
25 office for a conference in child custody in 1995.

1 And we found about 72 percent of the parents  
2 earned \$30,000 or less.

3 If you earn \$30,000 or less and you live  
4 in Bucks County, you can't afford a lawyer and  
5 you can't afford to pay a psychologist and you  
6 can't afford a trial.

7 So I think it's true that the  
8 proceedings cost too much. And they cost too  
9 much just because normal people don't have the  
10 kind of money that's necessary to pay a lawyer  
11 even for a couple of days in court.

12 Some of the reforms which could be  
13 instituted are the type of reforms which could  
14 help save time and money for the people who come  
15 to court and which could help save the courts  
16 time and money.

17 Many of those reforms the courts  
18 themselves need to institute themselves. Many of  
19 those reforms are described in the New Jersey  
20 materials and to some extent in other materials  
21 that people who work in family court read and  
22 which have been mentioned this morning.

23 For instance, one of the types of  
24 reforms that I talked about in my testimony is to  
25 control motion practice. It's a really simple,



1       mundane thing, motion practices, when you go to  
2       court to fight about little issues before you go  
3       to final trial.

4               So, for instance, one way to control  
5       that is to write a rule which tells you the  
6       result of the motion without having to file the  
7       motion.

8               The New Jersey folks recommended a rule  
9       that would require people to file medical and  
10       life insurance information and eliminate the  
11       necessity of anyone having to file a motion, pay  
12       their attorney to write it, and go to court and  
13       argue it.

14              Everybody just produce their medical and  
15       life insurance information. We're not going to  
16       argue about that in court. That's a practical  
17       way to control time spent in court.

18              Another way to do it is to let some  
19       motions be decided on paper instead of in a  
20       staffed court room. Another way to do it is to  
21       let some motions be decided by phone. The New  
22       Jersey Committee recommended that.

23              And there's a judge from California who  
24       wrote an article in -- this is the future of  
25       family law model programs for the year

1       2020 -- wrote an article saying he uses the  
2       telephone to rule on objections made in discovery  
3       at depositions.

4               It's very practical and it saves time  
5       and it saves paperwork and it saves money for the  
6       attorneys, for the parties, for the judges, for  
7       the courts. A lot of that we can do.

8               I don't know how the Legislature can  
9       help us except perhaps by some sort of incentive  
10      program to individual court systems or to the  
11      AOPC, like a bonus.

12              If you come up with a good idea and it  
13      actually works, you get a bonus. Another way to  
14      conserve courtroom time is with masters and  
15      settlement officers. And you've heard about  
16      masters this morning.

17              The program that's in my office is  
18      different from that which is in many other  
19      offices across the state in the sense that most  
20      of the work that we do is not formal record  
21      hearings, replacing what the judge does.

22              Instead, most of the work that we do is  
23      settlement oriented. It is deliberately  
24      conceived as a settlement program. Many counties  
25      have settlement programs and many make informal

1 efforts to settle cases.

2 I believe that particularly for low- and  
3 middle-income people these programs are beginning  
4 to replace the courtroom. These programs,  
5 whether it's a master who's hearing your case or  
6 a master who's trying to settle your case, these  
7 programs are replacing court.

8 The 75 percent of the property  
9 distribution cases in Bucks County that are  
10 contested at all settle in my office on the day  
11 that they appear in my office.

12 In the end, only about 4 percent of this  
13 caseload ever goes to trial. We're -- this  
14 diversionary system is replacing the system. My  
15 suggestion is that it should be very well  
16 controlled.

17 There ought to be rules about how we  
18 operate. It ought to be well funded. The people  
19 who work in it ought to be very well trained. I  
20 don't know of any educational requirement for  
21 masters beyond if you're a lawyer, the CLE  
22 requirements imposed by the disciplinary board,  
23 the State Board of Ethics.

24 Even district justices are required to  
25 take educational programs. And I suggest that

1 people who work in family court as master or  
2 conference officer or settlement officer should  
3 be required to have education in the field of law  
4 where they're working and in how to work with  
5 people and what's proper and what's not when  
6 you're working with the parties to the case. So  
7 those are my suggestions.

8 CHAIRPERSON COHEN: Thank you very much.  
9 We appreciate your being here. We always think,  
10 and I, I guess, as Chair of the Task Force, I've  
11 received hundreds, perhaps even thousands of  
12 letters and telephone calls.

13 And after each one, I always think that  
14 I've heard it all; and then the next letter comes  
15 in or the next call. But some of the complaints  
16 that we've had -- and I'm glad you closed with  
17 the requirements in terms of sensitivity training  
18 and education for masters.

19 Some of the problems that we've had and  
20 the complaints that we've had is that it takes  
21 masters so very long to issue a report and that  
22 there is no mandatory time limit on masters in  
23 terms of hearings and, certainly mostly, issuing  
24 the report.

25 MS. McFADDEN: There is a time limit on

1 the reports. It's in the state rules, and it's  
2 30 days. It's very difficult --

3 CHAIRPERSON COHEN: Why is that not in  
4 here too?

5 MS. McFADDEN: It's very difficult for  
6 some masters to adhere to that, particularly  
7 masters who preside at record proceedings. By  
8 the time -- if they schedule their cases so that  
9 the case comes in more than one day over a period  
10 of several months, by the time the case is done,  
11 they're not going remember the beginning.

12 They're going to have to sit down and  
13 read that transcript, which may or not may not be  
14 delivered to them in a timely manner. And then  
15 they have to write a report which may be very  
16 complex.

17 It may be 30 or 50 pages. It's very  
18 difficult. It's one of the reasons that I say we  
19 need to have controls on how programs operate.  
20 You shouldn't be scheduling that way.

21 Most cases can be resolved in six hours  
22 if you're doing a settlement program, at least as  
23 I do. One case, one day. Bring them in, start  
24 it, work through, finish it.

25 If it doesn't settle, write your report.

1 But if you schedule it three times and it comes  
2 in three times in six months, it's -- and you're  
3 doing a record hearing as opposed to the informal  
4 type of proceeding that I do, it's extremely  
5 difficult. I'm not surprised that some people  
6 can't make those deadlines.

7 CHAIRPERSON COHEN: Thank you.  
8 Representative Masland.

9 REPRESENTATIVE MASLAND: Just briefly,  
10 you've mentioned alternative dispute resolution  
11 in your prepared statement. And I guess I should  
12 say like some other people here, I'm on the  
13 Futures Commission's Alternative Dispute  
14 Resolution.

15 My question, though, is whether or not  
16 you in Bucks County have any mandatory or any  
17 programs dealings with mediation or conciliation?

18 MS. MCFADDEN: Conciliation.

19 REPRESENTATIVE MASLAND: Is that just  
20 for custody cases?

21 MS. MCFADDEN: In a way. We have two  
22 programs. Our child custody -- most of our  
23 effort at settling child custody cases is made by  
24 what we call our court conciliation and  
25 evaluation service.

1           That branch of our family court has been  
2           in existence for about 20 years. It's operated  
3           by a psychologist, and on the staff of court  
4           conciliation are several other psychologists and  
5           clinical social workers.

6           Custody cases can be referred into that  
7           program. They get -- each parent has to pay \$350  
8           for the program. It's not mandatory. It's  
9           voluntary.

10          They get, like, six sessions. Each  
11          parent has a session alone. The psychologist  
12          will observe the parents with the child, if the  
13          child is old enough, talk to the child, hold some  
14          joint sessions.

15          The first goal is to try to settle the  
16          case. If it settles, a written agreement is  
17          prepared. If it doesn't settle, a report is  
18          written for the court suggesting to the court  
19          what should be done with the case.

20          Parties who participate in the program  
21          are required to agree they will not cross-examine  
22          their psychologists. It's criticized because of  
23          that waiver. For low- and middle-income  
24          families, it's extremely cost effective.

25          Those folks cannot afford mediation

1       which fails and then evaluation for 2 or 3,000  
2       bucks and then a trial. The Combined  
3       Conciliation Evaluation Program is a good  
4       alternative for our low- and middle-income  
5       families.

6                 For low-income families, we the court,  
7       subsidize the parties so that they can go to the  
8       program.

9                 REPRESENTATIVE MASLAND: The  
10       conciliators it sounds like are all  
11       psychologists. You don't have any attorney  
12       conciliators --

13                MS. MCFADDEN: No, not in that program.  
14       Clinical social workers or psychologists.

15                REPRESENTATIVE MASLAND: And when you  
16       say that they agree that they won't cross-examine  
17       the psychologist, I guess there's some  
18       confidentiality agreement that they must sign  
19       that they won't call them to testify.

20                MS. MCFADDEN: They sign waiver of the  
21       right to cross-examine.

22                REPRESENTATIVE MASLAND: Well, I guess  
23       my question is, When you say the right to  
24       cross-examine, is this psychologist -- will the  
25       psychologist be called to testify in court?



1 MS. MCFADDEN: No. They're not  
2 permitted.

3 REPRESENTATIVE MASLAND: Then they're  
4 not going to be questioned, period?

5 MS. MCFADDEN: His report or her report  
6 will be in evidence. They agree to that. Our  
7 property distribution program works in a very  
8 similar way. In my office, there's four lawyers;  
9 and we sit down with parties. We try to settle  
10 the case.

11 If we can't, we write a report and  
12 recommendation to the court. And again  
13 it's -- it's -- for us we may use a mediation  
14 approach. We may use a mock trial approach.

15 We may use a conciliation approach or an  
16 educational -- sometimes all you have to do is  
17 just talk to people about why you're doing what  
18 you're doing. It works. So that's I think in a  
19 way very similar to what court conciliation and  
20 evaluation service does in child custody.

21 REPRESENTATIVE MASLAND: Let me just say  
22 as far as training goes there are a number of  
23 programs out there even in continuing legal  
24 education, conciliation, and mediation. I just  
25 took a 17-hour course this past January on that.

1 So you could get a few attorneys who are on your  
2 staff in there too.

3 MS. MCFADDEN: Yes. Yes.

4 REPRESENTATIVE MASLAND: Thank you.

5 CHAIRPERSON COHEN: Thank you,  
6 Ms. McFadden. Thank you very much. We  
7 appreciate your being here, but there are some  
8 other questions that the Panel has.  
9 Unfortunately, we're out of time. We would hope  
10 we'd be able to contact you and ask you --

11 MS. MCFADDEN: It would be a pleasure,  
12 anytime.

13 CHAIRPERSON COHEN: Thank you very, very  
14 much. Thank you. The next person to appear  
15 before us is Theresa Glennon, who is an Associate  
16 Professor of Law, Temple University School of  
17 Law. Welcome.

18 MS. GLENNON: Thank you for the  
19 opportunity to speak here today. As my legal  
20 work and research has focused on children, my  
21 primary focus today will be on child custody and  
22 court reform as it affects children. I want to  
23 do two things:

24 First, I want to review briefly what we  
25 know about children and divorce; second, I will

1       advocate the following policy recommendations:  
2       First, the Legislature should maintain no-fault  
3       divorce; second, reform family court procedures  
4       to help parents cooperate in the best interests  
5       of their children.

6               And I think we just heard a lot about  
7       that from Ms. McFadden. When parents are unable  
8       to do so, though, the court should act decisively  
9       to develop and implement final custody and  
10      visitation plans;

11              Third, Pennsylvania should retain its  
12      current standard for determining legal and  
13      physical custody. Pennsylvania should discourage  
14      relitigation of custody issues and should ensure  
15      that child support levels are adequate to  
16      decrease the economic hardship that many children  
17      face following divorce;

18              Finally, we protect dependent spouses  
19      who have contributed to their families,  
20      particularly those who have done so for a long  
21      time.

22              They should receive a portion of the  
23      ongoing income stream earned by the partner who  
24      maintained the job and benefited from the  
25      dependent spouse's support.

1           Many of us are disturbed by the high  
2 divorce rate of couples with children. Parental  
3 divorce places children at risk for numerous  
4 problems; however, the detrimental effects of  
5 divorce on children are neither inevitable nor  
6 irreparable.

7           Three factors seem to strongly affect  
8 childrens' adjustment: First, the level of  
9 parental conflict; second, the degree of economic  
10 hardship after divorce; and third, the quality of  
11 parenting by both parents following divorce.

12           Researchers agree that parental conflict  
13 is often associated -- that is often associated  
14 with divorce has a particularly harmful effect on  
15 children.

16           When parental conflict is minimized,  
17 there are few differences between children from  
18 intact and divorced families. Children are also  
19 harmed by postdivorce economic hardship.  
20 Economic hardship forces children to move away  
21 from familiar surroundings and it places the  
22 custodial parent under financial stress.

23           These financial difficulties cause a  
24 great deal of the negative impact of divorce on  
25 children. Third, children need positive and

1 consistent parenting postdivorce, ideally from  
2 both parents.

3 Our laws and court system can ameliorate  
4 the effects of divorce if they implement policies  
5 to reduce parental conflict, enhance postdivorce  
6 economic security for children, and improve  
7 parents' ability to parent effectively and  
8 cooperatively during and after the divorce.

9 How can we achieve these three goals? I  
10 make a number of recommendations in my written  
11 remarks; however, due to the time constraints, I  
12 will highlight just a few right now.

13 First, the Legislature should resist  
14 calls for a return to a fault-based divorce  
15 system. Eliminating no-fault divorce will not  
16 keep parents together.

17 Such proposals confuse a symptom for the  
18 problem. Divorce is not the problem. The  
19 problem is that one or both parents want to end  
20 the marriage.

21 Fault-based divorce requires the parent  
22 who wants to terminate the marriage to produce  
23 damaging evidence concerning the other partner's  
24 conduct. The divorcing parties must humiliate  
25 each other in court filings and testimony.

1           This highly emotional, adversarial  
2 process harms children while it is happening and  
3 undermines the potential of parental cooperation  
4 when all of the mudslinging is over.

5           Pennsylvania should retain no-fault  
6 divorce. In addition, unilateral divorce actions  
7 should not have to wait two years if they proceed  
8 on nonfault grounds but progress quickly if they  
9 proceed on fault grounds.

10           This gives the party who wants a divorce  
11 quickly an incentive to seek the more decisive  
12 fault-based divorce. This perverse incentive  
13 should be eliminated.

14           All divorces should be subjected to a  
15 one-year waiting period following separation.  
16 Finally, we must convey the message that family  
17 responsibilities do not end upon divorce.

18           Divorce with children cannot be the  
19 clean break that so many envision. Divorce is  
20 not the end of the family relationship, but an  
21 alteration to that relationship.

22           Parents must continue to work together  
23 as parents. Being a parent is a permanent  
24 commitment. Fault-based divorce is the wrong  
25 answer to the right question, Why do so many

1 parents divorce?

2 If we want to prevent divorce, we  
3 shouldn't focus on divorce law. Instead we must  
4 look much earlier. We must start in elementary  
5 and secondary education.

6 We must treat marital relationships and  
7 parenting as topics of learning and discussion  
8 like history and science. In addition, I support  
9 incentives for couples who seek a marriage  
10 license to participate in premarriage classes.

11 The State should aid access to such  
12 programs for low-income couples. In addition, we  
13 need nonstigmatizing ways for couples to obtain  
14 assistance before their marriage is on the verge  
15 of a breakdown.

16 We need to support a culture of marriage  
17 and commitment to children not by penalizing  
18 those who falter, but by supporting those who  
19 venture down those challenging paths.

20 Because those who seek divorces must  
21 pass through the judicial system, the courts can  
22 provide programs designed to aid all family  
23 members. No one reform standing alone may be  
24 successful.

25 It is important that the range of

1 services I recommend be provided together. These  
2 services include mandatory parenting education  
3 programs, support groups for children, mediation  
4 or other reconciliation services, mandatory  
5 parenting plans, and expedited proceedings.

6 In addition, the responsibilities of  
7 attorneys in family law cases should expressly  
8 include consideration of the interests of the  
9 children involved.

10 Judicial selection and assignment should  
11 be designed to encourage continuity and  
12 expertise. Finally, I join others here today in  
13 urging the Legislature to encourage, at least in  
14 experimental form, unified family courts systems.

15 Parenting education programs usually  
16 include education about the legal process of  
17 separation and divorce as well as its financial  
18 and emotional impact on parents and children.

19 These programs focus on how parents can  
20 help children cope with the major changes in  
21 their family life, evaluation of existing  
22 programs -- and there are many across the country  
23 that we could look at to choose from -- show that  
24 they increase problem solving skills, reduce  
25 relitigation rates, and direct parents away from



1       damaging custody battles.

2               These classes may also aid the great  
3       number of persons who file for divorce and  
4       custody pro se. The State Legislature should  
5       require all local courts to develop a mandatory  
6       parenting education program and provide adequate  
7       funding to reach all divorcing parents.

8               Support programs for children can be  
9       based in schools, courts, or other communities  
10       centers. These programs help children learn that  
11       they're not the only ones going through this  
12       difficult process, help them recognize and work  
13       through upsetting issues, develop coping  
14       strategies, and help improve parent-child  
15       communication.

16               The Legislature should provide the  
17       funding for local governments, school districts,  
18       courts, and nonprofit community groups to  
19       establish these programs.

20               I'm going to speak particularly to  
21       mediation. But I believe that the comments by  
22       Ms. McFadden, there are different models that can  
23       accomplish the same thing.

24               Mediation involves a mutual third party  
25       who encourages parties to settle their dispute.

1 They help parents identify the issues that must  
2 be resolved, vent their emotions, clarify what is  
3 most important to them, and find points of  
4 agreement between them.

5 A mediator can also raise concerns of  
6 children that parents should address in their  
7 settlement. Mediation emphasizes cooperative  
8 decision making, just the kind of decision making  
9 that parents need to benefit their children after  
10 divorce.

11 Pennsylvania should require divorcing  
12 parents to engage in comprehensive mediation  
13 unless there are domestic abuse or other  
14 allegations that might make mediation  
15 inappropriate.

16 And once again, as particularly we heard  
17 from Judge Panepinto, the courts need funding to  
18 be able to do this. Another device for helping  
19 parents focus on their parenting responsibilities  
20 that I believe Pennsylvania should test are  
21 mandatory detail parenting plans.

22 These can be used in conjunction with  
23 other mediation or an adjudication of custody. A  
24 parenting plan requires parents to submit either  
25 jointly or individually a detailed plan for

1 residential care, decision making authority,  
2 transportation, and other needed services such as  
3 health care.

4 They appear to be promising when used in  
5 conjunction with parent education programs and  
6 mediation, and we should experiment with them in  
7 several jurisdictions across the state.

8 Specifically with regard to custody law,  
9 I do believe that Pennsylvania should retain its  
10 current standard for custody, which is the best  
11 interests of the child.

12 However, motions for custody  
13 modifications I do not think should be decided by  
14 the best interest standard. Currently people can  
15 relitigate the issue of custody immediately and  
16 constantly.

17 Instead, I believe that we should modify  
18 custody arrangements only when there has been a  
19 material change in circumstance. And judges  
20 should be vigilant to ensure that modification  
21 petitions are not used as forms of harassment.

22 Finally, childrens' economic status is  
23 often reduced dramatically after divorce. And  
24 many children are placed at risk by postdivorce  
25 economic hardship.

1            Pennsylvania must ensure that its  
2 child-support guidelines are adequate to actually  
3 care for children and that child support is  
4 actually collected.

5            Children's needs may also properly be  
6 part of the property distribution considerations,  
7 which right now they are not. Long-term spouses  
8 who have primary child care responsibility during  
9 marriage should also be entitled to a portion of  
10 their spouse's future income where they have  
11 foregone employment or educational opportunities  
12 to raise children and support their spouse's  
13 career.

14           I hope the Committee finds these  
15 recommendations helpful. They focus on reducing  
16 parental conflict, increasing financial stability  
17 for families with children, and encouraging  
18 parents to work together cooperatively. Thank  
19 you.

20           CHAIRPERSON COHEN: Thank you,  
21 Professor Glennon. This is indeed a  
22 comprehensive analysis, and we'll certainly  
23 further study everything that's in here. We  
24 appreciate your summarizing your report. Does  
25 any Member of the Panel have any questions?

1           REPRESENTATIVE MASLAND: If we do have  
2 time, I'll just ask real briefly, the mandatory  
3 aspect of mediation, obviously, there's pros and  
4 cons. You can lead a horse to water, but you  
5 can't make it drink. Do you believe that it  
6 should be and can be successful if mandatory?

7           MS. GLENNON: There is definitely a  
8 dispute in the literature about whether mediation  
9 should be mandatory. And possibly because we're  
10 starting from a stage where so few people go into  
11 mediation to begin with, that we might want to  
12 start by offering it not as mandatory.

13           But I think that even if it doesn't  
14 work, being forced to sit down and identify the  
15 areas of disagreement which often winds up being  
16 a function that the masters do anyway is a useful  
17 process because then the hearing, if there is an  
18 adjudication, can focus on exactly what is in  
19 dispute so that it can at least identify where  
20 parents agree and where they disagree.

21           REPRESENTATIVE MASLAND: I would agree  
22 that we need to try to expand the use of  
23 mediation to begin with before forcing it on  
24 everybody, especially in custody cases where that  
25 could be very counterproductive. Thank you.

1                   CHAIRPERSON COHEN: Thank you,  
2 Professor Glennon. We certainly appreciate your  
3 being here. The next person to appear before us  
4 is Debra Rubin, Program Manager, Womens' Law  
5 Project. Good morning. Thank you for being  
6 here.

7                   MS. RUBIN: Good morning. I thank you  
8 very much for allowing me this opportunity. My  
9 name is Debra Rubin, and I am the Manager of the  
10 Telephone Counseling and Referral Service of the  
11 Womens' Law Project.

12                   I did provide my testimony copies -- 75  
13 copies, actually. The Womens' Law Project is a  
14 public interest, legal organization devoted to  
15 advancing the status and opportunities of women  
16 through high-impact litigation, public education,  
17 and advocacy.

18                   In the past 24 years, the agency has  
19 developed strong ties with the political, legal,  
20 and social services communities in the City of  
21 Philadelphia and throughout the State of  
22 Pennsylvania.

23                   As the Manager of the Law Project's  
24 Telephone Counseling and Referral Service, I  
25 supervise counselors who field approximately

1 7,000 inquiries per year, the majority of them  
2 regarding family law matters.

3 I have two main points I'd like to  
4 discuss today. No. 1, there is a massive  
5 shortage of attorneys throughout Pennsylvania to  
6 represent low- and middle-income people in family  
7 law matters.

8 Clearly, we need more family law  
9 attorneys. In addition, we need a system  
10 established in each county in Pennsylvania that  
11 enables people to represent themselves in family  
12 law matters.

13 Individuals have a constitutional right  
14 to access the courts, but many are unable to  
15 access this right because they lack the financial  
16 resources to do so.

17 The second point I'd like to discuss  
18 today is that many judges simply do not follow  
19 the law. Statutes are strong in the  
20 Commonwealth, but some judges exhibit biases and  
21 lack of knowledge in their decision making.

22 The normal judicial mechanism for  
23 correcting erroneous decisions, the appeal  
24 process, is rarely used in family courts because  
25 of the scarcity of family law attorneys and the

1 very high cost of appeals.

2 Before I elaborate on the above points,  
3 let me illustrate how our express concerns play  
4 out in a family's life. I would like to  
5 introduce you to Sharon. Sharon is a composite  
6 of a woman calling our service.

7 Sharon is a mother of three young  
8 children. She has been married to the childrens'  
9 father, Ed, for the past eight years; and their  
10 relationship has been increasingly violent.

11 Sharon recently received a Protection  
12 from Abuse Order. She asked the judge to award  
13 her temporary custody as a part of the protection  
14 order and did not receive it.

15 After she received the protection order,  
16 she immediately filed for custody. Three months  
17 after filing, she had a hearing. She went to  
18 court unrepresented because she could not afford  
19 to pay an attorney and every organization she  
20 called for free legal assistance was unable to  
21 represent her due to a lack of financial and  
22 staff resources.

23 While she had been allowing her husband  
24 to see the children, this was with great fear and  
25 anxiety arising from his threats to take the



1 children away from her.

2 She wants the children to see their  
3 father, and she also wants to follow the law;  
4 however, she is afraid for the safety of herself  
5 and her children.

6 The children are in counseling due to  
7 psychological problems experienced as a result of  
8 witnessing the violence against their mother.  
9 The two older children express fear of their  
10 father.

11 In custody court, Ed was awarded partial  
12 custody. This means he was allowed to see the  
13 children every other weekend and on Wednesday  
14 evenings.

15 When Sharon told the custody judge she  
16 had a Protection from Abuse Order, the judge did  
17 not want to hear about it. She tried to explain  
18 about the violence in the home and how fearful  
19 the children were of their father.

20 She wanted the court to order supervised  
21 visitation. Her request was denied. Sharon then  
22 told the court she was fearful about violence  
23 occurring when her husband picked up and dropped  
24 off the children.

25 The judge became very impatient and said

1 she'd have to work that out for herself. At this  
2 point, Sharon was intimidated and frightened and  
3 did not speak for the remaining time they were in  
4 court.

5 Sharon called the Womens' Law Project  
6 after consulting with a family law attorney. The  
7 attorney, who charges \$150 an hour, said that an  
8 appeal of the custody decision could take two  
9 years and cost at least \$20,000.

10 Sharon could not afford to hire the  
11 attorney. Since she felt that it was only a  
12 matter of time before Ed made good on his threats  
13 to file for full custody, Sharon called the  
14 Womens' Law Project looking for an attorney to  
15 represent her interests in court.

16 The Law Project's counselor explained to  
17 Sharon that due to a scarcity of resources, its  
18 staff attorneys do not represent individuals.  
19 Sharon is distraught over the risks she believes  
20 she and her children now face even though  
21 Pennsylvania's custody statute requires judges to  
22 hear evidence of domestic violence and even  
23 though Pennsylvania case law requires that the  
24 judge make a full and complete inquiry into all  
25 factors relevant to a custody decision. Sharon

1 knows she cannot afford to appeal.

2 Let me use Philadelphia Family Court as  
3 an example. Philadelphia Family Court is a  
4 system that is both overwhelmed by the volume of  
5 pro se litigants and alarmingly underfunded to  
6 move people efficiently through the court system.

7 As the Honorable Judge Panepinto stated  
8 this morning, there are currently over 739,000  
9 individuals in the Philadelphia Family Court  
10 system.

11 This is half of the City's population.  
12 Of that number, only 27,000 have legal  
13 representation. The remaining 712,000,  
14 approximately, individuals must rely on court  
15 personnel to guide them through a confusing and  
16 complicated system.

17 For example, January 1, 1997, to  
18 November 30th, 1997, approximately 8,000 custody  
19 petitions or pleadings were filed. Additionally,  
20 approximately 11,000 Protection from Abuse  
21 Petitions are filed annually in Philadelphia.  
22 Clearly, Philadelphia Family Court desperately  
23 needs to have the financial resources to handle  
24 its caseload.

25 Additionally, more legal service

1 attorneys should be provided. Many of the  
2 individuals going through the court system in  
3 Philadelphia have tried desperately and  
4 unsuccessfully to obtain counsel from a  
5 full-time, year-round legal services community.

6 Even if every family law attorney in  
7 Philadelphia took on one pro bono family case,  
8 there would still be people who would be forced  
9 to represent themselves.

10 To our knowledge, Philadelphia County  
11 and Allegheny County are the only two court  
12 systems in the Commonwealth which allow people to  
13 represent themselves in support, domestic  
14 violence, and custody courts.

15 Philadelphia Court Administrator,  
16 Margaret McKeown, had recently said that 92  
17 percent of the litigants in Philadelphia Family  
18 Court do represent themselves out of economic  
19 necessity, certainly not by choice.

20 For our callers who live in suburban  
21 areas and who need private attorneys to represent  
22 them in custody matters, the only referral the  
23 counseling service can give them is their county  
24 bar association.

25 While we cannot accurately report to you

1 if these suburban callers get attorneys as a  
2 result of such referrals, we do know the  
3 Philadelphia Bar Association simply cannot find  
4 enough lawyers for all the referrals to them.

5 Even if they had enough attorneys, the  
6 high cost of counsel makes this prohibitive for  
7 the people who call us. The sum total of above  
8 stated problems prevents family courts from  
9 carrying its mission. In custody and domestic  
10 violence courts, the effect is to put women and  
11 their children in real danger.

12 Because of resource deficits and  
13 judicial bias, some of the problems that arise  
14 include awarding custody or unsupervised  
15 visitation to a parent when there is evidence  
16 this parent has sexually abused a child, ignoring  
17 evidence of ongoing sexual abuse of a child and  
18 physical abuse, failing to issue clear custody  
19 orders that protect victims from ongoing domestic  
20 violence during the exchange of children, failing  
21 to resolve custody and visitation at least  
22 temporarily through a Protection from Abuse  
23 Order, and failing to include children on PFA  
24 orders.

25 It is imperative that the needs of

1 children and adults who have been victims of  
2 violence are understood by family courts through  
3 competent and sensitive lawyers who can be their  
4 voices and through judges who recognize and  
5 utilize their power to protect these children.

6 Family courts are truly the peoples'  
7 court. They should be provided the same level of  
8 resources as received by other civil law courts.  
9 Pennsylvania families should know they can  
10 resolve their differences in smoothly-operating,  
11 well-funded courts staffed by judges, masters,  
12 and other employees who are proud to be there and  
13 who are fully respected by their counterparts in  
14 other courts.

15 For all the mothers like Sharon in  
16 Philadelphia and other women around the state,  
17 the Womens' Law Project urges the State  
18 Representatives to continue this dialogue and  
19 help the court systems and agencies.

20 You have Womens' Law Project to make the  
21 system work fairly for all our citizens.  
22 Clearly, the most harmed are the poorest. We  
23 look forward to working with you.

24 CHAIRPERSON COHEN: Thank you,  
25 Ms. Rubin. I stated before, we always hear

1 something new even though we thought we've heard  
2 everything.

3 I think the statistics that you've  
4 presented here are astounding to us. I would  
5 like to welcome Representative James from  
6 Philadelphia County who has joined us.  
7 Representative Masland has some questions.

8 REPRESENTATIVE MASLAND: For a change I  
9 guess I should, say, try not to monopolize too  
10 much time. Thank you, Chairman Cohen. Just one  
11 comment. First of all, about many judges simply  
12 do not follow the law? I'm not saying that's not  
13 true; but the solution is not going to come,  
14 unfortunately, from a panel of legislators.

15 I do believe -- and Counsel can correct  
16 me -- that we have talked about on a couple  
17 different occasions encouraging the  
18 administration officers of the Pennsylvania  
19 Supreme Court to institute some kind of  
20 sensitivity training on domestic violence matters  
21 and some matters such as that.

22 And we can't require that. And if  
23 they're not going follow the law -- you're always  
24 going to have judges who are; we understand that.  
25 We bring that to your attention because we think

1       it's important for you to understand the  
2       challenges and the obstacles your constituents  
3       face.

4               And the only other thing I'd say is that  
5       this may be the only hearing we'll have, that any  
6       Committee will have across the Commonwealth of  
7       Pennsylvania where you'll have more than one  
8       person saying we need more lawyers. That just  
9       doesn't happen too often. Maybe it's because  
10      we're in the Bar Association Offices. That might  
11      help.

12             CHAIRPERSON COHEN: And are Members of  
13      the Bar. Any other Members of the Panel have  
14      questions? Thank you again. We certainly  
15      appreciate your very complete report to us, and  
16      we'll utilize all of your suggestions.

17             MS. RUBIN: We ask you to call upon us.  
18      We'd be happy to continue to dialogue.

19             CHAIRPERSON COHEN: I'd like to  
20      introduce Frederick Cohen, Esquire. He's a  
21      Support Master for the Montgomery County Court of  
22      Common Pleas and also a private practitioner.  
23      Welcome.

24             MR. COHEN: Good morning. Thank you. I  
25      thank you for the invitation and the opportunity



1 to be here this morning. I come before you this  
2 morning with a long and rather varied history in  
3 the area of domestic relations.

4 After I was admitted to practice in  
5 1961, I gradually began focusing on the  
6 matrimonial field as a specialization and have  
7 worked in numerous capacities since.

8 I was the Chair of the Philadelphia Bar  
9 Association Divorce Committee in 1980, the year  
10 that the new Divorce Code was enacted. In 1981,  
11 then Chief Justice O'Brien appointed me together  
12 with 33 other members who were newly established  
13 Supreme Court Domestic Regulations Committee.

14 Since that time, I've served as the  
15 Chair of the Pennsylvania Bar Association Family  
16 Law Section; as a member of the board of  
17 directors of DRAP, Domestic Relations Association  
18 of Pennsylvania; as an officer of the  
19 Pennsylvania Joint Family Law Council; and as  
20 President of the Family Law Doris Jonas Freed  
21 Chapter of the American Inns of Court.

22 I'm a fellow in the American Academy of  
23 Matrimonial Lawyers and a fellow in the  
24 International Academy of Matrimonial Lawyers. I  
25 now serve as a Support Master or Support

1 Conference Officer for the Montgomery County  
2 Court of Common Pleas.

3 And I am Of Counsel for the Philadelphia  
4 law firm of Obermeyer, Revin, Maxwell and Hipple.  
5 I'm a member of the Advisory Committee on  
6 Domestic Relations Law for the Joint State  
7 Government Commission which is a bicameral group  
8 enjoying the support of both the Pennsylvania  
9 Senate and the House.

10 I emphasize these organizational  
11 affiliations because it must be abundantly clear  
12 that any opinions I express today are not  
13 necessarily reflective of any of those  
14 organizations, but are rather my individual  
15 ideas, thoughts, and opinions which may or may  
16 not be reflective of those organizations.

17 Now that I've taken up too much of the  
18 time that was allotted to me for substance by way  
19 of my introduction, let me address a couple of  
20 points that I believe may be of significance.

21 We have come a long way in the field of  
22 matrimonial law in large measure due to the  
23 industry interest and commitment of our  
24 Legislators.

25 Today's hearings are an example of that

1 dedication. For all that you have done, I say  
2 thank you. And the issues that I would like to  
3 bring to the table are twofold but at the same  
4 time very much related as both involve achieving  
5 economic justice for the dependent spouse.

6 They are as follows: Use of existing  
7 agencies in coordination and conjunction with  
8 each other. You have in place a Joint State  
9 Government Commission which is the united effort  
10 of both the Senate and the House and which  
11 includes, as I said, an Advisory Committee on  
12 Domestic Relations Law.

13 That group includes representation from  
14 the Legislature, judges from the appellate courts  
15 as well as the trial courts, lawyers from various  
16 communities across the state, and representatives  
17 from other disciplines.

18 As a member, I can vouch for the hard  
19 work and conscientious efforts being exerted by  
20 that Committee. The singular most important  
21 pitch that I can make today is to urge the  
22 continued use of this Committee by the  
23 Legislature.

24 Perhaps where feasible, we could call  
25 upon them to review proposed legislation. As an

1 example of what could and did happen without  
2 prior review, let me briefly make some references  
3 to Act 58 of 1997, which was House Bill 1412.

4 While I recognize that much of that  
5 legislation was necessitated by federal mandate  
6 in order to secure 4-D funding, many of the  
7 provisions could have benefited by prior review  
8 and comment before and after.

9 For example, section 3701 of that Act  
10 dealt with alimony and changed existing law  
11 regarding marital misconduct that occurred after  
12 separation.

13 The prior statute provided that such  
14 postseparation misconduct, quote, Shall not be  
15 considered by the Court. In the new bill, the  
16 "shall not" was deleted and the word, quote, may,  
17 was inserted.

18 That was compounded by section 3702(b)  
19 dealing with alimony pendente lite and spousal  
20 support which provided that all the relevant  
21 factors set forth pertaining to alimony had to be  
22 considered, thereby making the permissive  
23 provisions of fault as in alimony consideration  
24 into a mandatory provision when it came to  
25 alimony pendente lite and spousal support.

1           What a terrible state of affairs. The  
2 public outcry was immediately and loud. In  
3 response, Senate Bill 1087 of 1997 was drafted  
4 and introduced eliminating both those unfortunate  
5 provisions of Act 58. I'm informed, but you  
6 would know better than I, that that bill is  
7 speeding through both Houses.

8           But it is interesting, however, that we  
9 may be left with a dilemma of having those two  
10 undesirable provisions remaining effective law  
11 for the period from January 1, 1998, which was  
12 the effective date of Act 58, until whatever the  
13 time is that we have an effective date of Senate  
14 Bill 1087, which by its terms is prospective.

15           However, Act 58 contains many other  
16 ill-conceived provisions that have yet to rear  
17 their heads; but I'm certain they will. For  
18 example, Section 4342(f) reads as follows:

19           Hearsay exception for proceedings  
20 pursuant to this section, a verified petition  
21 affidavit or document and a document incorporated  
22 by reference in any of them which would not be  
23 excluded under the hearsay rule if given in  
24 person is admissible in evidence if given under  
25 oath by a party or a witness.

1           In other words, any document attached to  
2           a petition or affidavit is not subject to a  
3           hearsay objection even though the preparer is not  
4           presented for cross-examination.

5           The statement of any witness, any  
6           medical report, or any self-serving document can  
7           now simply be attached to a petition or affidavit  
8           and be exempted from a hearsay objection.

9           I must admit, for a practicing lawyer,  
10          I'm truly bothered by such a statutory provision.  
11          Further, I find it particularly bothersome that  
12          we lawyers should be singled out for special  
13          punitive provisions in this support statute.

14          Section 43552 provides a statutory  
15          directive to the Pennsylvania Supreme Court as  
16          follows: The Supreme Court shall by general  
17          rule provide a procedure for the Court or  
18          disciplinary board to deny, suspend, or not renew  
19          the license of an attorney who owes past-due  
20          support in a matter comparable to the procedures  
21          set forth in this section.

22          I would point out that there is no  
23          comparable provisions for other professions such  
24          as doctors, dentists, accountants or what have  
25          you although the Act contains many other

1 provisions which should have been reconsidered  
2 prior to passage.

3 Let me conclude by directing your  
4 attention to section 4305(b)(10) which empowers  
5 a domestic relations section, quote, Without the  
6 need for prior judicial order to issue orders in  
7 cases where there is a support arrearage to  
8 secure assets to satisfy current support  
9 obligations and arrearages by -- and there are  
10 six listings of things they can do, including  
11 seizing periodic or lump sum payments, seizing  
12 judgments or settlements, attaching and seizing  
13 assets that were held in financial institutions,  
14 attaching public and private retirement funds,  
15 imposing liens on property, and directing the  
16 sheriff to levy and sell other real or personal  
17 property. All of this being done without notice  
18 or hearing.

19 In recognition of the horrors that could  
20 flow from the grant of such authority to act  
21 without judicial hearing, subchapter D of the Act  
22 understandably concludes by stating the court and  
23 the domestic relations section shall have  
24 immunity and not be subject to civil or criminal  
25 liability.

1 I suspect that you can tell just how  
2 upset I am and concerned about this portion of  
3 the legislation. That brings us to the second  
4 point in my presenting: Generalizations are  
5 indeed dangerous, but I believe that almost all  
6 of the claims that are subject to litigation in a  
7 domestic relations area are well provided for.

8 Generally, but with some very recognized  
9 exceptions, I believe the public is pleased with  
10 most of the judicial procedures in place to deal  
11 with custody and visitation of children to deal  
12 with the dissolution of the marriage and, yes, even  
13 the division of assets designated as constituting  
14 marital property.

15 The statutory guidelines have gone a  
16 long way to provide predictability and fairness  
17 in dealing with the support of minor dependent  
18 children. So then where is the bulk of this  
19 general public dissatisfaction with the status of  
20 domestic relations law?

21 Well, from my vantage point, it seems  
22 that the only thing left is alimony -- spousal  
23 support and alimony pendente lite for dependent  
24 spouses.

25 Much of the dissatisfaction was resolved



1 when the support guidelines were amended to  
2 provide that alimony pendente lite is to be  
3 treated the same as spousal support.

4 Of course, the guidelines provide that  
5 for parties whose combined incomes fall within  
6 a certain range, spousal support, or APL  
7 payments, are to be calculated on the basis of 40  
8 percent of that difference if there are no  
9 children and 30 percent of the difference if  
10 there are children.

11 That leaves us with but two unaddressed  
12 areas. The first is alimony where there are no  
13 directives whatsoever and it being an area where  
14 judicial decisions are simply all over the place.

15 I am not aware of any two cases in  
16 Pennsylvania where alimony was treated in the  
17 same fashion. This is probably the singular and  
18 most divisive and troubling open issues.

19 The other open area involves those cases  
20 where spousal support and alimony pendente lite  
21 are to be calculated and awarded where the  
22 respective incomes of the parties are in excess  
23 of the ranges provided by the guideline.

24 We now find ourselves in a bit of a  
25 quandary as to the path to take. Two drastically

1 different approaches have arisen as possible  
2 yardsticks to guide the calculation in these  
3 areas.

4 On the one hand, the Superior Court in  
5 Terpak, that court held that the correct approach  
6 would be the application of the guideline  
7 formulas of 30 and 40 percent to APL and spousal  
8 support cases even where the income figures  
9 exceeded the guidelines.

10 On the other hand, the panel of the  
11 Superior Court in Karp calculated the payor's APL  
12 obligation using a combined standard of living  
13 and reasonable needs approach.

14 There are those who argue that the  
15 provisions in Act 58 requiring consideration of  
16 the, quote, factors enumerated for alimony when  
17 confronted with calculating APL has, in effect,  
18 operated as a legislative overruling of the  
19 decision in Terpak.

20 Perhaps that is so; but I suspect that  
21 if such were the effect it was neither a  
22 considered nor an intentional result. So are we  
23 out of the woods with the larger spousal support  
24 and APL cases?

25 Unfortunately, no. The Supreme Court's

1 Domestic Relations Procedural Rules Committee has  
2 met and issued Recommendation 48, which are their  
3 proposed amendments to the Rules of Civil  
4 Procedure 1910.16-1 through 5 recommending to the  
5 support guidelines.

6 In their notes, they specifically  
7 address the conflict between the Terpak approach  
8 and the Karp method. That Committee's conclusion  
9 and recommendation is that the Terpak method  
10 should prevail and that the absolute percentage  
11 approach of Terpak should be applied because they  
12 reason that, quote, the formula itself is not  
13 inherently unfair because it is used only to  
14 establish the presumably correct amount of  
15 spousal support or APL.

16 Lest it be overlooked, this still leaves  
17 us with absolutely no guidance either by any  
18 appellate court decision or by the legislative  
19 directive as to the appropriate approach to  
20 calculate alimony.

21 That tremendously important aspect of  
22 economic resolution in divorce cases is every bit  
23 as up in the air as it ever was. In conclusion,  
24 I would like to once again thank you for the  
25 opportunity to have expressed my views.

1                   CHAIRPERSON COHEN: Thank you very much.  
2 We appreciate your expressing your views, as I  
3 knew you would. I just feel compelled to respond  
4 in general before the other members of the panel  
5 have some questions.

6                   First of all, this is certainly without  
7 making any excuses at all. And I must emphasize  
8 that we -- in a two year term, we as members of  
9 the House get coming across our desk within a  
10 two-year period approximately 5,000 proposed  
11 bills.

12                   Of that number -- and I don't know -- I  
13 don't have in front of me what the numbers are,  
14 how many actually get to be heard in a committee  
15 and, of course, we're not all members of every  
16 committee and certainly even a fewer number get  
17 to the House Floor.

18                   And even if they pass the House they may  
19 not pass the Senate. If they pass both Houses  
20 without amendment -- and many come back for  
21 conference committee amendment -- the governor  
22 doesn't sign all of them and vetoes are not always  
23 overridden.

24                   Having said that, we must become, if  
25 you will, experts in 5,000 different areas, which

1 is obviously a yeoman's task and almost an  
2 impossibility.

3 We rely, however, not only on staff, but  
4 we rely on what some people -- this is a dirty  
5 word -- and that is lobbyist, professionals who  
6 deal in specific matters to advise us on the pros  
7 and/or cons of a particular issue.

8 We worked -- and I was not a participant  
9 in developing House Bill 1412, which became Act  
10 58. But obviously because I'm responsible for  
11 this area, I did work on it with staff.

12 The Bar Association to me personally, I  
13 have to tell you, is incredibly silent. We heard  
14 from none of the areas -- I did not hear from any  
15 of the groups that you've mentioned.

16 Yes, since Act 58 was signed and became  
17 law, I heard from all of these different  
18 organizations complaining, where were you? Where  
19 were they when we were working on this issue when  
20 we were developing the issue? And 1412 was not  
21 new. It's been around for a long time; yet,  
22 nobody approached us.

23 And as I said we rely not only on our  
24 own professional personal experience and staff,  
25 but we rely on the professionals who deal with

1 these issues.

2 We try to be perfectionists. We try to  
3 serve the community, the whole community. Most  
4 of the time, we hope we succeed. We don't often  
5 succeed, and sometimes we even goof enormously.

6 And I think that as you've pointed out,  
7 Act 58 is a huge goof. We're trying to correct  
8 it. But, again, as you've pointed, out there's  
9 going to be a gap. And I don't know how we're  
10 going to deal with the gap once the Senate bill  
11 becomes law.

12 So we take responsibility for what we  
13 do, but we need the community and those that are  
14 professionals in the area to help us out and  
15 adopt these laws that won't create these  
16 problems.

17 MR. COHEN: If I may, my criticism of  
18 Act 58 was not intended as a criticism of the  
19 legislative process that led to the passage of  
20 Act 58. And I would like to correct any  
21 misimpression that I may have created.

22 I use that rather as a springboard, as  
23 a vehicle to try to make the point that perhaps  
24 where feasible for future domestic relations  
25 legislation, it might be helpful to submit that

1 for comment on review to Dave Hostetter and  
2 this -- the Joint Advisory Committee that the  
3 legislature has created.

4 I mean, it seems to me -- and I have not  
5 even spoken to Mr. Hostetter about this -- that  
6 that may be a natural next step to follow. If  
7 the committee has been created, it consists of  
8 members who propose to have some expertise in the  
9 area.

10 And you have such a massive largess,  
11 what, a 90-page bill, if I remember correctly, to  
12 submit it to them and say, hey, is this something  
13 you guys can run through and point some things  
14 out to us before it goes further? As just once  
15 of the commentary vehicles, it may be helpful.

16 CHAIRPERSON COHEN: I thank you. And I  
17 know I do with my bills always submit them to the  
18 various groups. And you are correct, as a member  
19 of Mr. Hostetter's commission dealing with  
20 adoption, we do work together on these.

21 I might also add that in many instances  
22 we are given mandates in the federal government  
23 and sometimes, if you will, we just have to hold  
24 our nose and do it or we'll lose funding, we'll  
25 lose a lot of other cooperative efforts.

1           So we must comply with the mandates that  
2 we get from the federal government. I believe  
3 Representative Masland has some questions.

4           REPRESENTATIVE MASLAND: Yes. And just  
5 picking up on the last comment, I know some of  
6 the feedback I've gotten since House Bill 1412  
7 was enacted dealt with issues that were mandated  
8 by the federal government. One is the support  
9 lien situation and how much trouble that has  
10 caused all the title searchers across the state.

11           So the other concerns you mentioned, I'm  
12 not sure whether they are specifically some of  
13 the mandates that we're talking about too, but  
14 I'll be happy to look into that along with  
15 counsel and check that.

16           My question though deals with alimony  
17 being all over the place. Don't you think that  
18 that is to a certain extent a function of the  
19 fact that when alimony is awarded it's at that  
20 time in the proceedings where you're also  
21 awarding equitable distribution?

22           And although they are separate issues  
23 they're ultimately related. And perhaps if a  
24 master awards a substantial amount of property to  
25 a spouse, the master may decide that it's not as



1       important to award as much alimony for as long a  
2       period of time. Don't you think that that's one  
3       of the factors?

4               MR. COHEN: I absolutely do. But in  
5       stepping back and trying to look at this area of  
6       the law from an overview -- and perhaps an  
7       oversimplification, it seems in those areas where  
8       we've been able to establish some predictability,  
9       some ability to forecast the likelihood of a  
10      result, we've had comparatively greater peace and  
11      satisfaction.

12              I suspect that the factoring of the  
13      equitable distribution award could still be based  
14      to some formula by simply saying that in  
15      calculating -- for example, if we were going to  
16      be going on a needs basis or a percentage basis  
17      that amount which would be awarded in alimony,  
18      the trier of fact should attribute a reasonable  
19      return on any funds or assets that were awarded  
20      as part of an equitable distribution award.

21              I bring to the table from my experience  
22      the fact that I know that Mr. Hostetter's  
23      committee is working diligently. As a matter of  
24      fact I know they're meeting this coming Monday on  
25      a proposal to submit to the legislature to give

1 some predictability to the calculations of  
2 alimony.

3 For example, if we have in place  
4 guidelines which have flaws and faults, what have  
5 you, but for the most part have reached a  
6 wonderful acceptance, maybe some approach such as  
7 that, at least for the bulk of the cases those  
8 cases where they can't afford high-priced lawyers  
9 to litigate but within the range, maybe within  
10 the same range of the guidelines, could be  
11 something that could be of benefit.

12 And I believe you're going to get  
13 confronted with that suggestion or recommendation  
14 at least.

15 REPRESENTATIVE MASLAND: If I might, as  
16 you were talking, it struck me that there could  
17 be analogy of types with criminal sentencing.  
18 There are basically guidelines. And if the judge  
19 deviates from those guidelines with a mitigating  
20 or aggravating sentence, they need to put on the  
21 record why it is aggravating or why they're  
22 deviating from the guidelines.

23 So I guess the same could be done and  
24 the master if say we are deviating from this I  
25 guess because of the equitable distribution.

1           MR. COHEN: Exactly the message that I'm  
2 trying to convey because I think that's the one  
3 hole, the one big gap that has remained in the  
4 whole area. We have some guidance, some  
5 predictability, some rules. Whether they're  
6 working as well as we would like them to or not  
7 is a different issues.

8           But we have them in every area except  
9 alimony where we have none. And you have some  
10 counties in this state where the triers of fact,  
11 the masters and the judges, just don't believe.  
12 They will not award alimony. And they give a  
13 little bit more in equitable distribution or  
14 something, but they won't award it.

15           And you get other counties which have  
16 fixed policies of percentages that are already in  
17 place as a county policy and they're doing it.  
18 And whereas throughout the state you have some  
19 uniformity in child support and spousal support  
20 and equitable distribution, the one place where  
21 you don't is the alimony gap.

22           REPRESENTATIVE MASLAND: Thank you.

23           CHAIRPERSON COHEN: Thank you  
24 Representative Josephs.

25           REPRESENTATIVE JOSEPHS: For the record,

1 talking again about the bill that you criticized,  
2 during the debate on the Floor, two members at  
3 least of the Minority Party got up and talked  
4 about these problems; but the Majority Party  
5 didn't want to listen and it was passed. Thank  
6 you, Madam Chairman.

7 CHAIRPERSON COHEN: Thank you, Mr.  
8 Cohen. We certainly appreciate your --

9 MR. COHEN: Thank you very much.

10 CHAIRPERSON COHEN: Thank you. The last  
11 person on our list is Joni Berner, an attorney in  
12 Philadelphia with the firm of Berner and Klaw.

13 MS. BERNER: Good morning. A few days  
14 ago, I learned both that I would be the last  
15 speaker this morning and I learned who else would  
16 be speaking to you this morning. And, frankly,  
17 it was a tremendous relief to me because I knew  
18 that you would be hearing in great detail about  
19 the most critical problems about family court.

20 And I therefore planned my testimony to  
21 cover two points that I thought would be summary  
22 points and two points that I thought would not be  
23 covered because they're quite specific.

24 In the 20 years that I've been  
25 practicing family law, I have come to a

1 conclusion -- and I think that the conclusion has  
2 been reached by many people who we've heard from  
3 today -- that it is a time now to rethink how we  
4 handle interfamily disputes.

5 We have tried to squeeze very complex,  
6 very personal family problems into our common law  
7 adversary system and it doesn't work very well.  
8 It doesn't work because the adversary system has  
9 a winner and a loser.

10 And in family law, we necessarily share.  
11 We share assets. We share debt. We share  
12 responsibility for kids. We share the joys and  
13 burdens of being parents.

14 There is no winner and loser. It's very  
15 conducive to a mediation model because of that  
16 opportunity for win/win results, but it's not  
17 good for a win/lose structure. Also, it  
18 is -- except for to lawyers, it is a ponderous  
19 system. It is confusing to even very intelligent  
20 lay people.

21 It has archaic rules and methods that  
22 frustrate and confuse people. And the result is  
23 that the procedure, no matter what the result is,  
24 the procedure is sometimes so confusing, so  
25 offensive that clients are unhappy. Constituents

1 feel they have not had a fair shake because they  
2 didn't understand the rules.

3 We've heard this morning already about  
4 the great expense of trying to fit these problems  
5 into an adversary system. I'm inspired by the  
6 millennium and think this is a great opportunity  
7 for us to rethink how we're doing it.

8 How do we do that? This is a good  
9 example of a way to brainstorm. Let's bring  
10 together members of the legal community, the  
11 health -- mental health community, community  
12 leaders in general.

13 Bring them together to brainstorm about  
14 a better way to do it, a better way to synthesize  
15 all of the many problems, very diverse problems  
16 that we must face in family court.

17 The second observation I have reached  
18 is a variation on the need for consolidation of  
19 resources in family court, and that has to do  
20 with the timing. I am confident that early  
21 intervention by the judicial system will be  
22 extremely helpful in resolving family problems.

23 Right now, our constituents see judges  
24 at the end of the process rarely at the beginning  
25 and never at the beginning unless it's an

1 emergency.

2 If we had a system that allowed very  
3 trained family court personnel in the beginning  
4 of the process to triage, form a triage of each  
5 family situation and then also have available  
6 resources, more resources than we have now to put  
7 together a tailored plan for each family, I  
8 believe that we would see much less litigation,  
9 much less fragmentation.

10 Now, some of the resources that I think  
11 are necessary have been mentioned again today.  
12 Parental education. I too am a trained mediator,  
13 and I have learned that so often many problems  
14 involved in a relationship breaking up can be  
15 well addressed by educating people.

16 The custody alone, defining the terms  
17 usually takes care of a large percentage of  
18 peoples' problems because they don't understand  
19 what the term custody means. They don't  
20 understand that custody is not a black and white,  
21 win and lose situation in the vast majority of  
22 cases.

23 I view parental education early on as a  
24 very important resource that is now not available  
25 in most systems, certainly not available in

1 Philadelphia.

2 The counties where parental education is  
3 necessary or does exist, excuse me, has a modest  
4 fee \$50 per person in the counties around here.  
5 That price is unaffordable for most of the people  
6 who come to the Philadelphia system.

7 And because of that, because of the  
8 financial burden of producing such a program, it  
9 can not be considered in a community of this  
10 size. And it should be.

11 Because of the difference and diversity  
12 between Philadelphia and other counties in the  
13 Commonwealth, I agree, as has been said earlier,  
14 that there is no one solution to how all  
15 counties' systems should work, nor is there one  
16 solution to how all family problems should be  
17 addressed.

18 But to determine that in the beginning  
19 is certainly far smarter than to wait until a  
20 family has gone through a variety of court  
21 appearances, a variety of interventions from  
22 other sources to find out that there has been no  
23 coordination and, indeed, maybe some inconsistent  
24 services and results.

25 Libby Bennett spoke about the judicial



1 team concept, the one family/one judicial team  
2 concept. I also view that as essential to  
3 efficient resolution and to client satisfaction.  
4 Judge Panepinto talked about the form of one  
5 judge/one family we have in Philadelphia.

6 The Consolidated Case Management  
7 Program, which is an attempt, an initial attempt;  
8 but it does not work. It does not work because  
9 we have 11 judges available and at the same time  
10 we have 700,000 cases.

11 When I became a lawyer 20 years ago,  
12 Philadelphia Family Court had 22 judges assigned  
13 to it out of the almost 100 judges that the first  
14 judicial district had.

15 To date, 20 years later, we have 22  
16 judges assigned to family court. In the interim,  
17 not only has the population grown, not only has  
18 certain social problems become much worse, we  
19 have developed a whole new legal system under the  
20 Protection from Abuse Act that did not exist 20  
21 years ago.

22 And even with all of the huge numbers  
23 associated with that, some over a thousand  
24 filings each month, we have had no additional  
25 judicial resources.

1                   So while one judge/one family  
2                   Consolidated Case Management Program is an  
3                   attempt to be responsive to a -- an outcry for  
4                   this kind of personal service, it certainly is  
5                   not -- does not work today.

6                   Now, the third point I wanted to make,  
7                   which is not unrelated to what I have said before  
8                   but is much more specific, is that I find myself  
9                   telling private clients time and time again  
10                  apologetically that custody and support matters  
11                  are not addressed by our system at the same time  
12                  and yet often the connection is obvious and  
13                  frustrating to try to address.

14                  The three points that I listed under  
15                  here are all anecdotes from my own clients. And  
16                  these are not -- these are families who tried to  
17                  resolve matters without litigation who were very  
18                  concerned about attorneys' fees and nonetheless  
19                  found themselves litigating because no one part  
20                  of the court could address this.

21                  In the first situation, there was  
22                  a -- the issue was how to handle the very  
23                  expensive cost of having a sick child cared for  
24                  when the custodial parent had to go to work and  
25                  the child was sick and the other parent also had

1 to go to work but the child was sick and that was  
2 not part of the routine child care coverage.

3 It's very expensive. This child was not  
4 even particularly unhealthy; but the costs were  
5 exorbitant, the parties couldn't agree, and we  
6 ended up trying to resolve that in support -- in  
7 the support area without success.

8 We tried to resolve that in the custody  
9 area without success, and it was a very  
10 frustrating situation which easily could have  
11 been addressed if one fact finder could hear all  
12 things.

13 Very similarly, we had an even more  
14 frustrating situation where the custodial parent  
15 moved to New Jersey, moved from Philadelphia to  
16 New Jersey.

17 The father worked in Philadelphia, had  
18 health insurance -- a good health insurance plan  
19 through Philadelphia but refused to make the  
20 necessary adjustments so that mom and the kids  
21 could have coverage in New Jersey; instead  
22 insisted that they continue to come to  
23 Philadelphia doctors.

24 This family did include a very sick  
25 child, and it was quite burdensome. We

1       approached the custody judge on that and he said  
2       oh, no, no, no. This is a support matter. You  
3       must take it there.

4               We approached the support many, many  
5       months later, a support judge on that issue who  
6       said ultimately that -- that as long as dad was  
7       providing insurance, which is what the support  
8       statute requires him to do, then the court could  
9       not second-guess the quality of that insurance  
10      and could not give the custodial parents, the  
11      nonemployed spouse, any input in the choice of  
12      the health care.

13             That was even appealed to the Superior  
14      Court because we felt that was such an important  
15      oversight in the separation of these two areas of  
16      law. The Superior Court was not helpful. At  
17      least we did not make bad law.

18             They rejected our position in a panel  
19      decision that does not have presidential weight,  
20      but very frustrating and very expensive for that  
21      client.

22             And then finally, we find ourselves  
23      litigating more often than I wish were true the  
24      way in which to handle child care expenses for a  
25      custodial spouse.

1           It is very routine and acceptable that a  
2           custodial parent who chooses not to work is a  
3           assigned an earning capacity, often a modest  
4           earning capacity, often a realistic earning  
5           capacity; but the additional step is not taken.

6           Hypothetically, if mom goes back to  
7           work, she will have a child care expense which  
8           will be often quite high. That part is not  
9           considered in the routine treatment of these  
10          cases.

11          And depending on the numbers and the  
12          flukiness of the guidelines, it can make a  
13          significant difference and there is no solution  
14          but litigation.

15          Those three issues I recognize as I say  
16          them and in light of all that's gone before sound  
17          relatively petty and trite in considering all the  
18          global issues that are here. I raise them though  
19          because I find time and time again intersection  
20          of custody and support matters, that simply is  
21          not addressed in our system.

22          My fourth observation is also an example  
23          of the interrelationship of custody and support  
24          issues. Our custody system is based on enforcing  
25          for the noncustodial parents the partial custody

1 or visitation schedule that is awarded.

2 That creates a minimum amount of time  
3 that the noncustodial parent sees a child, and  
4 the custodial parent must comply with that.

5 There is, however, the reverse is not true. The  
6 custodial parent cannot require the noncustodial  
7 parent to exercise visitation and partial custody  
8 rights.

9 I learned about a case maybe 15 years  
10 ago out of the Common Pleas of Philadelphia. And  
11 I had heard anecdotally that Judge Rosenberg,  
12 Edward Rosenberg, a very esteemed, experienced  
13 member of our court once did indeed find a  
14 noncustodial parent in contempt of a custody  
15 order because she -- it would happen to be the  
16 mom who was the noncustodial parent -- did not  
17 exercise the partial custody rights that she had  
18 won at great expense to both parties in a long  
19 and bloody battle.

20 That is a fluke. And for the most part,  
21 parents cannot require the other parent to see  
22 the kids. This is controversial. What I'm  
23 saying is controversial; but it is true that  
24 children suffer when noncustodial -- when they  
25 don't have both parents.

1           Dr. Davis, the first person who  
2 testified before you this morning noted a -- the  
3 phenomenon which indeed is true that child  
4 support compliance with child support orders  
5 increases when the noncustodial parent has  
6 regular and significant access to a child through  
7 a custody order.

8           I see these two concepts as being  
9 interrelated, that children certainly do better  
10 when they are -- when they see both parents.  
11 Children do better when they know that dad or the  
12 noncustodial parent, even though absent, cares  
13 enough to spend child support. All of those  
14 concepts are interrelated.

15           There is also a financial component -- a  
16 financial harm to the custodial parent when the  
17 noncustodial parent does not exercise partial  
18 custody rights. This is another issue that I  
19 have found in my private practice is being  
20 litigated more and more and more.

21           It's obvious that most families intact  
22 or separated require that both parents work. And  
23 when that happens, often the noncustodial -- the  
24 custodial parent relies on the noncustodial  
25 parent to exercise custody visitation rights

1       because it's -- and to take advantage of that  
2       time to do other things, often work.

3               When the noncustodial parent does not  
4       honor that order and does not make that  
5       commitment, in addition to the devastation to the  
6       child, it has an obvious financial impact on the  
7       custodial parent either in the form of lost work  
8       or additional child care. And, again, because of  
9       the fragmentation of our system, that is not  
10      something that can be addressed.

11              In summary, I encourage you to recognize  
12      that this is a new system, a new society. And it  
13      is really incumbent upon the Legislature to  
14      rethink the old-fashioned way we have handled  
15      things, to look for other resources in the  
16      community to work closely with the court so that  
17      the services provided to families can be more  
18      meaningful, more accessible, more timely than  
19      they have it now. Thank.

20              CHAIRPERSON COHEN: Thank you,  
21      Ms. Berner. We certainly appreciate your being  
22      here. I've been advised that Members of the  
23      House -- the Representatives don't have  
24      questions. We will certainly take your  
25      suggestions under advisement. They've been very



1 helpful.

2 I'd like to make some closing remarks  
3 and clear the record based upon a statement that  
4 was made a bit earlier. First, I want to thank  
5 all of the participants that have been here  
6 today.

7 I notice that there are people sitting  
8 in the room that were not scheduled to speak to  
9 us and some are familiar faces. Some of us have  
10 testified before this Task Force before, and  
11 certainly any written comments are welcome.

12 Secondly, Mr. Cohen, I think that there  
13 was a statement made to you and I want to clear  
14 the record; and in doing so, I think that I have  
15 to further introduce those of us that are sitting  
16 here. We did introduce those of us that are  
17 sitting up here when we started at 9:00 this  
18 morning.

19 We as Representatives of the  
20 Pennsylvania House are all members of the House  
21 Judiciary Committee. Representative Caltagirone  
22 is the Minority Chair of this Committee. The  
23 Speaker asked that this Task Force on Domestic  
24 Relations be appointed.

25 There are three members of the majority

1 party; that is, I was appointed as the Chairman,  
2 Representative Masland from Cumberland County and  
3 Representative Feese from Williamsport, who is  
4 not with us today.

5 Additionally, Representatives Petrarca  
6 and Walko are members of the Task Force from  
7 Allegheny County from the western end of  
8 Pennsylvania. They are not here today.

9 Representative Josephs and  
10 Representative James are Members of the Judiciary  
11 Committee. They are not members of this  
12 particular Task Force. It is my custom, however,  
13 to invite all members of the Judiciary Committee  
14 to all of these hearings to participate as they  
15 desire.

16 Mr. Cohen, I have to tell that you House  
17 Bill 1412 came before the entire House of  
18 Representatives. If you will check the record,  
19 the vote was a bipartisan vote. It was not  
20 initiated, discussed, nor voted in any kind of  
21 partisan manner.

22 The hearings that I conduct, it is my  
23 opinion that all of us as Representatives go  
24 about our duties and our charges for the benefit  
25 of all the citizens of the Commonwealth of

1        Pennsylvania.

2                    As I mentioned in my introduction, I  
3 believe that the issue of divorce is obviously an  
4 unpleasant issue and by the time people approach  
5 attorneys and approach the court system, it is  
6 apparent that there has been a breakdown in a  
7 relationship.

8                    It is painful; and we as legislators  
9 will do our best to ease the burdens on everyone,  
10 the participant, and as I said, especially the  
11 children and certainly the financial burdens that  
12 are experienced when people enter the system and  
13 take part in the process.

14                    I want all of you to know that we do our  
15 work in your best interest and not in a  
16 bipartisan manner. The comment that was made  
17 that votes in this issue and this particular vote  
18 on 1412 was taken in a partisan manner are simply  
19 not true, and I want to clear the record.

20                    Again, I thank all of you for being  
21 here; and this hearing is adjourned. Thank you.

22                    (At or about 11:59 a.m., the hearing was  
23 adjourned.)

24

25

## C E R T I F I C A T E

1  
2  
3 I, Deirdre J. Meyer, Reporter, Notary  
4 Public, duly commissioned and qualified in and  
5 for the County of York, Commonwealth of  
6 Pennsylvania, hereby certify that the foregoing  
7 is a true and accurate transcript of my  
8 stenotype notes taken by me and subsequently  
9 reduced to computer printout under my  
10 supervision, and that this copy is a correct  
11 record of the same.

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

15 Dated this 6th day of April, 1998.  
16  
17

18 *Deirdre J. Meyer (JB)*  
19

20  
21 Deirdre J. Meyer - Reporter  
22 Notary Public  
23  
24  
25