

HOUSE OF REPRESENTATIVES
COMMONWEALTH OF PENNSYLVANIA

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HEARING ON CUSTODY, FAMILY COURT REFORM AND
ECONOMIC JUSTICE FOR DEPENDENT SPOUSES

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House Judiciary Committee
Task Force on Domestic Relations

Council Chambers
Borough of Edinboro
124 Meadville Street
Edinboro, Pennsylvania

Monday, August 24, 1998 - 1:00 p.m.

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BEFORE:

Honorable Lita Cohen, Majority Chairperson
Honorable Brett Feese
Honorable Don Walko

IN ATTENDANCE:

Honorable Tracy Seyfert

ORIGINAL

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ALSO PRESENT:

Karen Dalton, Esquire
Majority Counsel

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1 CHAIRPERSON COHEN: Good afternoon.
2 Welcome to this hearing. I am Lita Cohen. I'm
3 the State Representative for Montgomery County,
4 and I am the Chair of the Domestic Relations
5 Task Force of the Pennsylvania House of
6 Representatives.

7 We have been studying the issue of
8 divorce and divorce reform for four years; two
9 sessions. We started this project during the
10 last legislative session, studying the issue of
11 no fault divorce and whether or not we should
12 repeal provisions of no fault in our code.

13 It became clear to us that we will --
14 we should, in fact, in Pennsylvania maintain
15 the provisions of no fault divorce. However,
16 in our studies what we determined was that,
17 there were other areas of the divorce issue
18 that needed reform: Custody, family court,
19 procedures, and certainly equitable
20 distribution and economic justice for dependent
21 spouses.

22 We, therefore, during the last two
23 years of this legislative term have been
24 investigating, holding public hearings
25 throughout the Commonwealth, as well as taking

1 written testimony, meeting with people, court
2 administrators, justices, not only in
3 Pennsylvania -- And when I say justices, I mean
4 starting with our Pennsylvania Supreme Court
5 going through the different phases and, of
6 course, speaking with the judges that are
7 dealing with these matters on a direct basis;
8 that is, our local Common Pleas judges who
9 actually have hands-on experience and really
10 serve the nitty-gritty of this issue.

11 We've gone to other states and
12 investigated to see how other states handle
13 these different matters. We hope, and as I
14 said, we've had hearings throughout the
15 Commonwealth and this is just another here in
16 Edinboro, another in the series of hearings
17 that we've been holding. We hope to come up
18 with something which will make this a very
19 sensitive and unpleasant emotional area that
20 affects so many people. We hope to come up
21 with the world's most perfect legislation.
22 Obviously, we can't.

23 One particular judge that we
24 interviewed told us that, when everybody goes
25 away angry, he feels that he's done his job

1 correctly. So, we realize that this is a
2 unique area of the law, particularly because it
3 so directly affects people's lives and it
4 brings with it so many emotional as well as
5 economic issues.

6 I want to thank Representative
7 Seyfert for her hospitality in inviting us
8 here.

9 What I would like to do is first
10 have -- introduce everyone that's sitting up
11 here. Let them introduce themselves. But, I
12 must give special thanks to our stenographer
13 and certainly to our video crew who came up
14 here to Edinboro; and my most thanks of all,
15 not only to our Judiciary Chief Counsel, Brian
16 Preski, but to Karen Dalton who is the Chief
17 Counsel to this task force, who for the past
18 four years has really worked 36 hours every
19 day, eight days a week on this issue. So,
20 we'll start on my left with Representative
21 Feese.

22 REPRESENTATIVE FEESE: Thank you,
23 Madam Chairman. Representative Brett Feese
24 from Lycoming County.

25 CHAIRPERSON COHEN: Thank you. And

1 Karen.

2 MS. DALTON: Karen Dalton, counsel
3 for the task force.

4 CHAIRPERSON COHEN: With that, I'll
5 turn this over to our host for this particular
6 hearing, Representative Tracy Seyfert; and
7 again, our thanks for your hospitality here.

8 REPRESENTATIVE SEYFERT: My pleasure
9 to have you here. Good afternoon, and I would
10 like to extend an official warm welcome to
11 Chairman Cohen and the members of the House
12 Judiciary Committee Task Force on Domestic
13 Relations.

14 Welcome to Edinboro and the fifth
15 legislative district. As you know, the fifth
16 legislative district is the furthest north and
17 west you can go in Pennsylvania and still be in
18 Pennsylvania; so we're delighted to have you
19 here. I hope that you'll find your visit to
20 our community enjoyable and productive.

21 Today the task force will be
22 considering the important topics of child
23 custody, family court reform, and achieving
24 economic justice for dependent spouses. Each
25 of these subjects literally hits home when

1 there is a domestic dispute and divorce; each
2 is emotionally charged.

3 Determinations of child custody
4 affect children and their parents for the rest
5 of their lives. As a former member of the Erie
6 County council, I had the opportunity almost on
7 a daily basis to observe the operations of our
8 family law system. And I have also encountered
9 the family court process in my profession as a
10 licensed psychologist. Through these
11 experiences, I have seen firsthand just how
12 crucial it is for family court to run smoothly,
13 to resolve cases expeditiously, and to help
14 families in crisis.

15 I express my thanks again to Chairman
16 Cohen and the members of the Task Force on
17 Domestic Relations for coming here and for
18 addressing these issues which affects so many
19 of Pennsylvania families.

20 The family is the central element and
21 the basic institutional unit of our society of
22 this Commonwealth of our community; and we, as
23 legislators, must do all we can to preserve,
24 protect, and promote every family's well-being.
25 Thank you.

1 CHAIRPERSON COHEN: Thank you,
2 Representative Seyfert. With that, we will
3 start our proceedings. I think that all of you
4 that have been asked to make a presentation
5 today--and obviously there are some people who
6 won't have time to, who are not scheduled to
7 actually make the presentation--we have been
8 and will continue to receive written testimony
9 from anyone who has not had the opportunity and
10 will not have the opportunity to actually make
11 a presentation today.

12 We'll start with the Honorable Robert
13 Fischer, a judge of the Family Division, Erie
14 County Court of Common Pleas. Welcome, Judge
15 Fischer. And I understand that Judge Stephanie
16 Domitrovich will also be making a presentation
17 as well. Welcome and thank you so much for
18 taking the time to give us your first-hand
19 experience on this issue.

20 HONORABLE FISCHER: Chairman Cohen,
21 Representative Feese, Representative Seyfert,
22 Attorney Dalton, thank you for giving me this
23 opportunity to speak to you today. At the
24 suggestion of Attorney Dalton, I had prepared
25 written remarks for you or a summary of my

1 remarks. And in those, at her suggestion also,
2 I outlined the makeup of our court.

3 I will say at this point that I am
4 one of the four judges of the family division
5 of the Erie County Court of Common Pleas, and
6 I'm pleased to see that Judge Stephanie
7 Domitrovich, who was just recently moved out of
8 that division but had spent a considerable
9 period of time specializing in the area of
10 divorce, is here and may be able to address
11 what you've shown a legitimate interest in on
12 the question of equitable distribution. She is
13 the expert in that field as far as our court is
14 concerned, and I'm grateful that she's here.

15 I would like to comment on four areas
16 of the law as it applies to the courts and the
17 jurisdiction that you're operating under as I
18 understand it.

19 The first has to do with divorce.
20 And as I've stated in my outline to you, it is
21 the suggestion of many of us that deal in this
22 area that the two-year limitation prior to a
23 divorce being granted that presently exists be
24 reduced to a one-year period, primarily because
25 of the impact that the delay has upon children

1 of the marriage and the impact it may also have
2 on support, on alimony, and on custody.

3 Although that's a minor issue on
4 custody, but the longer that the marriage
5 continues, the more difficult we see the
6 situation develops in resolving the problems
7 between the parents because they have
8 continuing difficulties over equitable issues,
9 distribution issues, and monetary issues. And
10 that impacts greatly upon their willingness to
11 cooperate in custody matters as well.

12 In the divorce area as well, I've
13 requested that you consider the counseling
14 that is mandated under the statute, and I've
15 cited the section in my written remarks. I
16 won't do it here; but the counseling that is
17 presently mandated in divorce cases be made
18 discretionary with the judge who is hearing the
19 case based upon the facts as that case comes
20 before it.

21 Too often we find that mandated
22 counseling is, unfortunately, used as a method
23 of delay rather than as a legitimate method to
24 try to have the marriage put back together
25 again or saved, and we would like to have that

1 available to the judge on a discretionary
2 basis, rather than requiring it where it does
3 not appear that it will have any benefit
4 whatsoever.

5 Also, in the area of custody, we
6 would hope that the Legislature would authorize
7 judges that handle custody matters to compel
8 the individuals, if the judge feels that it is
9 appropriate, to engage in counseling or
10 mediation and conciliation as well.

11 This is something that we do here in
12 Erie County, but we do it under court rule.
13 And there's a question whether or not -- how
14 far our power goes in that regard. We would
15 like to have that legitimized by statute as we
16 would like to have it legitimized in the
17 divorce area.

18 And we then turn to the protection
19 from abuse area, in that, all of our judges in
20 the family division hear protection from abuse
21 matters both for the initial petition to grant
22 a temporary order and the final order that
23 comes after a hearing. We would like to have
24 the authority to mandate at our discretion that
25 the defendant in that case participate in

1 counseling, both as to anger management or
2 batterer's counseling; some approved type of
3 counseling by an approved individual to assist
4 that defendant from violating the court order
5 or attacking, threatening the victim of the
6 case, and we do not have that authority at the
7 present time.

8 And we believe that it would be
9 beneficial if we were given that authority to
10 try to prevent that sort of thing from
11 happening again. I think all of our judges and
12 any judges throughout the state would feel the
13 same way in that regard.

14 There is one recurring problem that
15 we have in the protection from abuse area where
16 an order has been entered, where there has been
17 a hearing and an order has been entered, and
18 the parties then reconcile. They do not come
19 into court to ask that the order be modified or
20 terminated. They simply reconcile.

21 I've had personally one instance
22 where the parties married after the order was
23 entered in during the one-year period while the
24 protection from abuse order was in effect.
25 Difficulties then arise again between the

1 parties. The victim in the first case, the one
2 who received the order, calls the police and
3 wants to have the other party arrested for a
4 violation of the order. Now, this allows that
5 party to turn the order on and off at the
6 party's whim, and I have suggested here to you
7 that the Legislature either do one of two
8 things; either establish the fact of
9 reconciliation as a defense to a charge of
10 indirect criminal contempt of the protection
11 from abuse order or preferably, frankly, act as
12 a termination of the order as of the time of
13 the reconciliation as determined by a court.

14 It makes no sense to allow this to go
15 on, to have the order in place after the
16 parties have reconciled without them coming
17 into court to have the order changed. And many
18 judges feel that a violation of the order is a
19 violation of the order, even if the parties
20 have reconciled and have been living together;
21 even in the instance where the parties have
22 married after the case. And it seems that
23 that's an unfortunate situation that should be
24 addressed through legislation to allow the
25 courts to deal with it.

1 I'll be frank with you again. When
2 that situation arose with me, and I'm not sure
3 any other judge would do this, I treated the
4 reconciliation in the case that I'm referring
5 to--there was a marriage--as a de facto
6 termination of the order and would not permit
7 the indirect criminal contempt proceeding to go
8 forward and directed that if the victim wished
9 to have the protection of an order, it was
10 incumbent upon her to refile so that the matter
11 could be brought before the court again with
12 the new situation as it had developed, made
13 knowledgeable to the court.

14 That, in essence, Madam Chairman, are
15 the contents of my -- or my remarks to you, and
16 I'd be happy to answer any questions that you
17 might have.

18 CHAIRPERSON COHEN: Thank you, Judge
19 Fischer. That was going to be my first
20 question. Will you answer questions?

21 HONORABLE FISCHER: Certainly.

22 CHAIRPERSON COHEN: I just have one
23 area that I'd like if you could touch on
24 briefly. I understand that here in Erie you
25 have a type of one family, one judge -- one

1 case, one judge rule. Could you explain how
2 you operate that?

3 HONORABLE FISCHER: Well, we approach
4 that. We do not have a true one family, one
5 judge rule. What we do, we have a court
6 administrator, and if a case has been or if a
7 family has received attention previously by a
8 judge and it's deemed appropriate, that same
9 judge will have the new matters brought before
10 it.

11 As I outlined in my presentation to
12 you, we divide our four judges into four
13 principal areas of attention: Juvenile,
14 Orphan's court, divorce, custody, and the
15 fourth judge doing custody and support. I do
16 that. All of the judges back up each other in
17 the other areas. But if a judge deals with a
18 juvenile matter, and there is a tremendous
19 amount of juvenile work as you can well
20 believe; if a judge does juvenile matters and
21 those parties subsequently divorce, it is not
22 likely that it's going to go back to that same
23 judge again. It will go to the judge,
24 previously Judge Domitrovich, to handle the
25 divorce aspects of it.

1 She will undoubtedly be made aware of
2 what has happened previously, but the workload
3 upon the juvenile judges is just too much to be
4 able to ask them to take over custody, support,
5 and divorce as well, at least in our opinion.
6 So that's the case until the present time.

7 We're aware that Allegheny County is
8 attempting to make a true one family, one judge
9 situation work. And we're looking with great
10 interest to see how that happens. And if
11 they're able to do it in a county of that size,
12 there is no question in my mind that we'll be
13 happy to adopt it. We're just not sure that
14 practically we can do it at the present time.

15 There is also the problem of what
16 occurs when a judge transfers out of a division
17 into a new division. We try here to avoid
18 staleness by judges and to increase their
19 awareness of the other areas of the law to
20 rotate judges from one area to another after a
21 period of time. It would be difficult to take
22 a judge like Judge Domitrovich as an example,
23 who has recently been transferred into the
24 trial division where she will have to deal with
25 all civil and criminal matters that would

1 result in a trial, to also continue to handle
2 all of the cases that she would have handled
3 before.

4 I'm afraid that if you go with the
5 true one judge, one family situation, you are
6 going to lock into that area. A judge in
7 perpetuity, so to speak, which would not be
8 necessarily a good thing.

9 CHAIRPERSON COHEN: So you would not
10 recommend legislation mandating such a thing?

11 HONORABLE FISCHER: No. I would be
12 very hesitant to recommend legislation
13 mandating it. The last part of my notes to
14 you urges you not to mandate unless absolutely
15 necessary, and to leave to the discretion of
16 the judges that handle matters that discretion
17 to deal with the problem as it comes before
18 them.

19 I think it's an excellent idea and
20 encouragement is appropriate, especially if
21 some funding can go with it to assist us in
22 putting it in place. But, I think it would be
23 a little difficult to implement until we have
24 seen a program such as Allegheny County, the
25 first one in the state that I'm aware of that

1 is really working on this to see how well that
2 comes across.

3 CHAIRPERSON COHEN: We try not to,
4 but we have been notorious for unfunding
5 mandates.

6 REPRESENTATIVE SEYFERT: You had
7 brought up the PFA's, and it's come to my
8 attention by a couple of complaints, and maybe
9 you can answer the question, is that the victim
10 actually in some emotionally-charged situations
11 when they have not reconciled actually becomes
12 the instigator of additional contacts.

13 Is there any responsibility put on
14 the one that files for a PFA and any legal
15 recourse that they are under if they actually
16 instigate?

17 HONORABLE FISCHER: No, there is not.
18 It can be taken into consideration by a judge
19 who hears the indirect criminal contempt
20 hearing for a violation of the protection from
21 abuse order in determining whether the person
22 should be found guilty or what penalties should
23 be imposed, but there is nothing in the present
24 statute that precludes the victim from
25 initiating contact with the defendant.

1 Whether that should be in the statute
2 or not, I leave to you. I would have no
3 problem, and I'm sure judges would have no
4 problem in inserting that in it, but we don't
5 have the opportunity to do that at the present
6 time unless there has been a cross complaint by
7 the defendant against the plaintiff.

8 When that happens, we frequently will
9 enter cross orders prohibiting each from
10 contacting the other. And in that case, if the
11 victim in the first case contacts the defendant
12 in the second, the victim is violating the
13 order against her and action can be taken
14 against her or him as the case may be depending
15 on who the plaintiff is. We do have cases
16 where males bring protection from abuse
17 petitions against females and are granted that.

18 REPRESENTATIVE SEYFERT: But there's
19 no responsibility on the victim for appropriate
20 behavior in that situation. They have free
21 rein.

22 HONORABLE FISCHER: There is no legal
23 prohibition on it. I'm not aware of any judge
24 in our county that hears these matters that
25 does not make it clear to both parties that the

1 order is specific in its prohibition in contact
2 between the defendant and the plaintiff. And
3 states to the plaintiff -- or states to the
4 defendant, if the plaintiff contacts you, you
5 put yourself at her mercy. And I'm referring
6 here to the plaintiff as a woman; that you put
7 yourself at her mercy; that if you contact her
8 and she finds anything offensive about it,
9 factual or not, she can file an indirect
10 criminal complaint against you. So you'd be
11 wise to have no contact with her during the
12 one-year period of the order.

13 REPRESENTATIVE SEYFERT: Thank you.

14 HONORABLE FISCHER: You're very
15 welcome.

16 CHAIRPERSON COHEN: I would like to
17 welcome Representative Walko from Allegheny
18 County who was our host in Allegheny County for
19 one of these field trips. I understand
20 Representative Feese has some questions.

21 REPRESENTATIVE FEESE: Thank you,
22 Madam Chairman. Your Honor, in regard to
23 protection from abuse orders and your
24 suggestion that we, as a matter of legislation,
25 state that reconciliation is either a defense

1 or de facto avoiding of the order, how would
2 you define reconciliation in such a manner that
3 we can avoid as much as possible disputes,
4 whether there was actually a reconciliation or
5 not?

6 HONORABLE FISCHER: I'm not sure that
7 you can do that unless you were to place into
8 the statute a day limit, a number of days.
9 That's why in my suggestion I suggest to you
10 that you have the fact of reconciliation
11 determined by a court should the issue arise.
12 And it would normally arise on the bringing of
13 an indirect criminal complaint against the
14 defendant.

15 REPRESENTATIVE FEESE: With that
16 difficulty in mind, would it be better that --
17 If you do something legislatively, would it be
18 better that the state -- that the
19 reconciliation is in a defense rather than a de
20 facto voiding?

21 HONORABLE FISCHER: I think it would
22 be better to do it in reconciliation. I would
23 suggest that if there's a marriage that occurs,
24 you have no question of the reconciliation, and
25 that should be a de facto termination of the

1 order.

2 REPRESENTATIVE FEESE: So maybe limit
3 a de facto termination to a marriage and --

4 HONORABLE FISCHER: That's one
5 option. Either that, or allow the judge at a
6 hearing to make a determination that the
7 reconciliation did occur, and it constituted a
8 de facto termination.

9 REPRESENTATIVE FEESE: Thank you.

10 HONORABLE FISCHER: You're very
11 welcome.

12 CHAIRPERSON COHEN: Thank you, Your
13 Honor. We certainly appreciate your
14 preparation and your suggestions.

15 HONORABLE FISCHER: Madam Chairman,
16 I'm grateful, again, for the opportunity. If
17 there's anything further that I could provide
18 to you in writing, Counsel Dalton would contact
19 me, I'd be happy to provide it.

20 CHAIRPERSON COHEN: You'll probably
21 be hearing from us. Thank you. Judge
22 Domitrovich.

23 HONORABLE DOMITROVICH: Good
24 afternoon, Madam Chair, and all the members of
25 this committee. I asked you to review the

1 general laws of Massachusetts, the abuse
2 prevention statute that they have, and I'll
3 give you a copy of that statute. But the
4 reason why I point you in the direction of
5 Massachusetts is that it has several advantages
6 that we do not have, and it also gives you the
7 mechanics of the recommendations that I'm
8 making for you to consider.

9 First of all, one of the areas is
10 that we broaden the concept of who is a family
11 or household member. In Massachusetts, they
12 have as part of their statute that it also
13 includes those who have had a substantive
14 dating or engagement relationship.

15 I've had parties before the court who
16 have not had intimate sexual relationships with
17 each other, and yet, they've dated for a long
18 time; and I've had to say, by statute, we
19 cannot include you within the PFA. So, I've
20 had to turn those individuals down.

21 So, I ask you to give the court
22 discretion to make that determination as to
23 whether their relationship is substantive to
24 include them under the statute, and the court
25 would make the determination as to whether

1 they've had a substantial length of time in
2 that relationship, what type of relationship
3 they've had, the frequency of their
4 interaction, and when it was terminated, and
5 how much time has elapsed from the termination
6 of that relationship. So that's one of the
7 areas that the court is concerned about.

8 Also, you had talked about the
9 situation where individuals might have a
10 situation where the plaintiff may have enticed
11 the defendant, so to speak, to violate the PFA.
12 Massachusetts addresses that and gives the
13 court the discretion to issue a mutual
14 restraining order or mutual no-contact order
15 pursuant to any abuse prevention action only if
16 the court makes specific written findings of
17 fact.

18 So the court would make a
19 determination at the PFA that these parties
20 need to be apart for the cooling-down period
21 which is the intent of the statute; for the
22 one-year cooling-down period that they both
23 stay away from each other. So then the court
24 would have the power upon an indirect criminal
25 contempt action to, therefore, enforce the

1 order against both parties. So, in essence,
2 the court would be able to deal with that
3 situation.

4 Also, the court is -- I'm asking that
5 you look at more severe penalties for violating
6 the PFA order, the initial one. In fact,
7 Massachusetts indicates that the court has the
8 power to put an individual who has violated the
9 order in jail for up to two and a half years or
10 up to \$5,000 in fines.

11 Now, this is interesting because what
12 happens in our indirect criminal contempt court
13 is a friction between the criminal court and
14 the indirect criminal contempt action because
15 of double jeopardy. And the concern that the
16 court always has is whether or not the criminal
17 action would be abandoned when the court enters
18 an indirect criminal contempt.

19 So, if you increase the statutory
20 limits for the court to impose for indirect
21 criminal contempt then, in essence, you
22 wouldn't need the district attorney to then
23 file and move forward on simple assault charges
24 because, in essence, the court would have that
25 power to enforce the violation of that court

1 order.

2 There's also an interesting area. I
3 don't know if we want to pursue it, but it is
4 an area that I'm always concerned about is the
5 surrender of firearms and licenses when we have
6 PFA's. The concern is that we might take away
7 the immediate gun or the firearm or the
8 ammunition that's available, but we also
9 haven't taken the license temporarily or
10 addressed the other situations that are
11 potential.

12 Under Massachusetts law, the court
13 has the opportunity to make a finding that the
14 plaintiff has demonstrated a substantial
15 likelihood of immediate danger of abuse. So
16 then, the court has the power to look at that.
17 Always, the defendant or the respondent has the
18 opportunity to have due process and have the
19 court review that, especially if a respondent
20 or a defendant has to have a firearm for their
21 place of employment; then the act would allow
22 them to move forward.

23 Another area recently, it just
24 occurred, was where there was a father who was
25 the plaintiff and he was just about to undergo

1 surgery because his son allegedly had beaten
2 him up, and the police were before the court
3 asking, do we have statutory authority for us
4 to enter this on his own behalf? And under the
5 statute, no. But, in Massachusetts, a
6 representative can come forward and file on
7 behalf of an individual who is allegedly abused
8 and get immediate relief in order to keep the
9 alleged abuser away. That's something we
10 should consider.

11 Now, a household member or a family
12 member under our statute can do that; but in
13 this case, the plaintiff had no close family
14 members other than the alleged abuser who, of
15 course, would not come in and file for him for
16 obvious reasons. So, those are just some of
17 the areas that I would like you to look at.

18 I have recently written an article in
19 regard to one judge, one family court system.
20 It will be published at Duquesne Law School in
21 the near future. I have written about the
22 economics and the value economically to
23 Pennsylvania of the one judge, one family court
24 system, and as soon as it's published, I will
25 give you a copy of that.

1 I really do advocate for one judge,
2 one family. As Judge Fischer has indicated, we
3 have a modified system in that regard, in
4 regard to juvenile courts and termination of
5 parental rights and adoption court having the
6 same judge follow through.

7 The judges who have gone into other
8 divisions like myself recently are still
9 following some of the cases. We're still doing
10 those cases in order to continue with the
11 concept of one judge, one family, especially
12 for the cases that we feel would be very
13 duplicative of another judge trying to step in
14 and trying to help the families in those
15 situations.

16 As far as equitable distribution is
17 concerned, Judge Fischer indicated that I would
18 speak on that. I'm not really prepared in that
19 regard, but I will tell you that we do have
20 excellent appellate case law that guides the
21 lower court in that regard; that we would
22 probably favor some legislation that would, in
23 essence, mirror the case law so that we could
24 have more guidance for the individuals in that
25 area.

1 And I'll tell you one of the areas of
2 heavy litigation that I've had to make
3 decisions regarding involved marital gifts or
4 conveyances either before the parties have
5 entered into the marriage or during the
6 marriage where a third party, presumably the
7 father or the mother of one of the parties, may
8 have given over a substantial amount of money
9 and later on, of course, during divorce
10 litigation, the claim is it was only given to
11 one of the parties and not to the marital unit.

12 Then the court has to make the
13 decision as to what the impact is on equitable
14 distribution because, of course, it's going to
15 affect it if the court says it was only given
16 to one of the parties or it was given to the
17 marital unit which, in essence, is the marital
18 pot, so to speak.

19 So, equitable distribution issues are
20 well defined in Pennsylvania by appellate case
21 law, and if statutory law could mirror that,
22 that would be very helpful. Thank you.

23 CHAIRPERSON COHEN: Thank you very
24 much. We appreciate the information. Don't
25 leave.

1 HONORABLE DOMITROVICH: No. I have
2 time.

3 CHAIRPERSON COHEN: I have no
4 questions. Representative Feese.

5 REPRESENTATIVE FEESE: Thank you,
6 Madam Chairman. Judge, you mentioned
7 Massachusetts law --

8 HONORABLE DOMITROVICH: Yes.

9 REPRESENTATIVE FEESE: -- how it
10 expands the scope of protection for -- victim's
11 protection from abuse. I believe you used the
12 phrase substantial dating or engagement
13 relationship.

14 HONORABLE DOMITROVICH: Yes.

15 REPRESENTATIVE FEESE: Does the
16 statute define what an engagement relationship
17 is? What I was concerned about is just, are we
18 going to expand it to the neighbor --
19 disagreeing with the neighbor --

20 I practice law a little bit. On
21 occasion, I can get the telephone calls from a
22 neighbor who says, my neighbor is doing this to
23 me and I want a peace bond. You've probably
24 all heard that practice.

25 HONORABLE DOMITROVICH: That's

1 right.

2 REPRESENTATIVE FEESE: Massachusetts
3 law doesn't expand protection to those types of
4 situations?

5 HONORABLE DOMITROVICH: No. No.
6 What it does is, it says specifically that
7 family or household members are persons who
8 have been in a substantive dating or engagement
9 relationship which shall be adjudicated by the
10 judge considering the following factors which
11 is: The length of time of the relationship;
12 the type of relationship; the frequency of the
13 interaction between the parties; and if the
14 relationship has been terminated by either
15 person, the length of time elapsed since the
16 termination of the relationship.

17 In this day and age where parties are
18 trying to abstain from sexual contact, and then
19 they come before the court for relief and we
20 have to say, well, you didn't have an intimate
21 sexual relationship, so there's no relief. I
22 think we need to consider --

23 REPRESENTATIVE FEESE: I still don't
24 understand whether for engagement relationship
25 expanded upon substantial dating. I mean, I

1 don't --

2 HONORABLE DOMITROVICH: Yes. I see
3 your point. We would probably have to refine
4 that. I'll look at their case law and see if
5 they do have any litigation in that regard, and
6 see if there is something pending to resolve
7 that. That is an excellent point. I can see
8 that being expanded. The old peace bond did go
9 to the wayside, and this is, in essence, the
10 only resurrection of a peace bond that affects
11 primarily the family. That's a very good
12 point. I'll have to look into that. Thank
13 you.

14 CHAIRPERSON COHEN: Representative
15 Walko.

16 REPRESENTATIVE WALKO: Thank you,
17 Madam Chair. First of all, I do apologize. I
18 was detained in Pittsburgh, and I apologize to
19 Judge Fischer as well for being late.

20 Your Honor, you had mentioned about
21 the distinction between Pennsylvania and
22 Massachusetts law regarding, I believe, the
23 seizure of firearms in a PFA situation.

24 HONORABLE DOMITROVICH: Yes, the
25 surrender.

1 REPRESENTATIVE WALKO: Yes. Would
2 you please clarify that distinction? I
3 understand that in Pennsylvania they can be
4 seized.

5 HONORABLE DOMITROVICH: Yes. Yes.
6 They can be, but primarily the way that we've
7 been utilizing it -- Well, I should probably
8 say the way I've been utilizing it is in a
9 situation where the actual firearms have been
10 utilized or potentially utilized, and then we
11 have a little area where we say which ones,
12 and, is it a rifle. We identify them, but we
13 do not seize or have them surrender their
14 license. We don't take all of the necessary
15 precautions that are necessary for that.

16 We have in court individuals who come
17 and say, well, yes, I have my firearms, but I
18 was just using it for hunting, and I was out
19 hunting and it happened to be out in
20 plaintiff's backyard. But, it's interesting
21 how they'll come up with these ideas. So I
22 think surrendering the license upon the court
23 finding that, in essence, there's substantial
24 likelihood of abuse is discretionary with the
25 court when necessary, and then there's always

1 an opportunity to have a due process hearing
2 where the respondent or defendant comes
3 forward.

4 REPRESENTATIVE WALKO: Then one other
5 question, Your Honor, regarding persons who
6 would be able to file on behalf of victims.

7 HONORABLE DOMITROVICH: Yes.

8 REPRESENTATIVE WALKO: Would they be
9 in some sort of fiduciary relationship to the
10 victim? What suggested relationships would the
11 person who could or would have the ability to
12 file the PFA have to have with regard to the
13 person on whose behalf they are filing?

14 HONORABLE DOMITROVICH: I think we'd
15 have to define that by statute. Their statute
16 just says a representative. It could be a law
17 enforcement individual. It could be a person
18 who is the executive director of the abuse
19 center. We've made exceptions in this case,
20 and we have allowed in Erie County on at least
21 one occasion where we've had someone from the
22 abuse center come forward on behalf of someone
23 who is being operated on in order to protect
24 that individual.

25 So, we've done a little bit of court

1 ruling there, but it would be very nice if we
2 had statutory law that would allow it. So, it
3 depends upon what you would define as a
4 representative. It can be someone in a
5 fiduciary relationship and what that
6 encompasses.

7 REPRESENTATIVE WALKO: Would there be
8 any definition with regard, and I guess it's
9 inherent here that we define fiduciary
10 relationship, but would there be any
11 distinctions needed in regard to the class of a
12 victim, or I guess that would be taken care of
13 in defining a relationship.

14 HONORABLE DOMITROVICH: Right.

15 REPRESENTATIVE WALKO: Because I was
16 wondering if this would lead to a possible
17 abuse of protection from abuse order itself.
18 And then what safeguards -- In other words,
19 would a third party be meddling in a situation
20 against the interest for some ulterior motive?

21 JUDGE DOMITROVICH: I agree. That is
22 a deep concern. I think that the
23 representative would have to state exigent
24 circumstances that caused this representative
25 to come there instead of the actual plaintiff;

1 that the plaintiff is in surgery or is
2 incapacitated for some reason and they could
3 not go through guardianship procedures and they
4 needed this PFA for immediate relief. That's a
5 good point. Excellent.

6 REPRESENTATIVE WALKO: Thank you,
7 your Honor.

8 HONORABLE DOMITROVICH: Thank you.
9 Great questions.

10 CHAIRPERSON COHEN: Judge
11 Domitrovich, thank you again, and Judge Fischer
12 again. Our thanks to you for taking the time
13 and the preparation to give us this
14 information. We appreciate it and look forward
15 to working with you in the future as we develop
16 our legislative plans.

17 HONORABLE DOMITROVICH: Thank you.

18 CHAIRPERSON COHEN: The next person
19 to appear before us is Elizabeth Kelly. Ms.
20 Kelly, welcome; and we're ready anytime if you
21 are.

22 MS. KELLY: Thank you. Madam
23 Chairman, Representatives Walko, Feese,
24 Seyfert, Attorney Dalton: Thank you very much
25 for allowing me to testify today on behalf of

1 this Judiciary Committee. I would like to give
2 you just a little background on myself so you
3 know where I'm coming from with regards to the
4 comments that I'm giving to you.

5 I've practiced law for 15 years, and
6 I am currently a partner at the law firm of
7 Elderkin, Martin and Kelly in Erie,
8 Pennsylvania. The majority of my practice is
9 now in the area of domestic relations work.

10 I am a member of the Erie County Bar
11 Association and the Pennsylvania Bar
12 Association, the family law committees of both
13 of those organizations, as well as the past
14 chairman of the Erie County Family Law
15 Committee.

16 That's an important factor because
17 when I speak about custody and I talk about our
18 mandatory conciliation process in Erie County,
19 I was Chairman of the Family Law Committee the
20 year that that conciliation, mandatory
21 conciliation came into effect. And we
22 certainly had some significant input from the
23 Family Law Committee to the judges and the
24 powers that may be that year.

25 I'd like to speak very briefly on

1 achieving economic justice for the dependent
2 spouse. In Erie County, we have a permanent
3 master system, whereby, we have two permanent
4 masters. I believe that this serves the
5 economically dependent as well as the
6 independent spouse exceptionally well.

7 With two permanent masters in Erie
8 County, it creates a sense of certainty and a
9 sense of expertise among our masters in Erie
10 County. We are not constantly appearing in
11 front of new individuals who act as a master.
12 We are appearing before masters who are
13 familiar with the system, familiar with the
14 divorce code, and there's a sense of certainty
15 that you can advise your clients prior to
16 appearing as to what will most likely happen
17 before the masters in Erie County.

18 I believe that our masters in Erie
19 County with the two-master system have created
20 a level of competency which certainly benefits
21 the economically dependent and independent
22 spouse.

23 The one area of the master system
24 that I think does not work particularly well is
25 the funding of the master's system. In Erie

1 County, to have a master appointed, an
2 individual must first pay \$170, which has the
3 master appointed. And then at the initial
4 status conference, the individuals to the
5 litigation are told that they must fund the
6 master for future litigation; which means at
7 that point in time, depending on the expected
8 length of the master's hearing, the master will
9 assess additional fees for the master's
10 hearing; a thousand dollars, \$2,000.00. That
11 creates a level of economic stress on the
12 family unit. And oftentimes, the individuals
13 who are participating in the master system are
14 unable to carry that burden. So I think that
15 the funding of the master's system is an area
16 that needs to be looked at.

17 I would like to talk now about
18 custody. I believe very strongly from the
19 position of a domestic practitioner that our
20 Erie County custody system is a model that
21 should be looked at very closely across the
22 state because I believe as a practitioner that
23 it is working exceptionally well, and I think
24 that our custody system in Erie County benefits
25 the children of Erie County. The reason that I

1 say that --

2 And by the way, the statistics that
3 I'm going to give you in my discussion were
4 taken from the 1997 Erie County Annual Report
5 of Common Pleas that was sent to the Supreme
6 Court.

7 In Erie County in 1997, out of the
8 1,030 cases that were filed, only 97 of those
9 cases ever went to the point where they needed
10 court intervention for an adversarial hearing.
11 That means that only 9.4 percent of those cases
12 ever got to an adversarial hearing before a
13 judge.

14 Over 90 percent of the cases that
15 were filed in 1997 in the area of custody in
16 Erie County were resolved either at the initial
17 intake level or at the custody conciliation
18 level. And I believe as a domestic
19 practitioner that to get people into court --
20 And when I say court, I also mean custody
21 intake or conciliation to give them their day
22 before a neutral party, to give them an
23 opportunity to air their grievances in a
24 neutral environment, and to get out of the
25 system in a relatively expeditious and

1 inexpensive fashion is very, very important.

2 And I would say that the fact that
3 there is such a high success rate with our
4 custody conciliation and intake process should
5 say to our Legislature that conciliation is a
6 good thing. And I think that mandatory
7 conciliation is a good thing because if you say
8 to people, you have to go to conciliation, they
9 don't have a choice. Given the opportunity, I
10 hear so many of my clients say, I want to go to
11 court. I want to just go to court and have my
12 day in court. And if I say to them, we're
13 going to go through intake and conciliation
14 first and we don't have a choice, then that
15 makes them much more receptive to the concept
16 of conciliation and mediation in the custody
17 area.

18 I think it's good to mediate in
19 custody and not to fight. I also think that
20 what we have in Erie County that the
21 Legislature should take a very close look at is
22 a program called Children Cope With Divorce.

23 Any parent who comes into the custody
24 situation in Erie County is required by Erie
25 County rule to attend a four-hour mandatory

1 education session for both of the parents. The
2 children do not attend, and the parents do not
3 attend together. It is mandatory, and again, I
4 think that the fact that it is mandatory is
5 exceptionally important because my clients who
6 really need the seminar would not go if it was
7 left to their own device.

8 The Children Cope With Divorce

9 seminar is a four-hour educational system or a
10 four-hour educational seminar that is supposed
11 to try to educate or at least highlight parents
12 as to some of the areas involved in custody
13 litigation and custody problems that can cause
14 significant problems to their children and
15 attempt to educate those parents as what to do
16 and not to do.

17 I'm not saying that it's a hundred
18 percent successful, but I would say that if
19 every parent who went into that seminar came
20 out with at least one thing that they
21 remembered, that's one better thing for the
22 children of Pennsylvania, and I think it's
23 helping the children in Erie County.

24 Now the question becomes, are our
25 courts authorized to mandate individuals to

1 attend these seminars? And I think that there
2 is some question as to whether our courts are
3 allowed to mandate that. I think the
4 Legislature should look at the possibility of
5 creating legislation that requires mandatory
6 Children Cope With Divorce seminars or
7 something along those lines.

8 Another thing that our Erie County
9 system does in the custody area that I think is
10 very helpful is, they provide a booklet to all
11 of the individuals coming into the system.
12 That seems relatively basic and germane and the
13 information in the booklet is relatively basic,
14 but I would say that it is of substantial help
15 to my clients to be able to read in black and
16 white in laymen's terms issues about the
17 custody proceeding, and I think it helps them.

18 We also have the same type of booklet
19 in the support area. I think it's helpful for
20 the clients. I think it's very, very helpful
21 for the participants. The other thing with
22 regards to custody that I would like to address
23 very briefly is the issue again of funding
24 custody conciliation.

25 In Erie now, we have a requirement

1 that if individuals need to come into the
2 system, they pay an initial filing fee. If
3 they have to come back through the system,
4 either for a modification or a change in the
5 custody petition on situation, they're now
6 required to fund it.

7 I would say to this committee that I
8 think it's important to look at that issue
9 because custody orders are fluid just like
10 children are fluid. Situations change. What
11 is appropriate today for the children in this
12 situation may not be appropriate two years from
13 now or five years from now. I think it is
14 inherent to understand that it will change and
15 these people may need to be back into the
16 system. This creates economic stress on a
17 number of families to have to fund that type of
18 litigation.

19 With regard to the issue of family
20 court reform, I would like to talk briefly
21 about the importance I see as a domestic
22 practitioner in a unified family court system.
23 I think that the concept of a unified family
24 court system will create and promote unity, and
25 also will enhance judicial economy.

1 I can tell you as a domestic
2 practitioner that I have worked under the
3 frustration of appearing in front of five
4 different judges in one specific case that I
5 had, in front of two different judges on
6 support issues, a PFA issue, a custody issue,
7 and a special relief issue. I believe that
8 every time I had to go in front of those
9 different judges, I took up their time in
10 attempting to re-educate that new judge on what
11 was going on within this family unit. It was
12 frustrating for the clients. I'm sure it was
13 frustrating for the courts, and it was
14 certainly frustrating for the attorneys
15 involved.

16 I think it's important to have a
17 unified system, whereby, one judge follows the
18 family issues through the system, so that we
19 don't get diversified responses from the judges
20 in the same case. And so that the judge who's
21 listening to that case will have a sense of
22 familiarity with the case, especially with
23 regards to how issues of violence and custody
24 and juvenile delinquency issues all
25 interrelate.

1 I would like to thank you for
2 allowing me to testify before this committee.
3 I'd be free to answer any questions you would
4 like me to answer.

5 CHAIRPERSON COHEN: Thank you, Ms.
6 Kelly. I just have one area of questions
7 concerning the masters. Do you have a
8 requirement that they must submit their reports
9 within a certain time limit?

10 MS. KELLY: Yes, we do. And our
11 masters in Erie County are very, very good at
12 submitting their reports. I would say that
13 they don't have to write that many reports in
14 Erie County, because at this point in time only
15 nine of the 89 cases filed in 1997 ever needed
16 reports even filed with the courts. And with
17 the two masters, we are not talking about a
18 huge burden upon our masters.

19 One of the things that our master
20 system does, because there is so much
21 consistency, is, you have a fairly good idea
22 going in as to what you can expect, so we don't
23 have a lot of masters reports. So, we do not
24 have a backlog problem in terms of having our
25 reports filed.

1 But, again on that issue, I would say
2 to the Legislature that I think it's very
3 important in the area of family law to get
4 these individuals through the system as quickly
5 and as expeditiously as possible. To allow
6 these issues to linger means that you are going
7 to allow the family to maintain a sense of flux
8 in a very, very unhappy time. And, therefore,
9 I think it's incumbent upon the attorneys and
10 the judiciary involved in family law matters to
11 keep them moving expeditiously and quickly to
12 get these people resolved and out of the
13 system.

14 CHAIRPERSON COHEN: Do you require
15 your masters to file publicly their source of
16 funding? In other words, what they've earned
17 from each case?

18 MS. KELLY: I don't know the answer
19 to that. With me today is Attorney James
20 Richardson, who is the Chairman of our
21 matrimonial litigation department, the Elderkin
22 law firm. I'll ask him. Jim, do you know the
23 answer to that.

24 CHAIRPERSON COHEN: Do you require
25 your masters to publish and publicly declare

1 what they have earned from each case?

2 MR. RICHARDSON: I don't believe
3 there is a separate publication by each
4 individual, but there's a docket entry that
5 identifies what the master has been paid for
6 each case, and the docket entry is a matter of
7 public record.

8 CHAIRPERSON COHEN: Okay. Thank you.
9 I have no further questions.

10 REPRESENTATIVE SEYFERT: You are
11 advocating for mandatory counseling. Do you
12 have -- And from my background as a
13 psychologist, I had concerns in terms of the
14 effectiveness of mandatory counseling. And as
15 a legislator, I've had concerns about the cost,
16 so these two questions are asked in that
17 background.

18 In terms of mandatory counseling, do
19 you have any statistics or any performance
20 effectiveness of the results of mandatory
21 counseling that you could provide, and what
22 percentage? Whereas, I see in terms of
23 discretionary that's left up to the masters,
24 the courts, whatever, there's some flexibility
25 there.

1 The other aspect would be the cost;
2 who would be doing it; what their
3 qualifications would be, and to parallel that
4 to mandatory DUI. I think if you would really
5 check into the repeated rate of DUI, even that
6 have gone through the DUI program, it's
7 probably shameful. And the cost that is paid
8 to this other group outside the courts, quote,
9 be they professionals, or whatever.

10 But, the cost effectiveness of the
11 program for the results, while I don't have
12 statistics on it myself, I would highly
13 question it. And I would like to see that area
14 addressed before we push for mandatory;
15 whereas, I can see some need for flexible
16 discretion. So, would you respond to that?

17 MS. KELLY: What I would like to do
18 is make a point of clarification. When I'm
19 talking about the Children Cope With Divorce
20 seminar that is mandatory in the custody
21 conciliation proceedings in Erie, it is not
22 counseling; it's educational.

23 REPRESENTATIVE SEYFERT: I'm aware of
24 that.

25 MS. KELLY: So I'm not advocating

1 mandatory counseling. I don't have any
2 statistics in the area of mandatory counseling
3 or really the expertise to comment on that. I
4 think that these mandatory educational
5 programs, number one, are relatively short in
6 duration. We're talking about a four-hour
7 educational program.

8 In terms of the cost involved, it's
9 relatively low. I believe the current cost in
10 Erie County is twenty or thirty dollars. And
11 currently, they are put on by our family
12 services, Erie County Family Services.

13 I honestly can't comment to the issue
14 as to mandatory counseling, so I can't talk
15 about that.

16 REPRESENTATIVE SEYFERT: But was not
17 one of your points required mandatory probatory
18 counseling?

19 MS. KELLY: No; just mandatory
20 attendance at these educational seminars, like
21 Children Cope With Divorce.

22 CHAIRPERSON COHEN: Representative
23 Walko.

24 REPRESENTATIVE WALKO: Thank you,
25 madam Chair. First of all, this is rather

1 simplistic; but as you indicated, the booklet
2 about custody issues was basic and fairly
3 germane, and I was wondering if you had a copy
4 of that booklet?

5 MS. KELLY: I don't, but I'd be happy
6 to supply it to you.

7 REPRESENTATIVE WALKO: That would be
8 helpful. And I don't recall if in Allegheny
9 County, which is my home county, we have such
10 handouts; although, I do believe there is a
11 mandatory counseling or some sort of an
12 orientation session for families.

13 The other question, perhaps, should
14 have been addressed to Judge Fischer. But,
15 what do you perceive as the roadblocks to one
16 family, one judge in Erie County? I know that
17 in Allegheny we are trying to move toward that.
18 What do you perceive as the roadblocks?

19 MS. KELLY: Judge Fischer, why don't
20 you address that issue in terms of the
21 roadblocks that you see.

22 HONORABLE FISCHER: Before I do,
23 could I just make a comment? The Children
24 Coping With Divorce seminar is also mandated
25 prior to the entry of any divorce decree

1 involving parents. They must take that
2 educational session and show them that they've
3 done it before a divorce will be granted,
4 trying to get them to not find it necessary to
5 go into the custody area if they've already had
6 that education.

7 The greatest difficulty that I see as
8 for the one judge, one court is this: If
9 you're attorneys, you know that the law has
10 grown extremely complex in a number of areas
11 now, and there has been a movement in a number
12 of courts including Erie County to create
13 specialization within the court, so that a
14 judge knows as much about an area of the law as
15 the attorneys do that come in front of them.
16 And the area of divorce has grown in equitable
17 distribution. It's grown into a very complex
18 area.

19 The same thing is true whether we're
20 dealing with custody; whether we're dealing
21 with support; or whether we're dealing with
22 juvenile matters; or the termination of
23 parental rights under the Orphan's court. As
24 you develop that experience and an expertise in
25 it, you're able to deal much more effectively

1 with the matters that come before you.

2 Now, if we go to a true one judge,
3 one family court, we're going to have to make
4 the judge generalists again in all of those
5 areas because he's going to have to deal with
6 all of those areas. And I think that is one of
7 the conflicts that'll have to be addressed and
8 how that's going to be done.

9 How does the judge that handles a
10 juvenile matter and develops real expertise in
11 that area learn enough to handle the support
12 matter, the custody matter, and the divorce
13 matters and be as competent in it so that he
14 can deal with it?

15 I'm not sure how Allegheny County is
16 going to overcome that. Very frankly, I look
17 forward to seeing how they do it, but I see
18 that as the biggest problem. The example that
19 Attorney Kelly gave of five different judges
20 hearing different aspects of the same case is
21 an horrendous example, and it should not
22 happen. And I hope that it hasn't happened
23 recently, at least I hope it hasn't happened
24 recently since we've gone into the family
25 division and have the court administrator try

1 to track the cases and move them in front of
2 the same judge.

3 CHAIRPERSON COHEN: Thank you.

4 REPRESENTATIVE WALKO: Thank you very
5 much.

6 CHAIRPERSON COHEN: Thank you again,
7 Judge Fischer. Thank you, Ms. Kelly. We
8 appreciate your being here. Any further
9 testimony that you want to present to us in
10 writing, please feel free.

11 MS. KELLY: Thank you. Would
12 everyone on the committee like copies of those
13 booklets, or just Representative Walko?

14 CHAIRPERSON COHEN: I think if you
15 send just a few to Counsel Dalton, and she'll
16 make sure we all get them.

17 MS. KELLY: Thank you very much. May
18 I be excused also? I have to be in court at
19 2:30.

20 CHAIRPERSON COHEN: Yes. Thank you.
21 The next person to appear before us is Francis
22 X. Ryan, who's come here from Lebanon,
23 Pennsylvania. We appreciate -- Oh, no. I'm
24 sorry. I did skip somebody. I skipped Mr.
25 Kroto, is it? Am I pronouncing it correctly?

1 MR. KROTO: That's fine, yes.

2 CHAIRPERSON COHEN: Okay. Frank
3 Kroto, also an attorney. My apologies. Thank
4 you.

5 MR. KROTO: No problem. Madam
6 Chairman, members of the committee, my name is
7 Frank Kroto. I'm a practicing attorney in Erie
8 County. I've been an attorney for
9 approximately 35 years. At the present time, I
10 spend approximately half of my time in the
11 domestic area, the other half trying civil
12 cases.

13 What I have presented to you is
14 simply a few points. I don't mean to mix
15 politics when I call them discussion points,
16 but that's really what they are for purposes of
17 our presentation. Some of these points have
18 already been covered. I would start simply by
19 going down the divorce code as it's listed,
20 Section 3301 A., being the fault divorce
21 provision of our divorce code. I presume,
22 knowing the legislative history of how the act
23 got passed in 1980 that there are a lot of
24 reasons why something like that has to be in
25 the act.

1 Everybody who comes into my office --
2 Part of my discussion with the people is, I
3 give them a copy of the divorce code and go
4 through the highlighted sections. I simply
5 strike out that section and say quite candidly,
6 I don't remember -- I know I've never used it.
7 I've never defended an action on fault. I've
8 never filed one. And there may have been two
9 or three reported cases since July 1 of 1980 on
10 it. So, it's really something that's there,
11 and it has no particular purpose.

12 Section 3301 D being the two year or
13 what I call the true no fault provision works
14 well, but I believe it's already been commented
15 and it's no big surprise to you, the two years
16 really doesn't serve any particular purpose in
17 my professional opinion either. That's all it
18 does is raise the cost of the parties, causes
19 delay.

20 In certain instances can cause some
21 wasting of marital assets. My opinion would be
22 that to serve the citizens of the Commonwealth
23 more adequately, if that were reduced to one
24 year, it would give everybody the opportunity
25 to decide if there is going to be a divorce or

1 there isn't going to be a divorce.

2 I have absolutely no statistics to
3 back up my claim, but I would guess that people
4 who have been separated for more than one year,
5 that either a hundred percent or 99 plus
6 percent of them just aren't going to get back
7 together. And whether it's one year or 18
8 months, I don't think is going to make a
9 difference in trying to make a harmonious
10 society with reference to the family unit.

11 Along with that provision, I have
12 commented on the rules that require certain
13 filings. For instance, Rule 1920.33 talks
14 about filing an inventory within 90 days of the
15 date of filing a divorce proceeding. And for
16 anybody who knows the proceedings or practices
17 at all there, no one ever does it. I have
18 never known anybody to do that, and I
19 understand the rules may not be your
20 jurisdiction; but they go hand-in-hand with the
21 code.

22 My suggestion is, if you cut down the
23 two years to one year, the rule makers, being
24 the Supreme Court, will have to amend this rule
25 and then eliminate some paperwork and again

1 some money, consolidate the inventory and
2 appraisement with an income and expense, and we
3 have one set of documents. The rules
4 require--I'm not telling anybody anything that
5 they don't already know--that our inventory
6 before we get ready to have a master's hearing
7 should be with values within 30 days of the
8 date of the master's hearing.

9 Well, if you have to file an income
10 and expense or an inventory 90 days after the
11 divorce, and it's two years down the line that
12 you're going to get it, you get an appraisal 90
13 days after you file the divorce, and then in
14 another two years you have a two-year-old
15 appraisal.

16 So, the rule causes those things to
17 happen. And it's a waste of money. But again,
18 admittedly, no one files that inventory within
19 90 days; so that's part of what would be
20 affected if you eliminated the two-year under
21 3301 D.

22 My comment I would make on
23 bifurcation simply is that, I practice in three
24 different counties: Erie, Mercer, and Warren
25 County. There doesn't seem to be any

1 consistency to the application of the
2 bifurcation rule. I always thought I was able
3 to read, and the original provision when it
4 came down I thought it said after two years you
5 could get a divorce. I had an ongoing bet with
6 one of our judges, none of the ones who were
7 here today; but one of the prior family judges,
8 that my interpretation was right. Well, then
9 the rule was changed and clarified. But, it
10 still isn't clarified to the extent that we
11 know where we're going.

12 I think if you limited the 3301 D
13 from two years to one year, the bifurcation
14 problem may go by the wayside. That is
15 controlled I understand by case law, but again,
16 in the three counties that I practice the case
17 laws seems to be interpreted differently and
18 there is no consistency. So there ought to be
19 an absolute rule in the code on bifurcation,
20 and then we don't have to worry about Wilke or
21 what Wilke said back in 1985.

22 Going down to Section 3702, alimony
23 pendente lite, this is another provision that I
24 think has been confused and is causing
25 confusion now in the court system. In that,

1 since the rules changed, 1910.16 (1) has been
2 changed to say that APL, or alimony pendente
3 lite, which is Section 3702 of the divorce
4 code, can allow for alimony pendent lite under
5 the same rules and conditions basically as
6 support. What's happened is, at least in Erie
7 County, people who don't otherwise qualify to
8 obtain a support order, simply file an APL
9 order, go in and get it. Need or any other
10 condition or criteria isn't considered.

11 As an example, and I have it. I
12 represent a fellow -- and I represent women and
13 men, and I represent people who have a lot of
14 money or a little money. But, I represent a
15 man who makes about 30,000, 35,000. His wife
16 left him one day, went and moved in with her
17 boyfriend, who she calls her fiance. She makes
18 twenty to \$22,000.00. She's living with her
19 fiance. She's collecting child support, which
20 is all well and good, but she's also collecting
21 APL for herself.

22 Now, under the provisions of the
23 divorce code we have, she's living with her
24 boyfriend she calls her fiance. She has two
25 years that she can wait because of the divorce

1 code, and she collects APL because the
2 interpretation here is, she can just get it
3 even though she doesn't qualify for support.

4 There's something wrong with that. I
5 mean, it doesn't encourage a family unit. It
6 doesn't encourage the following of the mandates
7 of the codes stated in 33 -- 3102 to achieve
8 family unity and harmony. It just makes no
9 sense to me at all, and I think that could be
10 addressed.

11 The disparity in those sections and
12 the confusion caused thereby in our
13 Pennsylvania rules of court, there is an
14 explanatory comment of page 223 of the 1998
15 version that says exactly that; that there is
16 almost the distinction without a difference
17 now, and that's right in the comments.

18 One of the questions that was
19 mentioned to be addressed in the choice of
20 subject matter, and I kind of just figured I'd
21 choose a general subject matter of the code,
22 was obtaining or achieving economic justice for
23 the dependent spouse.

24 My perception is, and I think it's
25 already been commented on before, our system

1 and maybe it's Erie County, really achieves
2 economic justice for both the dependent as well
3 as the independent spouse. And, therefore, I
4 considered the statement offered by the
5 committee as somewhat argumentative or a
6 misstatement of really what happens.

7 Our system does work fairly well. We
8 have two masters who are fairly consistent. I
9 mean, they don't see it your way all the time;
10 but the system works very well. And if we
11 could condense the program and cut it down to
12 one year instead of two, I think the economic
13 justice would be fulfilled for both parties.

14 The way I explain it to people if
15 they come to me is quite simple. You separate,
16 you're going to get a divorce, and here's a
17 hundred percent of your marital estate. That's
18 it. Now, everything you spend on this
19 litigation is going to come out of that hundred
20 percent. The less litigation there is, the
21 more discussion there is, the more attempt
22 there is to resolve it. And the sooner it's
23 resolved, the more of that hundred percent
24 you're going to split between you, your spouse,
25 and your family. And, again, prolonged

1 litigation just means more expense to the
2 court; more expense to the parties.

3 With reference to that begging of
4 that statement of economic justice, my
5 concluding statement is, if you took a
6 survey--I don't care if it's in Erie County or
7 Crawford County or Allegheny County--of the
8 last hundred or last thousand parties who went
9 through a divorce and say, do you think you
10 were fairly treated? To put it politely,
11 they'd say no, I didn't do too well. My spouse
12 really, you know, took me to the cleaner. And
13 if you ask both of them, they're all going to
14 say that.

15 Now, obviously in civil parlance and
16 litigation, I guess if everybody thinks they
17 didn't get the best of the deal, the theory is,
18 everybody did pretty good.

19 But, the system does work pretty
20 good. It doesn't need to be wholesale changed
21 in my humble opinion, but it does need a little
22 tweaking. And that's why I just used this as a
23 punch list to go down and say, all right, these
24 are the points where --

25 Again, I've been a lawyer for 35

1 years. I've been a trial lawyer for 35 years.
2 I manage a 26-person law firm, and again, this
3 is from my personal everyday experience, my
4 comments to the committee.

5 CHAIRPERSON COHEN: Thank you very,
6 very much, Mr. Kroto. We've both been
7 attorneys for 35 years, but it's always helpful
8 to the committee to hear from people in the
9 trenches who are actually dealing with this on
10 a consistent basis. Representative Feese has a
11 question.

12 REPRESENTATIVE FEESE: Thank you,
13 Madam Chair. Mr. Kroto, the alimony pendente
14 lite support problem that you brought to our
15 attention, what do you see as the legislative
16 correction for that problem?

17 MR. KROTO: I think there has to be
18 some definite delineation in the 3702 provision
19 where it says counsel fees, expenses, and
20 alimony; that you have to really delineate
21 that -- I think you need to have grounds for
22 that too or cite that there are certain
23 specific instances where you don't qualify for
24 it.

25 For instance, our case law says that

1 after a divorce, if you're living with
2 somebody, you're not going to qualify for that.
3 But, there seems to be a hole there, where
4 before the divorce, there's no condition or
5 criteria nor case law that prohibits it. And
6 in Erie County, it's just kind of rubber
7 stamped that it comes in and you don't qualify
8 for this, so you literally file under the other
9 name and you get it. It never made any sense
10 to me since they started applying that rule.
11 I've tried to argue it, but that's the way it's
12 interpreted.

13 So I think you need a condition under
14 3702 that talks about predivorce,
15 postseparation; but predivorce condition to get
16 APL under that section.

17 Support's okay. That has its own
18 case law and guidelines.

19 CHAIRPERSON COHEN: Thank you.
20 Representative Walko.

21 REPRESENTATIVE WALKO: Thank you,
22 Madam Chair. Mr. Kroto, you and Judge Fischer
23 were pretty adamant about the two-year rule
24 being too long and making that go or
25 recommending that it be lowered to one year

1 under Section 3301D. And I was just wondering
2 what the reason was originally, either under
3 the divorce code of 1980 or before that for
4 having that two year in the case after an
5 irretrievable breakdown. What are the reasons
6 for it?

7 MR. KROTO: I'm an attorney, not a
8 legislator, but I did read the entire
9 legislative history --

10 MR. WALKO: Say you were hired to
11 argue for it.

12 MR. KROTO: I've read the entire
13 legislative history of the Act of 1980, and it
14 was originally three years, if you recall. And
15 it's -- I think basically a political-type
16 thing. It has nothing to do with statistics.

17 And if I'm allowed to say this in
18 public, in order to get the product sold, the
19 term was used. I understand that maybe three,
20 four, five years ago the Legislature was hot on
21 trying to get it down and there was a possible
22 compromise at 18 months.

23 And again, I'm all in favor of the
24 family unit. I'm all in favor of myself making
25 a living, but it serves no practical purposes

1 to serve society to have it at what it is. It
2 prolongs the whole thing, costs everybody a lot
3 of money and a lot of hardship. So the sooner
4 you realize, okay, it's over, in a year. You
5 recognize that if you're separated for a year
6 it probably isn't going to be again.

7 Most of these people are living with
8 somebody else and just -- Why are they holding
9 off? A lot of times it's support. I've had
10 instances where I had a lady getting \$12,000 a
11 month support. All right? Now, this is not a
12 credit against anything. \$12,000 a month; you
13 collect that for two years, that's a lot of
14 money.

15 I, right now, have a lady getting
16 \$5,700 a month support. Why be in a hurry? If
17 the code gives you two years, take your \$5,700
18 a month times two years, put that in your
19 pocket. That's free. That's even tax free --
20 That's not tax free, but it doesn't come off of
21 equitable division. And then you decide you're
22 going to start talking about, all right, now,
23 let's divide it. Now, again, those people I
24 represent, the proffered idea is not in their
25 favor. But, I'm talking about the overall

1 benefit of society. It makes no sense to have
2 it. That's the only advantage it is for a few
3 people, and that's how they use it.

4 REPRESENTATIVE WALKO: Thank you, Mr.
5 Kroto. Thank you, Madam Chair.

6 CHAIRPERSON COHEN: Thank you. You
7 may be interested to know, Mr. Kroto, and I'll
8 close on this one. But when we first started,
9 we had two bills before us -- This is really
10 four years ago. We had two bills before us.
11 They were both similar.

12 As I said, repealing the no fault
13 divorce it was the theory that if you make
14 divorce more difficult, people will learn to
15 love each other happily ever after. But, we
16 soon discovered the human cry was extraordinary
17 with counselors coming before us talking about
18 abuse of not only each spouse, abuse against
19 children, et cetera. That's why our conclusion
20 was that, indeed, no fault divorce was a very,
21 very great necessity for the citizens of
22 Pennsylvania.

23 So there were a few, if any, of us on
24 the task force that bought the theory that if
25 you make divorce more difficult people will

1 learn to love each other, and the old 2.3
2 children, a dog, and a picket fence, et cetera.
3 And we never found out how you get a .3 child
4 anyway. So, we thank you very much.

5 MR. KROTO: Thank you for the
6 opportunity.

7 CHAIRPERSON COHEN: Thank you. Now,
8 Mr. Ryan. Let me ask our stenographer, are you
9 okay to continue?

10 THE COURT REPORTER: I just need to
11 change my tape.

12 CHAIRPERSON COHEN: Okay. Welcome,
13 Mr. Ryan. Thank you for coming all the way
14 from Lebanon.

15 MR. RYAN: Madam Chair, thank you
16 very much. Distinguished Representatives, Ms.
17 Dalton, I truly appreciate the time to be with
18 you today. I'm here today in an unusual
19 capacity. I'm a customer of the system, and
20 I'm not a very happy customer, unfortunately.

21 If I could give you a little bit
22 about my background. I have an MBA in finance.
23 I specialize in turning around financially
24 troubled companies to keep them from going into
25 bankruptcy. And I'm a colonel in the United

1 States military specializing in restoring
2 vitality to governments that have collapsed.
3 And I've served in the Republic of Haiti and in
4 Bosnia.

5 In 1973, I took an oath of office to
6 support and defend the Constitution of the
7 United States against all enemies, foreign and
8 domestic. And in that period of time, I have
9 had the opportunity to go into harm's way as a
10 military reservist and have come to learn to
11 live with that possibility; but I never
12 expected that harm's way was going to be the
13 family court system in Pennsylvania.

14 I've never in my entire life
15 experienced the degradation, humiliation,
16 delays, lost records, confusion, additional
17 delays, costs that I've seen in my own
18 particular case. And in the cases that I've
19 decided to get involved with to help those
20 people who don't have the opportunity or the
21 educational background, that I have to work
22 their way through this system.

23 To give you an indication, I've spent
24 enough in legal fees to pay for a law degree at
25 Georgetown University. And my estate at the

1 time of filing for divorce six years ago was
2 only \$200,000.00.

3 The family court system in
4 Pennsylvania as it currently exists, unlike the
5 experiences you have in Erie, but I think it
6 reinforces the basic issue, is that there is no
7 consistency in Pennsylvania. It encourages all
8 of those things that we as citizens have come
9 to loathe.

10 In the interest of protecting
11 children, it destroys their lives. In the
12 interest of taking care of a spouse, a
13 dependent spouse, instead of taking care of
14 that dependent spouse, it creates additional
15 dependency. In the interest of a PFA, an
16 economic weapon to gain control of the family
17 residence, and to gain an upper hand in the
18 case of custody relative to children.

19 If you think that cosmetic changes
20 are going to work where this is concerned, I
21 can tell you as a turnaround expert, it won't.
22 This system needs to be completely overhauled.
23 Perhaps the model that you've see in Erie,
24 Pennsylvania is a model that needs to be
25 emulated throughout the state, but it needs to

1 be legislated. Because if it doesn't, you're
2 going to see more of what you don't want, and
3 that's more divorces.

4 You're going to see more of what you
5 don't want, and that's more tie-ups in the
6 court. You're going to see more of what you
7 don't want; that's citizens living together
8 without the benefit of marriage, undermining
9 the very basic principles and the stability
10 that a marriage brings to the table. You're
11 going to encourage children that marriage is
12 not a viable option because of what happens to
13 them when they get caught up in the system.

14 First, if any of you even remotely
15 believe that there are any winners in divorce,
16 let me tell you as one of the customers that
17 there are none. The children don't win. The
18 father, regardless of the settlement, doesn't
19 win. The mother does not win.

20 What I would encourage us as citizens
21 of the State of Pennsylvania to do is, to
22 embark upon a complete revamping of the entire
23 system. First, I would encourage that before a
24 marriage license is even issued, that all
25 people that are contemplating marriage undergo

1 counseling. Encourage those people to
2 understand the nature of the responsibilities
3 they're about to undertake; both the legal,
4 moral, and emotional. Let them understand what
5 it is that they're getting involved in.

6 We don't think anything about giving
7 someone a test for CDL. We don't think
8 anything about giving someone a test to take a
9 driver's license for a personal automobile.
10 Why should we think anything less of having
11 someone go out and take some degree of
12 counseling and understanding what the marriage
13 binds and bonds are about?

14 Second, should a divorce ensue both
15 parties to the marriage should receive
16 mediation from an attorney; either accredited
17 by the American Academy of Matrimonial Lawyers,
18 or some other state-recognized organization.

19 Remember family courts, once you're
20 in court, are only used by those people who
21 can't get along; who can't cooperate. But it
22 only takes one person not to cooperate. One
23 person may decide to do everything they
24 possibly can to be able to reconcile and to
25 give in. But, there's a point in time in which

1 you can't give in on everything. If the giving
2 in means don't ever see your children again,
3 you can't give in on that no matter what your
4 desires are.

5 So when mediation is enforced, as you
6 heard Attorney Kelly talk about today, there's
7 a tremendous amount of benefit to that.

8 Additionally, when you've required
9 someone to have formal counseling as an
10 attorney, to be formally trained in matrimonial
11 law, you've insured that those people that are,
12 in fact, getting divorced have the benefit of
13 the experienced representation before battle
14 lines are being drawn.

15 Third, no attorney should be
16 permitted to practice law without formal
17 training as I've mentioned. I know that the
18 professionalism of the attorneys that I have
19 and that have represented me in my case in
20 front of the four different judges that I'm
21 currently dealing with -- In fact, one of the
22 hearings was taking place today. I know that
23 their professionalism kept me recognizing that
24 my only responsibility is to my children no
25 matter what happens to me in the court system.

1 The system needs to be changed, or
2 that failure to provide the noncustodial parent
3 with information about the child is viewed
4 seriously as failure to pay child support.

5 The system needs to be changed to
6 ensure that decisions can be obtained from a
7 court within a reasonable period of time, such
8 as 12 months. I've been paying alimony
9 pendente lite for five years. My ex-wife has
10 been married for three. I don't anticipate
11 that the judge will hear the case for another
12 five to six months. I've paid well over
13 \$70,000 in alimony pendente lite.

14 The system needs to be changed; that
15 assumption of 50 percent custody is assumed at
16 the beginning, both mother and father need to
17 have responsibility for their children. I want
18 to be an active part of my child's life, on all
19 four of my children.

20 The system needs to be changed that
21 one parent cannot be given an exemption from
22 having an earnings potential. My ex-wife has a
23 Master's Degree in nursing, a current nursing
24 license in the State of Pennsylvania, and was
25 assigned no earnings potential by the judge

1 even though she's working part time. She has
2 decided --

3 Incidentally, our youngest child is
4 only 11 years old; so it's not like we have
5 infants or individuals that are unable to care
6 for themselves. They're all healthy children.
7 One of my children started Penn State this past
8 week.

9 The compensation program for domestic
10 relations personnel needs to be altered that
11 their compensation is not tied to the amount of
12 money that they collect; but rather, could be
13 considered as a percentage of what's collected.

14 And then finally, I would recommend a
15 review panel to take a look at the ridiculous
16 issues that come in front of the court. Let me
17 give you an example. And this is one of the
18 cases that I cite in my testimony that I
19 presented to you today.

20 I was ordered to provide dental
21 coverage for my children. I received a letter
22 from Domestic Relations telling me that I had
23 to have dental insurance. I called Domestic
24 Relations and informed them that I have -- I'm
25 self-insured. Relative to insurance, I know

1 what that term means. I've passed the CPA exam
2 in 1978, and I think I'm fairly well qualified
3 to understand what self-insurance is.

4 Domestic Relations indicated that I
5 was required by the court order to provide
6 dental insurance, so I went out and got it and
7 my ex-wife refused to use it. So now I'm
8 carrying the dental insurance, and I'm
9 reimbursing the dental expenses. There's no
10 way to even remotely stop that type of issue in
11 the current system without undergoing
12 extraordinary expense. And I'm not prepared to
13 spend an additional seventy to \$80,000 to do
14 that.

15 As I mentioned to you at the
16 beginning of my testimony, I'm a colonel in the
17 United States military. If you noticed, my
18 name is Ryan. ,And there's a movie that's
19 currently out. It's called Saving Private
20 Ryan. If you were to carry that time period
21 forward, I might not be that same age.
22 Hopefully, I would be a little bit younger.

23 But, I would hope that sooner or
24 later that we customers of the system that
25 currently exists in the family court system

1 would be able to have someone to have some
2 force of reason that helps us out and
3 recognizes that there are no winners here, and
4 that saving Colonel Ryan might be the battle
5 cry that we all need to employ; to recognize
6 that divorce is a traumatic experience for
7 everybody; children, husbands, wives. We need
8 to put an end to the legal bickering and the
9 legal maneuvering that can exist where
10 complicated rules exist.

11 It's an emotional issue. It's not
12 necessarily a legal issue. And when mediation
13 is required, when conciliation is required,
14 you're more likely to encourage people to cease
15 the trauma of divorce, rather than using the
16 legal system and all the rules the 1960.19,
17 whatever the code sections may be, as a legal
18 weapon against a spouse in order to prolong an
19 unnecessarily bitter divorce. Thank you very
20 much.

21 CHAIRPERSON COHEN: Mr. Ryan, we
22 thank you for traveling a great distance to be
23 here and to make your presentation. If it's
24 any consolation to you, in the last four years
25 that we have been dealing with the entire

1 issue, we have spoken with and heard from and
2 met with hundreds and hundreds of people
3 throughout the Commonwealth who have had
4 experience with the system and have been on the
5 receiving end of the system and not -- and feel
6 quite justifiably that the system has not been
7 fair to them, which is obviously why we have
8 delved into this issue, and it's taking us so
9 long because we want to hear from as many
10 people as we can and make sure that our
11 findings will be as conciliatory as possible
12 and as just as possible.

13 I know it doesn't help you, but it's
14 kind of misery likes company I suppose that
15 there are people out there who have not
16 received fair treatment from the system.

17 MR. RYAN: Well, you know, actually,
18 Madam Chair, I'm not concerned about myself in
19 this case. I have four children that I love
20 very much, and I'm not going to take any steps
21 that could cause any damage or injury to them.
22 I'm more concerned about what happens to the
23 younger person that hasn't been through the
24 life experiences that I've had.

25 I mean, I think I've been fairly well

1 trained to keep my composure. I think I've
2 been fairly well trained to recognize the
3 system. I've been in the military. I
4 understand the rules of the Internal Revenue
5 Service, and I can cope with that quite well.
6 So, this is really child's play.

7 But what about those poor individuals
8 that can't, be it man or woman? I used to
9 think that this was gender discrimination, but
10 after talking to so many people, I recognize
11 it's really not; that this system is out of
12 control. It really is. I applaud you for the
13 efforts that you're taking today to look at
14 these issues and hopefully resolve them.

15 CHAIRPERSON COHEN: Thank you. I
16 believe Representative Seyfert has a question
17 or a comment.

18 REPRESENTATIVE SEYFERT: Just one
19 quick comment, and while earlier, judge Fischer
20 and others indicated that the system within
21 Erie County is working well and smoothly is one
22 of the reasons that I asked for this judiciary
23 hearing in this area to come up is because my
24 office receives complaints and numerous
25 complaints from both sides that may be a

1 symptom of what Judge Fischer had indicated
2 that both parties, they feel successful if no
3 one is happy with the results. It may be a
4 symptom of that, or there may be something much
5 more substantive going on; but even in Erie
6 County the customers of the system are not that
7 happy with the end result.

8 As an example, I would encourage you
9 to look behind the statistics. I have a fairly
10 heavy math background. Whenever I hear that
11 only nine percent of the people are going to
12 court, that's telling me one of two things;
13 either the system is working extremely well, or
14 on the other side of the coin, it's not working
15 at all; and that people have given up and
16 recognized that they can't afford the battle.
17 So, I applaud your efforts in that area. I
18 really do.

19 CHAIRPERSON COHEN: Thank you. Thank
20 you again, Mr. Ryan. We're going to take a
21 five-minute break, and we'll start at 2:36.

22 (A short recess was taken)

23 CHAIRPERSON COHEN: Mr. Gehringer,
24 please, if you will. The next person to appear
25 before us is Michael Gehringer. He's an

1 attorney and the permanent master for divorce
2 in Erie County, and I believe that Judge
3 Fischer and Ms. Kelly mentioned you; not by
4 name, but did mention that we have two
5 permanent masters here in Erie County.

6 MR. GEHRINGER: That's correct, Madam
7 Chairman. Masters have been utilized in the
8 domestic relations arena for decades and
9 decades; probably back in the 1950's, even back
10 to the 1940's. At least in Erie County,
11 virtually every lawyer in the county was from
12 time to time a master in a divorce. It was a
13 revolving list.

14 A permanent master is simply one step
15 beyond that. It indicates that because of the
16 complexity that came about in the early 1980's
17 as a result of code reform that there should be
18 a degree of specialization. In Erie County
19 there are, in fact, two permanent masters
20 rather than that rotating list that I spoke of.
21 I handle two-thirds of the appointments.

22 Just to put some numbers on that, in
23 Erie County there are approximately 1200
24 divorce filings a year. There are
25 approximately 100 appointments of master, and

1 as I indicated, I would get two-thirds of those
2 cases.

3 The areas of inquiry propounded by
4 the committee are certainly extraordinarily
5 broad. I thought that I would take just a few
6 moments today to speak to the issue of the
7 economically dependent spouse, which is
8 certainly something that I've heard, even in
9 the few minutes that I'm here, quite a few
10 comments about.

11 As permanent master in divorce, I
12 guess I am an integral part of the system.
13 I've heard that I'm the one that makes everyone
14 unhappy. I've heard that the system works
15 well. I've heard the system doesn't work well
16 because there's only a hundred appointments a
17 year. And as I said, I wanted to take a couple
18 of minutes to maybe give you some idea of what
19 it is that we do.

20 I had the opportunity to put together
21 a chart that I believe has been provided to the
22 committee members. It's important to
23 understand that there is no typical divorce.
24 There is no situation that steadfastly repeats
25 itself.

1 The numbers that I have provided here
2 are fairly reasonable, especially for this part
3 of the Commonwealth. I think we have to
4 understand that there, in this part of the
5 Commonwealth, are an awful lot of ten dollar
6 and fifteen-dollar-an-hour jobs. And that
7 translates to perhaps \$30,000 gross income per
8 year.

9 In this chart, I'm presuming that the
10 wife is employed part time at about minimum
11 wage and, therefore, we have family gross
12 income of approximately \$35,000. The next
13 thing that I indicate there is what the net
14 wage of these two people would be after
15 separation. Now, the net wage for the husband,
16 at least on this chart, presumes approximately
17 25 percent tax. That would be FICA, state,
18 federal, local, things along those lines.

19 Obviously, that number is mythical.
20 Obviously, it's subject to change depending on
21 who your accountant is and what your particular
22 situation is. But using these numbers, a
23 separated wage earner at that amount could
24 expect to pay approximately \$556 a month in
25 child support and another \$285 in spousal

1 support. That takes his income down to just
2 over a thousand dollars.

3 The net wage or the net disposable
4 income for the wife, again in this hypothetical
5 situation, is up over \$1200 a month. Now, the
6 simple fact of the matter is, and this is point
7 number 1, neither one of these folks is doing
8 very well. I would not want to try and support
9 two children on \$1200 a month. And I would not
10 wish to try and find a decent apartment on a
11 thousand dollars a month. Something is going
12 to have to give.

13 The point here is that, neither one
14 of these people are happy. I think it's
15 important to understand that the sociologists
16 tell us that one of the major reasons for
17 difficulty in the family unit would be arguing
18 about finances.

19 I would suggest to you that these
20 people aren't doing very well to begin with.
21 The car broke at exactly the wrong time. The
22 credit card bill obligation begins to inch up.
23 One of the kids get sick and somebody can't go
24 to that part-time job. And normally it would
25 be the wife, the economically dependent spouse.

1 This leads to stress. This leads to arguments.
2 And again, the point is, financially these
3 people aren't doing very well to begin with.
4 That's one of the reasons why they got
5 separated and gone to the divorce.

6 When we drop down to the second part
7 of this page, again, I'm dealing with a totally
8 hypothetical marital estate. We presume a
9 residence that has a value of approximately
10 \$80,000 is encumbered by a purchased money
11 mortgage that has a principal balance of
12 approximately \$30,000. There's a house full of
13 furniture. There's a car, and there's a
14 pension plan. To make the numbers easy, we
15 have a hundred thousand dollar marital estate.

16 It would not be unusual to anticipate
17 that the economically dependent spouse -- And
18 if we could be politically incorrect or if I
19 may be politically incorrect for just a moment
20 and indicate, golly, lots of times that's the
21 wife who is, in fact, economically dependent.
22 The wife makes a choice. I want the kids, and
23 I want to continue to raise the kids in the
24 family residence so as to be at least
25 disruptive as we can for the benefit of those

1 kids.

2 If you take a look at these numbers,
3 again, it would be not unusual to anticipate
4 that the wife would receive 60 percent of the
5 marital estate, which, in essence, is
6 everything that these people have absent the
7 pension.

8 Now, one of the areas of concern that
9 I hear over and over again is, why does it
10 appear that the economically dominant spouse
11 recovers while the economically dependent
12 spouse continues in her situation virtually
13 indefinitely?

14 I would suggest that there are a
15 couple very big, very important things that
16 happen as time passes. Number one, the
17 children grow up and consequently child support
18 ceases. Under those circumstances, the kids
19 move out of the nest, that economically
20 dependent spouse is left with a house that's
21 way too big and doesn't have the child support
22 coming in that would allow proper maintenance
23 of that asset.

24 The second thing that happens is that
25 the individuals approach retirement age -- And

1 you have to think back several years when this
2 divorce occurred and the wife gave up her
3 interest in the pension plan or the 401K plan
4 in order to keep the house. When this
5 individual reaches retirement age, she's left
6 with a situation where all she has is Social
7 Security because she's given up that pension
8 plan.

9 What I'm trying to suggest to the
10 committee is that this is what I am faced with.
11 These are the incomes and the assets that the
12 people bring to me. I cannot make this pie any
13 bigger. I cannot provide more income or more
14 assets for this divorcing couple. It's my job
15 to deal with the economic realities as they
16 present themselves. Neither one of these folks
17 are doing very well, and both of them are going
18 to suffer economic harm as a result of this
19 fracture.

20 It occurs to me that if the
21 Commonwealth really wants to address the
22 problem of the economically dependent spouse,
23 that we as a Commonwealth have to address the
24 causes of that dependency. I can't make the
25 pie any larger, but the Commonwealth can. The

1 Commonwealth can certainly subsidize education,
2 subsidize training, subsidize day care to limit
3 the causes, the root of that dependency and
4 allow a window of opportunity, at least, to
5 become more self-sufficient; and as I said, to
6 at least address the dependency problem at its
7 root.

8 I think it's important to understand
9 that those efforts are going to be meaningless
10 unless the Commonwealth finds a way to create,
11 attract, and keep jobs that will provide hope
12 for this individual who can get through the
13 training and become self-sufficient.

14 I don't think there's anything wrong
15 with the divorce code per se. The situation is
16 simply not tenable. I can't fix it. The law
17 can't fix it. As I said, the pie can't get any
18 bigger.

19 I would be happy to answer any
20 questions that the subcommittee might have, not
21 only on this particular issue, but on the other
22 two areas of concern. I understand that we are
23 running a little bit late. If you have no
24 questions, that's understandable. But again, I
25 would be glad to address to myself to any of

1 the areas of concern that have been brought up.

2 CHAIRPERSON COHEN: Mr. Gehringer,
3 thank you very much. I believe that
4 Representative Seyfert does have a question.

5 REPRESENTATIVE SEYFERT: I would just
6 like to share -- I certainly appreciate where
7 you're coming from. And the State of
8 Pennsylvania, particularly under the Ridge
9 Administration, we have with the federal funds.
10 I believe there's close to \$700 million in
11 terms of work force, development training, and
12 the state part of that did increase
13 dramatically this year.

14 Under family of four with 25,000 or
15 less do not pay personal income tax. We have
16 increased the terms of child in day care, so we
17 are aware of that and we are working on that;
18 but I do appreciate your bringing that to this
19 hearing. Thank you.

20 CHAIRPERSON COHEN: Counsel Dalton
21 has a question.

22 MS. DALTON: Mr. Gehringer, I would
23 just like to know, how often do you go outside
24 the lines on this -- Or in this case that you
25 gave to us, would you go outside the guidelines

1 when money is so tight?

2 MR. GEHRINGER: I presume you're
3 talking about the support guidelines?

4 MS. DALTON: Right, because I was
5 just wondering what's the percentage in your
6 caseload of going outside the guidelines?

7 MR. GEHRINGER: Under normal
8 circumstances, the issue of support has been
9 decided long before the case comes to my desk.
10 The issue of support is one of the very first
11 things that is going to be addressed by the
12 court, because the need is so instantaneous.
13 Those numbers are pretty much in place when the
14 Pleadings in the case is assigned to me.

15 One of the areas that I definitely
16 would deal with would be alimony pendent lite
17 as well as the longer alimony award. The
18 guidelines published by the Commonwealth in the
19 rule book really do not apply to those
20 particular issues. And consequently, I guess
21 the answer is, gee, it doesn't come up.
22 Alimony is an incredibly difficult issue to
23 deal with. It involves everything that's
24 happened before, and again, the available
25 dollars. What is available and for what period

1 of time?

2 MS. DALTON: Thank you.

3 CHAIRPERSON COHEN: Mr. Gehringer,
4 again, your testimony has certainly been
5 enlightening, and we thank you for taking the
6 opportunity to appear before us and to give us
7 something really in black and white that we can
8 dig our heels into. Thank you very much.

9 MR. GEHRINGER: Good day. Thank you
10 very much, and thank you for coming to Erie.

11 CHAIRPERSON COHEN: It is our
12 pleasure. The next person to appear before us
13 is Joseph Martone. Are you Mr. Martone?

14 MR. MARTONE: Yes.

15 CHAIRPERSON COHEN: Welcome to the
16 hot seat. You don't have to -- We know if
17 you're an attorney, you're sworn. All
18 attorneys are sworn to tell the truth.

19 MR. MARTONE: Thank you.

20 CHAIRPERSON COHEN: As a member of
21 the bar for 35 years, I can say that. Mr.
22 Martone, we appreciate your being here.
23 Anytime you're ready.

24 MR. MARTONE: Okay. I'd like to
25 focus my remarks on the subject of unified

1 court system. I do not speak for the Bar
2 Association, although I'm involved with the
3 Pennsylvania Bar Association's family law
4 section. So on behalf of this section, I
5 report a message to you that we also have a
6 joint task force to coin the phrase; that is,
7 investigating specifically the area of unified
8 court system.

9 The committee chairperson is a lawyer
10 named Mary Cushing Doherty out of Philadelphia.
11 Mary is currently, as we speak, in fact,
12 preparing a survey to be sent to each of the
13 judicial districts to accumulate information on
14 how each district handles its family law court
15 system. When that information is accumulated,
16 another part of the committee will also be
17 investigating unified court systems in sister
18 states, focusing mostly on the system in New
19 Jersey and Delaware. And if you may be aware,
20 those states have an actual family court as
21 part of their judicial system.

22 The Family Law Committee Task Force
23 will then accumulate its information and be in
24 touch with the various legislative bodies with
25 proposals. So you can expect more input by the

1 end of the year at the latest on this
2 particular subject. And it will be in
3 participation with most of the lawyers in the
4 state who do practice in family law.

5 My personal experience would be that
6 the ideal family law court system would begin
7 with a branch that was dedicated to family law.
8 Although I'm not a constitutional law expert, I
9 trust that all of you had much more experience
10 than I have with that. It would occur to me
11 that we couldn't do that in Pennsylvania
12 without a constitutional amendment setting
13 aside a separate family court much like the
14 business court that was discussed several years
15 ago.

16 In the absence of that type of
17 initiative, I'd like to share with you our
18 experience here in Erie County because we have
19 a modified, unified court system. Erie County,
20 as you may be aware, has eight judges. We
21 elect a president judge every seven years.

22 Our system has been broken down into
23 two separate divisions. One is called Family
24 slash Orphan's Court Division. The other is a
25 Trial Division. Our Family/Orphan's Court

1 Division consists of those areas that are
2 mostly family law: Divorce, support, custody,
3 protection matters, and we've expanded it to
4 also include Orphan's court matters such as
5 incapacities, probate matters, and minor
6 guardianships.

7 Our Trial Division, which is the
8 second division, handles obviously civil and
9 criminal trials. But, we've also included
10 juvenile in the trial court division, in that,
11 most of the juvenile matters are criminal in
12 nature. Even the dependencies have the
13 overtone of criminality to them. The judges
14 who handle the criminal matters seem to be more
15 focused, at least at this point, on dealing
16 with the juvenile matters.

17 Of the two divisions, the president
18 judge appoints an administrative judge for each
19 division. That administrative judge has great
20 authority in determining the direction that the
21 division goes. For example, we have an
22 administrative judge in the Family/Orphan's
23 Court Divisions who is then permitted to make
24 judge assignments within -- in this case it's a
25 his division -- of who will be assigned certain

1 types of cases. At least two other judges are
2 assigned and devoted at least part time to the
3 family division with other judges sharing
4 duties on an as-needed basis as appointed by
5 the president judge.

6 Family court division also rotates
7 the duty judge so each judge has a month on
8 handling with the emergency matters. Now, Erie
9 County does not have a classic one judge, one
10 family system. There are advantages and
11 disadvantages to that, as I'm sure you've
12 heard. I'll talk about that in a few moments.
13 What we do have, though, is in the family
14 division, each judge is assigned a particular
15 area to concentrate his or her judicial
16 experience.

17 For example, Judge Roger Fischer, who
18 was here earlier I believe, has been assigned
19 most of the support and custody trials. Our
20 newest judge, Judge Palmizano, has been
21 assigned many of the divorce litigation aspects
22 such as the exclusive possession hearings,
23 temporary alimony hearings, emergency relief
24 hearings. Judge Shad Connelly presides in the
25 Orphan's Court and guardianship areas within

1 the family court division.

2 This works out extremely well for our
3 county. Obviously, we're smaller than
4 Philadelphia and Allegheny, so that the judges
5 can communicate among themselves. But the
6 purpose of the unified court system is served
7 in that we have one judicial officer who is in
8 charge of the entire division.

9 And second, within the various judges
10 who are assigned these areas, there is a great
11 deal of communication. The judges are not
12 afraid to refer the matter back to one of the
13 judges within family law division if that judge
14 has more experience.

15 The key element from a practitioner's
16 standpoint of a unified court system in family
17 law is that it gives us a consistent pattern, a
18 consistent record of what we can advise our
19 clients in these very emotional periods in
20 their lives. It also allows the judge to gain
21 a great deal of expertise.

22 Family law can be very excruciating
23 at times, but when under the auspices of a
24 well-trained and well-meaning judge, many of
25 these situations can be defused and many of

1 them can be avoided because the lawyers and, in
2 fact, the litigants will know what the outcome
3 is going to be.

4 The one aspect of Erie County
5 practice that I'm not particularly pleased with
6 is the fact that our judges are mandatorily
7 rotated every two years. Again, there are
8 advantages and disadvantages to that.

9 Sometimes it results in a very good family law
10 judge sitting taking pleas and sentences all
11 day, while we get a disgruntled civil judge who
12 has absolutely no rapport with the family law
13 system hearing alimony and exclusive possession
14 hearings.

15 And although Pennsylvania is a state
16 that prides itself on diversity, the modern
17 trend as I see it in many legal aspects is for
18 uniformity. And that's where your committee
19 can, with the expertise that you are
20 developing, impose or create a system that will
21 be in place statewide. I point your attention
22 to the statewide rules of evidence that are now
23 in effect. You can see that the support area
24 has been generating towards a unified system.

25 I will mention in my second part of

1 my remarks about House Bill 1723, which is the
2 custody bill that has been proposed. If that
3 bill becomes law, you can see there is a great
4 deal of uniformity in what is going to be
5 expected in the custody area.

6 I would suggest that it is time for
7 the committee and entire Legislature to look at
8 bringing together the various aspects of
9 practicing family law that are statewide;
10 particularly, to have each county or each
11 judicial district have at least one judge who
12 is going to be responsible for administering
13 all of the family law components in that
14 particular system.

15 Family law, by its nature, always
16 will require intensive case-by-case hands-on
17 participation by the judiciary. There is no
18 way we can design a perfect system to help
19 alleviate all of the emotional discord caused
20 by a breakup of a family.

21 However, the unified family court
22 system will give us the advantage of providing
23 a bank of trained, concerned individuals
24 starting with a judge at the top who will then
25 select and train other professionals within the

1 area to identify the emotional and legal needs
2 of a family to provide consistent legal
3 outcomes when litigation becomes necessary, and
4 to also afford the family the opportunity for
5 counseling or other types of programs apart
6 from litigation that may be helpful in these
7 situations.

8 So I'd ask the members of the
9 committee to consider legislation that, if at
10 all possible, would create a unified distinct
11 family court system. If that is not possible,
12 to at least pursue the idea through legislation
13 of having a family court subdivision within
14 each Court of Common Pleas with an
15 administrative judge to oversee the various
16 aspects of family law.

17 CHAIRPERSON COHEN: Thank you. We
18 appreciate your being here. For your own
19 information, we have been working with the Bar
20 Association, and I think that we've had a
21 wonderful dialogue with the attorneys and your
22 subcommittee.

23 Additionally, again for your
24 information, we've been working with the folks
25 not in Delaware, but certainly in the State of

1 New Jersey; and we have met with the court
2 administrator there to glean some information.

3 We've collected information from as
4 far away as Hawaii, which again, has a unified
5 system, and hopefully we will be able to come
6 up with a -- if not a perfect system
7 legislatively, perhaps, the most perfect of
8 among the 50 states in the union. That is
9 certainly our goal. So we appreciate your
10 being here to reinforce what the bar is doing
11 in this area. And obviously, you're the people
12 with the expertise, and we certainly need your
13 advice and we appreciate the cooperative spirit
14 that everyone in the bar has worked with us.

15 Well, we thank you for your
16 presentation. We will certainly be in touch
17 with you, because again, we'll need your input
18 as we craft our legislation. So we thank you.

19 The next person to appear before us
20 is Bradley Enterline, also an attorney.

21 MR. ENTERLINE: Good afternoon.

22 CHAIRPERSON COHEN: Thank you for
23 being here. You may start your remarks at any
24 time. As I mentioned before, there is no need
25 to be sworn in. We just assume that attorneys

1 are sworn in. Sworn at.

2 MR. ENTERLINE: I'll be honest.

3 CHAIRPERSON COHEN: Thanks. That's a
4 given. Thank you, sir. You may proceed at any
5 time.

6 MR. ENTERLINE: Thank you. Good
7 afternoon. My name is Bradley Enterline. I am
8 pleased to be here today speaking before you.
9 A little bit of background. I have been a
10 practicing attorney in Erie County for
11 approximately 13 years. And throughout that
12 entire time, I've devoted a significant portion
13 of my practice to family law issues including
14 divorce, custody, support, protection from
15 abuse, and those areas.

16 When I was initially contacted about
17 the possibility of speaking to you, it occurred
18 to me I didn't think I had anything to say and,
19 in fact, I think I spoke with Karen Dalton and
20 I said, you know, I don't have any complaints
21 or particular problems that I'm aware of.

22 And after thinking about it a little
23 bit, I suppose that really your job is not
24 necessarily to come here and hear complaints or
25 problems, but to get feedback from people who

1 are in the system to find out at least what our
2 experiences are. So, I guess I'm here in that
3 role or in that position.

4 As to the issue of family court
5 reform, I've indicated that sometimes that
6 phrase strikes fear in the heart of practicing
7 family law attorneys. Maybe it's in part
8 because we feel that we're already trying to
9 keep up with case law, statutes, local rules
10 and procedures, the individual idiosyncrasies
11 of different judiciary members, so maybe we're
12 selfish in not wanting to change or to rock the
13 boat.

14 However, I think more importantly one
15 of the things we need to look to is, how is
16 this system operating, and does it need to be
17 fixed? One of my concerns is that, if things
18 are running smoothly, you don't necessarily
19 want to rock the boat or to alter how things
20 are handled because sometimes that can cause
21 chaos or even more difficult problems.

22 In my opinion, the family court rules
23 and the procedures here in Erie County--and I
24 can only speak to that because that's where my
25 practice is generally limited to--are adequate

1 and have worked well on a practical level.

2 We have a very active family law
3 committee in the local Bar Association who has
4 the cooperation of not only the bench but also
5 the bar. In addition, we work with the local
6 rules committee to also draft local rules and
7 legislation to help the operation of the
8 various filings and the way that the family
9 system operates.

10 When problems or concerns do arise, I
11 think we get a significant amount of
12 cooperation from the bench, from the judges who
13 are involved, and also from the bar who are
14 practicing in these particular areas.

15 With respect to custody issues, I
16 wanted to make a few comments since coming from
17 an advocate and somebody who represents
18 litigants in this area. The custody process in
19 my opinion has evolved greatly over the last 13
20 years. It used to be that custody matters were
21 heard somewhat as a nonjury trial. You would
22 have witnesses. You would cross-examine the
23 parties. You would present evidence and
24 testimony before a hearing officer.

25 One of the problems with that system

1 was, it created an adversarial situation right
2 from the start. It got parents thinking about,
3 how am I going to beat the other side? How am
4 I going to present my case better? And
5 sometimes I think it lost focus of really what
6 we were there for, and that's to try to provide
7 for the best interest of the children.

8 Since that time, the current
9 procedure that we use in Erie County and in
10 many of the other counties around the state
11 provides a situation that in my opinion is much
12 better. We have a situation where we try to
13 get the parents to work together as parties and
14 to come up with an agreement in the custody
15 realm.

16 To the extent that there may be
17 limitations in this process, some of the
18 attorneys complain they can't bring witnesses.
19 They can't introduce necessarily expert
20 testimony or evidence at these custody intake
21 or conciliation conferences.

22 I don't believe that that's
23 necessarily a problem at that level. If a
24 party can't or parties and parents can't come
25 to some sort of an agreement at that time, they

1 have the option of going to the judge and
2 having a full custody trial. There's always
3 that ability to do that.

4 A significant advantage of the
5 current practice is that, the parties may
6 represent themselves at custody proceedings.
7 They don't necessarily have to come to me and
8 hire me and pay me money to resolve these
9 issues. It also has the benefit of making the
10 parties responsible to go to court, to try to
11 come to an agreement on their own. It puts the
12 power in their hands to try to resolve their
13 own conflict, and to the extent that people can
14 do that, I think the children benefit when the
15 parents are able to work together.

16 The custody office also provides
17 limited assistance for people. It tells them
18 how to file their complaints and how to get
19 into custody court. And I think that's
20 important. Northwest Legal Services, which is
21 the legal service branch here in Erie County
22 also provides seminars for people on how to
23 prepare a custody complaint, how to get it to
24 that first stage so that they can have a
25 custody intake conference and hopefully walk

1 away with a court order.

2 The most difficult custody issues and
3 problems are those which obviously cannot be
4 resolved at that level. . These are the ones --
5 These are the cases which require judicial
6 tension and a custody trial however, and I
7 don't know.

8 You may have gotten information, but
9 according to the custody office since or
10 through July of this year, there's been 616
11 filings of custody cases. Out of all those
12 cases, only 40 went and asked for -- could not
13 come to an agreement or asked for a custody
14 trial. Of those 40, only 14 withdrew their
15 request; and so, 24 ultimately had final orders
16 that came out of the custody court. That's
17 about four percent of all the cases, or rather
18 96 percent of the cases if those numbers are
19 accurate, resolved in parents, guardians,
20 grandparents, coming up with their own
21 agreement and resolving the issue. And I think
22 that's a significant success.

23 Part of the problem we have in those
24 four percent of cases is that the parents that
25 come to court and are pursuing custody

1 litigation aren't necessarily doing so for the
2 right reasons. It's an extremely emotional
3 issue. A lot of times I've seen parents who
4 are simply angry. They're vindictive. They're
5 embittered. They're unreasonable. They want
6 to hurt the other party, and that makes for a
7 very difficult process. Not all of the cases
8 are like that that go to custody trial.

9 I truly think that most parents
10 believe that they're doing what's in the best
11 interest of their children. They're trying to
12 represent and trying to get the court to grant
13 relief that they believe is best for them, but
14 it makes for a difficult situation.

15 One of the concerns that I've had is
16 parents who bring their children into a custody
17 courtroom and actually want the children to sit
18 through the custody trial and to hear the
19 testimony. I refuse to allow my clients to
20 bring children into the custody -- or to the
21 courtroom. Sometimes it's necessary for
22 children to testify. We don't like to do that
23 unless we have to. We like to keep them away
24 from the process as much as possible.

25 But, to the extent that they need to

1 testify or that the court needs to hear them,
2 that matter can generally be heard in chambers.
3 And I've been successful. Most counsel have
4 always agreed to do it that way rather than
5 forcing the child to testify on the stand in
6 front of their parents.

7 It's a situation that I think
8 everybody can agree would not be in the best
9 interest of the child to be put in a situation
10 where they have to choose, or at least make
11 statements in front of parents that would be
12 difficult for them.

13 For custody cases that have to be
14 decided by a custody trial, we have been
15 fortunate in Erie County to have a number of
16 licensed psychologists who help to assist in
17 evaluations, in evaluating the parties, the
18 children, to come up with a determination or at
19 least a recommendation that can go to the
20 judge.

21 The judge doesn't have to accept a
22 psychological evaluation, and in a lot of cases
23 does not. But, it provides another element and
24 another advantage for the trial court in making
25 a decision. Part of the problem with the

1 psychological evaluation process is it's too
2 expensive. For most people, depending upon how
3 many children you have, how many parties
4 involved, and what the issues are, you're
5 talking maybe one to \$2,000 just for an
6 evaluation and a report to the court. That
7 doesn't include the expert's time to come in
8 and testify. And for some people that's just
9 outside of the realm of possibility for them
10 financially in order to do that.

11 Now, there is a provision in the
12 rules that let's the court appoint a
13 psychologist to do an evaluation at the
14 county's expense. But with the county
15 budgetary limitations, it's my -- I think most
16 judges would find it difficult to order that in
17 all, but maybe the most difficult or extreme
18 cases. So that's an area that I think it needs
19 to be looked into.

20 Judge Fischer, who has already
21 testified, I believe, and conducts the lion
22 share of custody trials in Erie County, in my
23 opinion has done an excellent job. He's a very
24 active jurist. He is someone who even if a
25 party is unrepresented and I'm there

1 representing my client, he does a very good job
2 of trying to get all the information and the
3 facts out. He has an inordinate amount of
4 patience with people who represent themselves.

5 As you can imagine, that can be a
6 difficult process. He allows them to present
7 all the evidence that they think is relevant.
8 He allows them to present witnesses and to get
9 the testimony in. And I think those parents
10 and those parties are entitled to their due in
11 the courtroom whether they're represented or
12 not.

13 I think that Judge Fischer in
14 examining those people and even in
15 cross-examining my clients, some lawyers have a
16 difficult time with that, with the judge taking
17 such an active role. But, I think in custody
18 situations where we're looking at not really
19 what's best for the parents or what they want,
20 we're looking at what's best for the child.
21 It's up to the court, and it's incumbent on the
22 court in order to do that type of an evaluation
23 and an interview of the parties in order to
24 come up with a solution.

25 In conclusion, I'd like to reiterate

1 that at least as far as custody issues are
2 concerned in Erie County I believe that the
3 statute, the state and local rules are working
4 effectively. They're being used well. We have
5 the tools there to continue to work in this way
6 and that the trial court, the custody office
7 have done an effective job in what are
8 extremely difficult circumstances in resolving
9 custody issues. Thank you very much.

10 CHAIRPERSON COHEN: Mr. Enterline,
11 thank you very, very much. We appreciate your
12 suggestions. We've been studying this issue
13 for four years, and as I mentioned in my
14 opening remarks, we have been throughout the
15 Commonwealth.

16 Counsel Dalton and I have been to New
17 Jersey speaking to the court administrator
18 there. We had contact with people, as I
19 mentioned before, from as far away as Hawaii.
20 We've been meeting with people; judges,
21 attorneys in the field, of litigants, of
22 children, counselors. We've really met with
23 and run the gamut. And each time we meet with
24 someone or get testimony from someone, it seems
25 that another issue is presented to us, and you

1 certainly have opened up even more issues for
2 us.

3 I believe that Counsel Dalton has a
4 question.

5 MS. DALTON: I'm going to put you on
6 the spot.

7 MR. ENTERLINE: That's okay.

8 MS. DALTON: Judge Fischer had
9 testified regarding PFA matters.

10 MR. ENTERLINE: Yes.

11 MS. DALTON: He suggested that if the
12 parties reconcile, that the order automatically
13 terminates. And then if there's some kind of
14 behavior that would have amounted to a
15 violation had the PFA been in place, that there
16 really isn't any order to proceed upon.

17 I was just wondering whether you had
18 had some experience with representing people in
19 PFA matters; and if so, would you have an
20 opinion about that?

21 MR. ENTERLINE: Yes. Actually, I do
22 happen to represent PFAX, which is a local
23 organization that provides legal counsel to
24 abused spouses in PFA court. We handle --
25 PFA's account for, I believe, the single

1 largest filing in Erie County of any civil
2 matter. I think we had over 2,000 filings last
3 year, and we hold court on Tuesdays and
4 Thursdays every week and Judge Fischer hears a
5 lot of those. The judges are rotated. But, we
6 can have anywhere from maybe -- easily 10 to 20
7 or 30 individuals a week coming through on PFA
8 petitions.

9 I understand the judge's concerns,
10 and I know he's raised this before. His
11 concerns are, I think, and if I am incorrect on
12 this, let me know. But I think what he's
13 saying is that, if the parties were to get back
14 together without coming to the court to ask for
15 approval, that the order would automatically
16 terminate.

17 So that if something would happen,
18 the defendant in that instance would not be
19 guilty potentially of violating or coming into
20 contempt of court for violating that order. My
21 only concern is that in a lot of these
22 situations, we do have an easy remedy to undo
23 the order or to change it.

24 We try to make an effort to explain
25 to not only the petitioner, but also the

1 defendant that we're not attempting to keep
2 these people apart. Our desire is not to
3 separate parents, to keep them away from their
4 children, and to have them have separate homes.
5 We simply want the abuse to stop.

6 And if they want to try and get back
7 together, one of the things that we can do is,
8 we can change the order so that there is no
9 what's called an exclusive possession. So in
10 other words, that they can move back together
11 and live together in the same house, but an
12 order's there to protect them in the event that
13 something else happens.

14 I would have concerns about
15 automatically terminating their order because
16 they have gotten back together. I understand
17 the judge's concerns about trying to enforce
18 that, but my worry -- I think I would leave it
19 up to the litigants and then require them to,
20 if they want it changed, if they want it
21 dropped, they can come back to court.

22 It's a very simple process. They can
23 fill out the petition themselves and say, Your
24 Honor, we've gotten counseling. We've worked
25 our problems out. We want to get back

1 together. We don't want this order. We think
2 we can do it. And the court will do that in
3 those instances.

4 MS. DALTON: Okay. Thank you.

5 CHAIRPERSON COHEN: Mr. Enterline, we
6 thank you again for enlightening us in this
7 area.

8 MR. ENTERLINE: Appreciate your time.

9 CHAIRPERSON COHEN: Thank you. We
10 have a witness to be here at 3:30, ten minutes;
11 so why don't we just hold off and wait for him.

12 (A short recess was taken)

13 CHAIRPERSON COHEN: Doctor
14 Schierberl, we welcome you. We understand that
15 you've just gotten back from vacation.

16 DOCTOR SCHIERBERL: Correct.

17 CHAIRPERSON COHEN: We appreciate
18 your efforts to be here under those
19 circumstances.

20 DOCTOR SCHIERBERL: Thank you.

21 CHAIRPERSON COHEN: Anytime you're
22 ready, you may proceed.

23 DOCTOR SCHIERBERL: Okay. And I
24 guess you, therefore, understand why I don't
25 have something in writing to give to you.

1 CHAIRPERSON COHEN: That's fine.

2 DOCTOR SCHIERBERL: I would have
3 liked to have done that, but I'll try to speak
4 clearly and slowly so you can capture the gist
5 of what I have to offer.

6 I don't have statistics and research
7 studies. What I have is a clinical perspective
8 from someone who does a large amount of
9 counseling and therapy work with kids and their
10 families involved in divorce and the court
11 systems surrounding the divorce process.

12 I noticed in looking over the agenda
13 today, many familiar names there for me,
14 because I do a lot of custody evaluation work
15 to assist the courts and the attorneys in
16 resolving custody issues, and so this is kind
17 of familiar ground for me.

18 I'd like to start out by saying that
19 I think this is a very significant public
20 mental health problem. In addition to the
21 other concerns that bring this to your
22 attention, divorce is just a destructive force
23 on children, certainly, but also the adults
24 involved.

25 Anything that can be done to ease the

1 course of families as they struggle with that
2 challenge would go a long way to easing the
3 challenge on the health system of so many
4 people struggling with stress, much of which is
5 preventable if we can make some improvements in
6 the system. So what I can talk about is my
7 experiences with the system and where I see
8 points of possible improvement.

9 Let me start by giving sort of a
10 typical scenario of families that come to my
11 attention. You have a marriage that's going
12 sour; husband and wife not getting along.
13 There's increased tension, increased family
14 conflict as the kids start to act out and
15 become troubled by the marriage problem. And
16 here's where the first problem comes in.

17 People don't have access to
18 treatment. Most people don't yet know that
19 divorce is preventable if people would just
20 seek help early on. We have a long way to go
21 to remove the stigma on family problems and
22 mental health problems.

23 My vacation was combined with a
24 conference, and I was speaking to the head of
25 the American Academy of Pediatrics about this

1 matter, and he was apologetic; but saying he
2 basically understood why family physicians and
3 pediatricians are still hesitant to tell
4 someone, you could be helped by going to a
5 psychologist or social worker or psychiatrist.

6 There's still a bit of a stigma
7 there. I don't know exactly what we do to
8 remove that. I guess we need a lot more public
9 education. I guess this is part of that
10 process. But there's a tremendous amount that
11 could be accomplished on the prevention end if
12 we simply helped pastors, teachers, family
13 physicians, people that come in contact with
14 stressed families and to help steer them
15 towards helping professionals.

16 But, typically, that doesn't happen.
17 So, a family is headed towards divorce, they do
18 not get treatment; they're separated; they
19 start into the divorce process. And now
20 they're involved in a legal system which,
21 unfortunately, is still primarily an
22 adversarial system. I think we've had
23 tremendous improvements in the 15 years I've
24 been practicing in Erie County, but there's
25 still great room for improvement; and I'll try

1 to give some suggestions.

2 Once they're in the legal system,
3 there's increased tension and animosity between
4 the two parents. The kids are caught up in the
5 middle of that, and very likely then kids
6 become symptomatic. Whether they're depressed
7 or inattentive in school, or acting out with
8 behavior problems; the full spectrum of
9 adjustment problems kids can have occurred in a
10 reaction to this increased stress as the
11 families negotiate the tensions of the
12 adversarial legal system.

13 Now, you've got also financial
14 stresses; lawyer bills to be paid, two
15 households now to be run, and so now the
16 families are under even further stress.
17 Parents are less effective at providing the
18 increased support the kids need at this time,
19 which just further sort of increases the
20 momentum of the snowball rolling down the hill,
21 if you will, and things continue to cycle.
22 Kids act out. Parents get further stressed.
23 They become less effective, withdraw from the
24 kids, drink; whatever they might do to cope,
25 and kids become even more symptomatic.

1 And then they come to our attention
2 typically. There is still some room for
3 improvement in terms of the economic aspects of
4 seeking mental health services. A large
5 percentage of families -- I would probably
6 estimate the majority of families nowadays have
7 a type of health insurance that will at least
8 provide the basic mental health benefit. But
9 many families don't, and sometimes it's a
10 limited benefit. Even a \$25 co-pay is a common
11 requirement. But families struggling with the
12 economic pressures of divorce, a few can afford
13 to pay even that \$25 fee, and so we need to
14 have some way of intervening for families that
15 can't afford to get the help that they might
16 even want. Maybe they know they need it.
17 Maybe they're open-minded about it, but there's
18 economic factors there as well.

19 There's another point where some
20 improvement needs to be made. Parents
21 sometimes start working two jobs when they're
22 trying to cope with the financial stresses.
23 There's decreased parent availability to the
24 kids. And again, increased likelihood of
25 mental health problems in the children. So

1 then we come in and try to patch this thing up,
2 and sometimes also lead people through the
3 court process; but it's a long and ugly process
4 and takes a major toll on families.

5 One of the things that I think is a
6 major advantage in Pennsylvania, including Erie
7 County, is the so-called wraparound system of
8 enhanced mental health services for children
9 where people who have medical assistance and
10 now have greatly increased access to help with
11 services coming out to the home, into the
12 school, wherever the children need the help
13 provided. That's been a wonderful improvement.
14 I think if we can make similar improvements on
15 the preventive end before the family actually
16 splits up, we would be two steps ahead.

17 I want to say a few words about
18 education. I think this also goes hand-in-hand
19 with prevention. Just like psychologists often
20 complain that it's a shame that there's no
21 training in parenting. People are just
22 presumed to know what they're doing with this
23 newborn infant, and we don't tell them much
24 about what to do and how to raise the little
25 youngster.

1 Well, it becomes even more compounded
2 when the children are going through divorce.
3 Most parents have very little idea how to
4 conduct themselves in that situation, how to
5 co-parent effectively with an ex-spouse that
6 they're not on good terms with.

7 So there's a lot that could be done
8 in terms of educating people better on how to
9 help children cope with the process. We have
10 the Children Coping With Divorce seminar in
11 Erie County which has been very, very helpful;
12 but my feeling is it is not quite enough.

13 In my effort to seek out alternative
14 models and find out how other states and
15 counties do this, some places have a second
16 level of education, so that for people who
17 maybe don't get enough by sitting and listening
18 to a lecture for a couple of hours, and many
19 don't, they can move into an alternative model;
20 a smaller group format, more interactive, more
21 discussion oriented, and lasting, hopefully,
22 more than just two hours. Some families really
23 need more than two hours of education if
24 they're going to get anything out of this.

25 A smaller group interactive format

1 eliminates the problem of people bringing some
2 newspaper to read or not paying attention, just
3 sort of going through the motion, which,
4 unfortunately, I hear that quite often
5 happening. Parents are required to go to this,
6 but there's no way to require them to take it
7 seriously.

8 So, I think some alternative models
9 of that education seminar would be very useful.
10 I also think we could do more on the end of
11 helping the children cope with the divorce. We
12 have many private and some public programs in
13 Erie County, most of them under the Rainbows
14 for All God's Children logo. Also some private
15 programs, but I know some other counties have
16 more of a systematic program associated with
17 the parent education to make sure the children
18 do have an opportunity; that it's not just left
19 up to the parents as an option; that children
20 will be put in small group programs where they
21 can talk with other children and experts to
22 help them go through this process. I think
23 there's more we could do there.

24 The final point that I would
25 emphasize as where I feel we could do more in

1 making this a less adversarial and less
2 destructive process for kids and their families
3 is in the area of mediation.

4 As you probably know, we have a
5 conciliation model here in Erie County, which
6 is sort of a quasi mediation system. Parents
7 meet with a conciliator and the conciliator
8 strives to affect a compromise solution, but
9 it's time limited attention's usually still
10 high. The problems that I see with the
11 conciliation model are, number one, that the
12 attorneys remain involved. There's still sort
13 of an adversarial atmosphere.

14 Number two, the fact that it is not
15 confidential; that people know that if they let
16 their hair down and admit that they've got some
17 problems and open up in that process, it might
18 come back and be used against them later on in
19 the court proceedings. I see that as a major
20 problem with our conciliation process.

21 And then at the end of it, if the
22 parties can't agree, there's still sort of a
23 court-ordered solution bordered on the family,
24 imposed on the family with an option to appeal.
25 Most people either can't afford to appeal, or

1 are frightened to do so, or just tired of going
2 through the adversarial process.

3 Contrast that with a true mediation
4 model -- I'll use Allegheny County as an
5 example. I'm familiar with -- where they have
6 a lot of mediators that work closely with the
7 courts; and those cases are assigned to the
8 mediators where people can meet in
9 confidentiality, a comfortable atmosphere
10 with a trusted mediator. They can meet as many
11 times as they like. There is still an economic
12 hurdle to be overcome. Not everyone will be
13 able to afford that, but there should be ways
14 around that too. I think it's a function
15 government should serve to prevent the higher
16 costs on the system later when people don't get
17 the early intervention help.

18 But in a true mediation model in a
19 confidential discussion for anywhere from one
20 meeting to 20 meetings, many families are
21 capable of ironing out their problems. The
22 solution as to what schedule of involvement the
23 two parents will have with their children for
24 the rest of their lives is not left up to a
25 sometimes arbitrary decision of one person.

1 I know psychologists, when they are doing
2 custody evaluations, always hate being in the
3 position of playing God and making that kind of
4 a major decision to impact a family's whole
5 life.

6 We sometimes step back from that
7 final step and leave that to the judge. I know
8 judges hate being in that position also. But
9 we're not really allowing families the
10 opportunity to have the healthy alternative
11 that exists other places, where they could sit
12 down without time pressure and take as many
13 weeks as they need to come together and work
14 together towards compromise, so the two parents
15 who know those children best and are the best
16 people for the job can somehow find a way to
17 find middle ground that they can agree on and
18 make the decision that's probably as major a
19 decision as will ever be made for their
20 children.

21 And to stay involved in that process
22 unless the initial decision does not work out,
23 it needs to be modified, and I think that's
24 much preferable to what I often see now where
25 the, quote/unquote, losing party in a custody

1 battle or even in our conciliation process
2 where people go in, and if they don't like the
3 decision, there's no opportunity to continue
4 discussing it. They don't want to go to court,
5 and many times the so-called noncustodial
6 parent withdraws then.

7 The stereotype example is a father.
8 There are so many kids growing up today without
9 involvement with their fathers who are readily
10 available, sometimes very close by, but just
11 withdraw. I think if we had a better process
12 of mediation involved, we could steer families
13 towards a healthier solution.

14 So to summarize, the things that I
15 see as being needed to improve our family court
16 system as it relates to my primary area of
17 interest, the impact of divorce on children,
18 increased access to early intervention and
19 prevention services to help families avoid
20 divorce.

21 Secondly, increased education
22 programs to give parents the knowledge and the
23 tools that they need to cope with divorce and
24 to help their children cope with divorce, to
25 prevent all the predictable problems with

1 mental health disorders and delinquency that
2 stem from divorce very often.

3 Thirdly, more of a true mediation
4 system to supplement the conciliation model we
5 now have.

6 And fourthly, it's not as specific;
7 but as I just alluded to, there has to be a
8 community-wide, system-wide effort to push to
9 keep both parents actively involved in the
10 children's life after divorce, regardless of
11 which one has primary custody.

12 Those are the points that I wanted to
13 emphasize today, and I don't know how I did on
14 my time; I hope okay.

15 CHAIRPERSON COHEN: Fine. Thank you,
16 Doctor Schierberl.

17 DOCTOR SCHIERBERL: You're welcome.

18 CHAIRPERSON COHEN: We certainly
19 appreciate it, and you've brought another
20 complexion and another aspect to this
21 investigation, and we certainly appreciate your
22 being here. Welcome back from vacation.

23 DOCTOR SCHIERBERL: Thank you.

24 CHAIRPERSON COHEN: This concludes
25 another in our series of hearings on divorce

1 reform and from the divorce and domestic
2 relations task force.

3 I must reiterate some of the things
4 that I said and really has been mentioned
5 throughout the four years that we've been
6 investigating these issues.

7 The task for the Legislature is
8 overwhelming. As most people know, we as
9 legislators during the course of a two-year
10 legislative session receive and have in front
11 of us about 5,000 bills in proposed forms of
12 legislation. We are expected to be an expert
13 in all of those areas, be they domestic
14 relations, criminal law, agriculture, whatever.

15 Our task in this area is
16 overwhelming, particularly because it is
17 unique. We are not dealing with mere cold
18 facts. We've had bills before us dealing with
19 nutrient management, bureau dollar, etc. They
20 don't have an emotional ring to them. But when
21 we're dealing with people's lives and people's
22 emotions, it complicates our job as
23 legislators.

24 Doctor Schierberl, you particularly
25 mentioned, who wants to play God, or who is

1 mandated to play God. Our job as legislators,
2 we may be indeed -- It may be incumbent upon
3 us, and that burden may be thrown into our laps
4 very uncomfortably.

5 This is not a perfect world. Our
6 duty as legislators is to make it as perfect a
7 world as possible. When we're dealing with
8 people's thoughts, feelings, pocketbooks,
9 emotions, families and children, really the
10 most basic aspect of our society, these issues
11 become even more difficult for us as
12 legislators.

13 As you, in fact, mentioned -- And
14 it's interesting because my husband and I
15 talked about it just yesterday, none of us have
16 a Ph.D. in parenting. When we all take
17 childbirth education courses and learn how to
18 huff and puff and breathe and have the child
19 come out, and when it's placed in our arms,
20 even those of us with advanced education say,
21 now what? We do our best in marriage, and we
22 do our best with our children out of love.
23 Sometimes things go awry that we don't have any
24 control over. Even in those difficult and very
25 painful circumstances, we still all try to do

1 our best.

2 This domestic relations area is not
3 just an area for legislators. Again, as you
4 mentioned, it's an area for the entire
5 community: The clergy, psychologists,
6 counselors, judges, police, everyone. What our
7 task is to, as I said, make this as perfect a
8 world as we possibly can with help from all
9 aspects of the community. We can only
10 legislate to a certain extent, and then we,
11 because we are the leaders in society, have to
12 call upon the entire community to assist us in
13 all aspects of this.

14 So, to our community, the people who
15 have testified, the people who have come to
16 these hearings, we thank everyone for the
17 input. Again, I must thank Karen Dalton, our
18 counsel, who has just done a yeoman's job in
19 this. We hope what will come forth out of
20 these hearings is some kind of justice.

21 We hope to fix the system, which is
22 broken in many aspects. We will do our best.
23 We'll aim for a perfect world. I know we will
24 not achieve it, but if we can make this entire
25 process less painful and a little bit more

1 just, then we will have, I think, succeeded and
2 done our job correctly.

3 Again, I have to thank Representative
4 Seyfert for your hospitality, and if you want
5 to make any concluding remarks, please feel
6 free to do so.

7 REPRESENTATIVE SEYFERT: Thank you.
8 I would just like to take the opportunity to
9 thank the Community of Edinboro, the Borough of
10 Council here for the use of their facilities.
11 And again, Chairman Cohen, thank you and the
12 other legislators that were here earlier and
13 had to leave. I think it has been a very
14 productive hearing, and I am pleased that it
15 was held in Edinboro, the fifth legislative
16 district. Thank you.

17 REPRESENTATIVE SEYFERT: Thank you,
18 again, and this concludes our hearing for
19 today. Thank you.

20 (At or about 3:53 p.m., the hearing
21 concluded)

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C E R T I F I C A T E

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

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

Dated this 23rd day of September, 1998


Amy J. Patterson - Reporter
Notary Public

My commission expires
5/21/01