

ORIGINAL

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COMMONWEALTH OF PENNSYLVANIA
JUDICIARY COMMITTEE TASK FORCE ON DOMESTIC RELATIONS

HOUSE BILLS 1976 AND 1977

NARBERTH BOROUGH HALL
COUNCIL CHAMBER ROOM
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FRIDAY, DECEMBER 10, 1999, AT 9:08 A.M.

BEFORE: HON. LITA COHEN, CHAIRPERSON
HON. JOSEPH PETRARCA
HON. STEPHEN MAITLAND

JAN L. BUCHER
REPORTER-NOTARY



ARCHIVE REPORTING SERVICE

2336 N. Second Street (717) 234-5922
Harrisburg, PA 17110 FAX (717) 234-6190

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1 REPRESENTATIVE COHEN: Good morning and welcome
2 to the Pennsylvania House of Representatives' Judiciary
3 Committee Task Force on Domestic Relations. I am Lita
4 Cohen, Representative from Montgomery County. We are here
5 today to discuss and take testimony and hear comments
6 about House Bills 1976 and 1977.

7 As you know, the Domestic Relations Task Force
8 has been working for the past six years to reform the
9 domestic relations laws in Pennsylvania. For the past
10 several years we've heard testimony from judges, citizens,
11 anyone connected with the issue of divorce both in the
12 Commonwealth; and we have also taken expert testimony from
13 people from other states.

14 We have determined that the system as it exists
15 in the Commonwealth is not just and does not provide
16 efficient, expedient, swift, economic justice for those
17 involved in the system. It is our aim to revise the
18 system in order to provide justice for everyone and to
19 make a very painful personal situation as painless as
20 possible.

21 We have many experts with us today to testify.
22 The first thing that I would like to do is to introduce
23 Representative Petrarca from Westmoreland County. Thank
24 you for being here. Representative Petrarca is a member
25 of the Judiciary Committee and, of course, of the task

1 force. Additionally, we have Karen Dalton, counsel to the
2 committee, and Jane who is the Democrat minority
3 representative here. Thank you for being here.

4 We have invited to testify today many judges
5 and many people who unfortunately could not be able to
6 join us. But for the record I would like to say that we
7 have invited Judge Feinberg, Justice Newman of the
8 Pennsylvania Supreme Court, Judge Paul Panepinto, who's
9 administrative judge of family court of the County of the
10 Philadelphia, and Judge Emanuel Bertin, who's the
11 administrative judge of the Montgomery County courts.
12 Judge Bertin has, however, sent written testimony.

13 House Bill 1976 proposes an amendment to the
14 Constitution of the Commonwealth of Pennsylvania providing
15 for hearing and deciding cases involving the dissolution
16 of marriage, custody, child support, spousal support,
17 alimony, equitable division of marital property, and
18 related family law matters.

19 House Bill 1977 amends Titles 23 and 42
20 providing for procedures in domestic relations litigation,
21 conferring powers and duties on the unified judicial
22 system, the Secretary of the Commonwealth and the
23 Legislative Reference Bureau establishing the family
24 justice account and making editorial changes.

25 Essentially what that means is that the whole

1 system, we hope, will be revised to provide a one-family,
2 one-team, one-judge system. Each time a family needs the
3 Court's help, the family will deal with the same team and
4 the same judge; mandatory education for judges and family
5 law masters in areas that will enable them to make the
6 best decisions they can for their families; the
7 substantive law of divorce, child custody and support, and
8 other economic issues, domestic violence, child psychology
9 and child abuse and neglect.

10 Additionally, we will propose and have proposed
11 a differentiated case management system which will enable
12 cases to be decided more quickly and fairly due to placing
13 them on different tracks based upon the case's
14 complexity.

15 We also propose a system that promotes public
16 confidence by assuring accountability of court officers
17 and judges and recognition of the fact that an
18 overwhelming number of family members undergoing the
19 strain of breakup are not represented by lawyers.

20 Having said all that, I'd like to introduce the
21 first person to make a presentation to us today. He's
22 made presentations to us. He's an expert. He's from the
23 American Bar Association. But Jeffrey Kuhn has come up
24 today from Washington. He has been our mainstay and one
25 of the principal sources of the composition of our

1 proposal.

2 So, Mr. Kuhn, we welcome you. Please have a
3 seat and let's hear from you because you always have
4 pertinent and concise and substantive information to tell
5 us.

6 MR. KUHN: I hope that continues.

7 REPRESENTATIVE COHEN: I do, too.

8 MR. KUHN: Good morning, Madam Chairman, and
9 lady and gentleman of the House Judiciary Committee Task
10 Force on Domestic Relations. My name is Jeffrey Kuhn.
11 I'm here to testify in support of House Bills 1976 and
12 1977, more specifically an enactment of the Family Law and
13 Justice Act.

14 I am here today as a consultant on family law
15 and justice reform for the American Bar Association in
16 Washington, D.C. In that capacity I provide assistance to
17 the courts and legislatures of over 35 states presently in
18 reforming the manner courts address legal issues related
19 to children and families.

20 I have served for four years as the Assistant
21 Administrative Director of the Courts for the State of New
22 Jersey in that capacity managing the nation's largest
23 family court system. Prior to that time I served for ten
24 years as the Director of the National Family Court
25 Resource Center at the National Council of Juvenile and

1 Family Court Judges.

2 I've also practiced family law in the States of
3 California and Nevada and have served as a family court
4 judge pro tem in the 2nd Judicial District in the State of
5 Nevada. I've also authored a number of published articles
6 in law reviews and legal periodicals on the subject of
7 family law and court reform.

8 I have had the fortunate opportunity to work on
9 the construction of this proposed legislation with
10 Representative Cohen and her counsel, Karen Dalton. I say
11 fortunate because they have both been meticulous and
12 thoughtful about its contents.

13 This reform package is representative of what
14 the approach of family courts should be to children and
15 families who require their help. It is about assuring
16 safety and protection of those at risk and protecting
17 those who have been harmed from future harm. It is also
18 about assuring access to Pennsylvania's system of family
19 law and justice, not only for those who are indigent but
20 also for those who are too frightened or intimidated by
21 the traditional adversarial approach to family justice to
22 adequately communicate their needs to the system.

23 This proposed legislation is about expedition
24 and timeliness, recognizing that what is days or weeks for
25 adults seems like months or years for children. Also it

1 is about an accountability of a part of the justice system
2 that handles the most important jurisdiction in the state
3 trial courts. And, as importantly, it is about restoring
4 public trust and confidence in the courts and their
5 ability to handle these most important cases.

6 Rather than continuing to speak in broad terms
7 about my support for this legislative package, I would
8 like to anticipate with you some of the testimony you may
9 hear from those who oppose this legislation.

10 Surely you will hear from those who oppose this
11 legislative package because they believe the legislature
12 has overstepped its bounds by venturing not only into the
13 structure of judicial reform but by mandating the process
14 by which the courts must execute it; said another way,
15 violating the separation of powers provision within
16 Pennsylvania's Constitution.

17 I'm not here as a constitutional law expert to
18 debate this issue. And as one who has spent most of my
19 professional career either directly within or very close
20 to family courts, I would prefer the courts initiate their
21 own reform efforts.

22 However, what, on balance, is the most
23 important for children and families in the State of
24 Pennsylvania? This legislative package presents to
25 Pennsylvania's judiciary a wonderful opportunity to

1 provide judicial leadership, experience, and scholarship
2 to an important reform effort and for all branches of
3 government to work together to benefit families in the
4 justice system.

5 It is not about standing on 200-year traditions
6 that did not anticipate the complexities of our modern
7 society and the need to protect its vulnerable
8 individuals. You may hear also that this legislative
9 package represents an unfunded mandate requiring a vast
10 array of new resources for the courts without the dollars
11 to support their implementation.

12 I would be foolish and probably out of a job as
13 a consultant if I sat here and told you that additional
14 resources were not necessary to develop and implement the
15 reforms called for in this proposed legislation. If you
16 are serious about this proposed reform, you must
17 understand that it will absolutely require additional
18 resources.

19 Creating case management teams, parent and
20 child divorce education and orientation programs, secure
21 waiting facilities for children and victims, increasing
22 legal assistance for persons in need, and fulfilling the
23 mandate to educate judges and court staff are
24 resource-intensive efforts.

25 However, there are many creative methods to

1 find and develop resources that will help support your
2 family justice system. More than anytime in recent
3 history the federal government is providing block grants,
4 formula grants for special initiatives in the areas of
5 domestic violation, non-custodial parent access,
6 alternative dispute resolution and community resource
7 development.

8 In fact Pennsylvania presently receives dollars
9 in several of these areas. These funds will not totally
10 fund family court reform efforts; however, these dollars
11 if treated as investment capital for funding grant writers
12 and community resource management personnel will help
13 develop and implement over time the reforms this
14 legislative package calls for.

15 You should also look toward the community for
16 potential resources. The family court in New Jersey
17 utilizes nearly 6,000 volunteers to conduct mediation
18 programs, supervise visitation sessions, review
19 child-in-placement matters, provide victim support, serve
20 as citizen-review panels for minor juvenile delinquency
21 matters, and provide assistance to the public in court
22 buildings and facilities.

23 These volunteers from local communities save
24 the New Jersey courts hundreds of thousands of dollars
25 every year and provide a very high quality of service to

1 families and children in the court system.

2 Potential resources also exist through the
3 development of new linkages with agencies that provide
4 direct services to children and families in the court
5 system. Frequently executive branch child welfare and
6 protection agencies can pool resources with the courts to
7 develop a triage approach to family justice.

8 While these are non-traditional means that
9 require formal resource-sharing agreements and protocols,
10 they represent a more efficient use of what resources are
11 presently available.

12 I'd like to conclude by suggesting that the
13 reforms called for in this legislative package are
14 substantial. Their development and implementation will
15 require committed judicial leadership, stakeholder
16 participation, resource development and, above all,
17 patience.

18 Perhaps former New Jersey Supreme Court Chief
19 Justice Arthur Vanderbilt who said, "Court reform is not
20 for the short-winded," best describes this process. But
21 however tedious it might be, it is a process to which the
22 children and families of Pennsylvania are entitled.

23 Thank you. And if you have any questions, I'd
24 be pleased to address them at this time.

25 REPRESENTATIVE COHEN: Thank you. I certainly

1 appreciate, again, the advice from Counsel and the
2 statements that you've made. I can't stress enough our
3 gratitude to you for being there and really for all of the
4 advice and the suggestions that you've given us.

5 I have to ask or comment about two of the
6 things that you said. First, about the legislature
7 overstepping its bounds. I think it's important that we
8 put on the record that we certainly don't think we are,
9 obviously, but that historically we've -- the legislature
10 has indeed restructured the court system through
11 constitutional amendments.

12 In previous years we've done it concerning
13 judicial boards. And we do have a history of doing this.
14 Additionally, by putting it out to the people to approve a
15 constitutional amendment it is indeed the people who
16 decide that these are the changes that they want made
17 rather than having it become a war between two separate
18 branches of government.

19 Your other comment we will certainly take to
20 heart concerns funding of these programs. And I think on
21 balance one of the things that you did not say, but how
22 much it costs our citizens to participate in the entire
23 process of dissolution of a marriage.

24 And to me it seems incumbent upon us as
25 legislators to serve the people. And one of the ways we

1 can do that is to economically save them, save them
2 dollars once they enter the system. And right now it is
3 very costly in all kinds of terms, jobs, emotions,
4 etcetera. But in specific dollar terms it becomes very,
5 very expensive to the litigants and to the participants in
6 this process.

7 And I think it's incumbent upon us as
8 legislators to save them those dollars that they don't
9 have to if we had an efficient system that ran well and in
10 their interests. That was my comment. I have no
11 questions on that.

12 Representative Petrarca, do you have
13 questions?

14 REPRESENTATIVE PETRARCA: Maybe just one
15 question. And, also, thank you for being here. And I
16 thank Representative Cohen for taking the lead on this
17 issue and providing leadership to the House so that we can
18 work through some of these problems.

19 I think that those of us in the legislature all
20 hear -- we all hear from constituents regarding these
21 types of problems and breakdowns in the system. You said
22 that you would prefer, I guess, the judicial system
23 implement some changes, some necessary changes rather than
24 the legislative branch of government.

25 Do you see that as a viable option or -- once

1 again, I feel that we certainly need to do some things on
2 behalf of the legislature. And, once again, I'm glad to
3 be here discussing House Bills 1976 and -7.

4 Does it make sense for the legislature to wait
5 for the judicial branch to move? And are you saying just
6 give that branch the money and start to throw in some
7 additional fundings, fundings that stay out of the
8 structure and mandating of some of these programs?

9 MR. KUHN: I think what I'm saying is that
10 sometimes the judiciary maybe needs a little push. And
11 certainly, again, I would stand by my original statement
12 that I would prefer that reform in terms of a court system
13 be initiated within the judicial branch of government.

14 Sometimes it's not possible to get the
15 attention of the people that work with the children and
16 families that are so gravely affected by the justice
17 system on a daily basis. And when that happens there have
18 been and sometimes are situations in which the legislature
19 appropriately intervenes and, if for no other reason, gets
20 the attention of the judicial branch.

21 REPRESENTATIVE PETRARCA: I feel that's where
22 we are now.

23 MR. KUHN: And I certainly support that kind of
24 strategy, if you will. I think, however, it's incumbent
25 upon once you do have the attention of the judiciary to

1 work very closely with the judiciary on these reform
2 efforts.

3 The successive reform on a continuing basis in
4 the judicial branch of government really largely depends
5 on the leadership that's demonstrated within that branch.
6 And I think once you can get the attention of that
7 leadership and, incident that, perhaps this is the right
8 thing to do, then certainly you should work together with
9 those as closely as possible.

10 REPRESENTATIVE COHEN: Karen?

11 MS. DALTON: Good morning, Mr. Kuhn. I'm
12 tempted to call you Jeff. I have a few questions for
13 you. Just a follow-up on what Representative Petrarca was
14 saying, first of all. You were saying that sometimes the
15 legislature needs to take the lead. Can you give us an
16 example of at least one other state -- I think Oregon,
17 perhaps?

18 MR. KUHN: Certainly. There are several
19 western states where legislative initiatives similar to
20 this one have been crafted that have been taken to the
21 voters in terms of a valid initiative. And New Jersey
22 aside from those western states and probably one of the
23 most significant family court operations, if not the most,
24 in the country was actually created through a valid
25 initiative that was done similar to what was intended to

1 be done here in Pennsylvania in the early 1980s which
2 resulted in the creation of an entire family court system
3 that consolidated all of the subject matter or
4 jurisdiction related to children and family into one
5 unified court. And that's certainly, as a neighbor of
6 Pennsylvania, I think it's a significant example.

7 MS. DALTON: And could you --

8 REPRESENTATIVE COHEN: Excuse me. Before you
9 ask your next question, I just wanted to say -- and for
10 those that will be watching this on video -- every once in
11 a while you're going to hear some background noise. We
12 are adjacent to the main line of the -- what I will term
13 the Pennsylvania Railroad. Obviously, it is no longer.

14 But this is the famed Pennsylvania Railroad
15 Main Line. You are in Narberth. And I should have said
16 that in the beginning. And we want to thank our hosts for
17 welcoming us to the Borough Council Room in Narberth, but
18 you're also in the heart of the legendary Main Line.

19 MS. DALTON: Would you be able to talk,
20 Mr. Kuhn, about transnationally in terms of reform; for
21 example, the track and team approach that House Bill 1977
22 embodies? We took that from some other states. Could
23 you talk about what other states are doing in terms of
24 reform and then, perhaps, place House Bill 1977 and
25 House Bill 1976 in context of that national trend,

1 please?

2 MR. KUHN: Certainly. There are, I'd say, at
3 least 30, if not more, of the states presently in
4 different ways looking at the manner in which the courts
5 handle children and family matters. And those initiatives
6 to some degree are supported by federal government dollars
7 through various grants and programs that have been created
8 in the US Congress.

9 Among some of the reforms that they are looking
10 at is the manner of which cases are managed in family
11 courts throughout the country. And there has been for a
12 number of years talk within the courts and the case
13 management system that provides for coordination in terms
14 of a family's involvement with the justice system whereby
15 a judge retains all matters related to one family for the
16 entirety of their proceedings from the very time that the
17 matters are filed to the very time of their disposition.
18 And if the cases are reopened at some point, that judge
19 retains management of those cases.

20 As time has gone on and we've seen populations
21 increase significantly around metropolitan areas and
22 courts have thought about this one-judge, one-family idea,
23 it's becoming increasingly difficult to do it based on
24 pure case volume, the amount of time judges have
25 available, meaning judicial resources that are available

1 to hear cases in which you retain all matters related to
2 one family. And sometimes what results in larger
3 metropolitan areas is that the judge is sometimes forced
4 to leave a matter to deal with another matter that may
5 have some emergency or emergent status within the system.

6 And it results in some fragmentation in terms
7 of the ability to conduct, if you will, a continuous type
8 of trial.

9 REPRESENTATIVE COHEN: We're also in the
10 firehouse.

11 MR. KUHN: So that is not always the case. But
12 in locations that experience that sort of problem the kind
13 of approach that's suggested within this proposed
14 legislation makes sense. And that is using a team-based,
15 case-management approach which allows staff of the court
16 who are trained in various different kinds of functions to
17 actually manage the case and stay with the family
18 throughout the proceeding which in turn frees up the
19 judges to do things like continuous trials and manage
20 their cases more effectively with the minimal need for
21 increased judicial resources as time goes on.

22 And that is; although, that's been practiced in
23 New Jersey for a number of years, other states as they
24 begin to experience these sorts of volume problems,
25 particularly in the metropolitan areas, are looking more

1 and more at it. And in fact a number of other courts have
2 just in the last five years adopted the concept.

3 MS. DALTON: Just continuing along that line,
4 can you tell me how other states are handling issues with
5 respect to litigants who can't afford lawyers, so-called
6 pro se litigants, and also how they are trying to help
7 children?

8 For example, House Bill 1977 has a provision
9 that there must be a pro se manual provided to all
10 families whether they have a lawyer or not. There must be
11 a separating parent seminar so that parents will know the
12 substantive and procedural law in a simple way so that
13 they know what to expect, how long the case will probably
14 last, that kind of thing.

15 We're also requiring a family resource center
16 where folks can come in and get access to easily
17 understandable legal materials about the family court so
18 they are not sort of running around blind the way they are
19 now. And we also establish, as Representative Cohen said,
20 a family justice account.

21 When we held our hearings there was one witness
22 who said that just going to see a master could cost as
23 much as \$1,000 or \$2,000 up front before the work
24 started. And that's just before one master for one little
25 part of a family law case. So we're establishing a family

1 justice account to help those folks who can't afford those
2 proceedings. So are you seeing that those kinds of
3 reforms are taking place in other states?

4 MR. KUHN: There's quite a spectrum of things
5 that you've mentioned there. And if in my response I miss
6 one, please remind me and I'll go back. But I'll start
7 with the pro se issue.

8 In fact there is a recognition and a good deal
9 of research has been done in the field of family law and
10 justice generally that indicates that the majority of the
11 litigants that are involved in family court matters are in
12 fact pro se litigants. In fact the national average
13 approaches 70 to 75 percent of all new cases that are
14 filed in family courts.

15 Clearly the majority of the litigants that come
16 to the system are unrepresented. That presents many
17 challenges to the Court in terms of the ability to handle
18 matters efficiently, to help people understand the gravity
19 of what is occurring within the system. And it generally
20 just slows things down and makes things inefficient and
21 does not do well in terms of the delivery of quality
22 justice for children and families.

23 So the idea is to assist those individuals who
24 either cannot afford attorneys or for some reason are not
25 in a position to retain counsel through a variety of

1 means. Pro se assistance programs, obviously, are one of
2 those means. And that is essentially the part of your
3 legislation that talks about the family law or family
4 court resource center in which families are provided an
5 opportunity to get some sort of legal assistance and
6 guidance in terms of what's happening to them in the
7 system.

8 That is a focus of many, many court reform
9 efforts throughout the country. And what they do varies.
10 There is quite a spectrum of reform efforts in the field
11 ranging from exactly what you propose in your
12 legislation. In King County, Washington, which is the
13 metropolitan area of Seattle in which the family court has
14 established a family law resource center specifically for
15 pro se litigants in cooperation with three law schools in
16 the area to provide interns within the center on a daily
17 basis to provide assistance to litigants who are asking
18 for it.

19 They provide them assistance with completing
20 forms, explaining the process to them in terms of what
21 they will be encountering and what their rights and
22 responsibilities are. And that small investment in time
23 and resources has great benefit and impact in terms of the
24 operation of the system generally.

25 There are a number of other means in which pro

1 se assistance programs are addressed through pro se
2 manuals. I would caution when you get involved in the
3 area of pro se manuals that whoever the writers are
4 preferably not be lawyers because we lawyers speak in
5 legalese that is not often understood by the majority of
6 those that come to court.

7 And I would perhaps in being perfectly serious,
8 think about, if it were something that you intend to do,
9 perhaps hire a second- or third-grade teacher to write
10 such a manual for you without being facetious at all.

11 Those kinds of documents need to be created in
12 a manner which is very easily understandable. Not only
13 that but perhaps need to be at least bilingual. And that
14 is a service that the court cannot forget about in this
15 area because there is a great need for it.

16 In terms of other access issues you mentioned
17 establishment of a secure and comfortable area for
18 children who wait with their parents in a facility. And
19 that extends to victims of domestic violence as well.

20 Court facilities have not historically
21 accommodated those persons very well at all in fact, to
22 the extent that their safety and security is very much in
23 jeopardy oftentimes when they come to the facility. And
24 the building to begin with is an intimidating place. And
25 to put them in the same hallway as a perpetrator or as an

1 individual who has threatened them with a variety of
2 intended abuses is not a healthy thing for families.

3 And the fact that much thinking has gone into
4 the idea of establishing secure and comfortable facilities
5 for children and victims in the courthouses is very much a
6 part of national reform effort. Is that --

7 MS. DALTON: That's about it. May I ask one
8 more question?

9 REPRESENTATIVE COHEN: Sure.

10 MS. DALTON: I just have one more question,
11 Mr. Kuhn. And that has to deal with the statement you
12 made before that we'll hear a variety of arguments against
13 court reform proposals. And since you've consulted with
14 35 other states -- you mentioned two. One was the
15 separation of powers argument. And I believe
16 Representative Cohen is right. How can you have a
17 separation of powers problem when it's the folks that live
18 here, that vote here, that pay taxes here deciding to
19 change their constitution if they decide to do it?

20 And the other is that it's an unfunded
21 mandate. You addressed that also. Are there other kinds
22 of oft-repeated arguments or concerns about reform
23 proposals like this one before you?

24 MR. KUHN: There are. And it varies in terms
25 of what the concentration of the present reform is. There

1 are a number of arguments that -- to be encountered in
2 terms of money issues. And there are a number of
3 arguments that deal with bureaucratic involvement in the
4 court system.

5 Also, there's very much a concern that a court
6 that thinks about services for children and families
7 perhaps dilutes its dignity and status in terms of perhaps
8 becoming more of a social work institution than a court of
9 law.

10 And that is something you hear very frequently
11 around the country when you start to talk about reforming
12 justice to accommodate children and families in a more --
13 and I hesitate to use the word, but therapeutic is often
14 the word that's used these days in terms of how the courts
15 handle these matters.

16 The fact is that it's important in the reform
17 effort to recognize first and foremost that what we're
18 dealing with here is a court of law and that its
19 fundamental responsibility is to uphold the rule of law.
20 And it is not about moving people away from their right to
21 have their day in court, so to speak.

22 And I think it's important as the law gets
23 written around this reform effort that maintaining the
24 rule of law is respected and that it remains very much a
25 part of the dignity and status of the system.

1 But I think it's very -- this kind of reform
2 effort is very capable of making that happen. And there
3 are many kinds of reform efforts that have actually done
4 very well in that area. But, again, it's something that
5 you will hear. It's not an uncommon argument.

6 MS. DALTON: Thank you.

7 REPRESENTATIVE COHEN: Again, we thank you for
8 being here and for all the assistance that you've given
9 us. Oh, I'm sorry, Jane.

10 MS. MENDLOW: I'd just like to ask one
11 question.

12 REPRESENTATIVE COHEN: Please. Absolutely.

13 MS. MENDLOW: Mr. Kuhn, I was just wondering if
14 you could also give us some insight as to how this --
15 these various proposals because there are a number of
16 mandated pieces in the legislation in House Bill 1977, how
17 this plays out in scale in terms of some of the smaller
18 counties, if you might have some insight to share with us
19 on that.

20 MR. KUHN: I think that what's important to
21 acknowledge, first of all, with a smaller jurisdiction is
22 that they do not have resources available to do the kind
23 of things that we're talking about here. So I think
24 what's important to think about is how you pool resources
25 to make these kinds of reforms happen.

1 Frequently in states that look at statewide
2 reform efforts where there are metropolitan counties and
3 they're either very small or rural counties, the effort is
4 made to bring those counties together into -- and I'm not
5 suggesting that an entire reworking of the boundaries of
6 judicial jurisdiction in the State of Pennsylvania be
7 drawn.

8 But by example I would suggest that certain
9 judicial districts sometimes are merged when they are very
10 small for the purpose of sharing resources. And probably
11 the simplest example of that is there are very, very many
12 rural counties throughout the county now who even share
13 judicial resources and have continued to do so over the
14 last century.

15 But more and more what we're seeing is in
16 thinking about the convenience of families and their
17 accessing of direct services of families that are involved
18 in the courts we think about pooling resources in one
19 location that might be centrally located between two or
20 three or four different counties or small judicial
21 districts; wherein, they otherwise would not have the
22 resources available.

23 So the idea of throwing something into the pot
24 from each location to make something more available for
25 all people within those jurisdictions is appealing to

1 those smaller places.

2 REPRESENTATIVE COHEN: Thank you. My apology,
3 Jane. Again, Mr. Kuhn, we thank you for all of your
4 assistance and wise counsel to us. We appreciate you
5 being here today.

6 MR. KUHN: Thank you. My pleasure.

7 REPRESENTATIVE COHEN: Thank you. I want to
8 recognize Representative Maitland who has joined us from
9 Adams County. Thank you for being here. Appreciate it.
10 The next person to make a presentation to us today is The
11 Honorable Robert A. Fall who is a judge at the Superior
12 Court, the Appellate Division, in the State of New Jersey.

13 And I must say that after hearing from
14 Mr. Kuhn we know that New Jersey is one of the leaders in
15 this area of reform. So we certainly welcome you.

16 JUDGE FALL: Thank you very much. My
17 presentation will only be about two, two and a half hours.

18 REPRESENTATIVE COHEN: That's fine.

19 MS. DALTON: Do you have testimony, Your Honor,
20 to pass out or no?

21 JUDGE FALL: No, not really. I'm not sure what
22 you want me to do specifically. But what I'd like to do
23 is just tell you, first, a little bit about myself. Judge
24 Feinberg was going to come also, but she's tied up with
25 orders to show cause, meaning emergent matters, and asked

1 me if I would mind coming by myself. And I didn't.

2 I'm a judge in the appellate division. And I'm
3 going to outline the court system for you and the
4 structure in New Jersey. I don't know if you can see it
5 on that angle, but it's probably important you understand
6 where I stand in the tier here, so to speak.

7 The Supreme Court in New Jersey is the highest
8 court, obviously. All this is created by constitution and
9 then implemented by statute, seven members in the Supreme
10 Court. The next lower level of the court system is the
11 Superior Court Appellate Division. There are 32 of us.
12 And I'm one of those.

13 The General Trial Court Jurisdiction is
14 Superior Court trial. There are about 400 Superior Court
15 judges. They are appointed by the Governor, confirmed by
16 the Senate, and serve for a period of seven years. At the
17 end of the seven years they stand for tenure, meaning the
18 Governor has to reappoint them and the Senate has to
19 reconfirm them. Once they get a second appointment, they
20 have tenure until retirement. And, of course, the
21 retirement system is also constitutional and statutory.

22 Superior Court Trial Division which is the
23 heart of our system -- and I'll show you how many cases
24 they handle, about a million a year in New Jersey which is
25 about 8 million population just to give you a flavor in 21

1 counties broken down to 15 vicinages or judicial
2 districts.

3 In any event, in each one of the 15 judicial
4 districts some vicinages are multi-county districts. And
5 most stand on their own like Ocean County, Essex County,
6 Hudson County as a Superior Court trial division. Each
7 division has an assignment judge. That's where Judge
8 Feinberg was or is.

9 And the Superior Court trial division is broken
10 into four parts. This is a centralized integrated trial
11 court system meaning centralized at the top and flows down
12 to the bottom and is integrated meaning we hear
13 everything. So you can be a Superior Court trial judge
14 and be assigned at any given point in time to the family
15 part which is classically called Family Court, criminal
16 part, civil part, or equity and probate issues. There are
17 essentially four parts.

18 There's also a Municipal Court System that is
19 not staffed by Superior Court judges. They are locally
20 appointed by the particular towns and are really -- have
21 their law practice plus sit as Municipal Court judges.
22 It's not a centralized system except they come under our
23 umbrella.

24 And any appeals from the Municipal Court go to
25 the criminal part of the Superior Court. And any appeals

1 from anywhere in the trial level come up to us in the
2 first instance, then the Appellate Court and then to the
3 Supreme Court which has discretion to take which cases
4 they want to take. The only exception are death penalty
5 cases when there's a death penalty trial and a
6 conviction. They directly go to the Supreme Court and the
7 direct appeal process.

8 The Family Court which, of course, is what
9 you're most interested in has gone through an evolution.
10 And it was approved by constitutional amendment in 1983.
11 Prior to that everything was fragmented. You had a
12 juvenile domestic relations court. You had a Superior
13 Court, Chancery Division that handled divorce cases. You
14 had cases all over the planet, so to speak. It was not
15 centralized. It was discombobulated, I guess, is a phrase
16 that comes to mind.

17 Over the years -- and I've been on the bench
18 since 1986, three years after it was created, and I sat in
19 Family Court for 12 years before being moved up to the
20 Appellate Division two years ago. But I still maintain
21 all of my committees. We had a whole committee process.
22 I brought a lot of the reports with me, some of which you
23 probably have and many of which you do not have.

24 And the reason I brought it was to dramatize to
25 you what's necessary in order to have a well functioning

1 family court in terms of the study that goes on and how
2 it's structured. We have come down to now and have a
3 standardization of best practice system that within the
4 family part of the Superior Court we handle 400,000 cases
5 a year on a state-wide basis.

6 Now, bigger counties, obviously, have bigger
7 chunks. And we break essentially the case types -- and
8 I'll go through the case types with you very briefly --
9 into four integrated docket teams. Jeff Kuhn is a good,
10 old trusted friend and talked about the original concept
11 in family court was it makes sense to have one judge
12 having one family. That makes a lot of sense until you
13 really try to do it. And then it doesn't seem to come out
14 so well.

15 We have come to the concept in New Jersey that
16 you have one team. And we're talking about clerks. We're
17 talking about probation officers. We're talking about
18 paraprofessionals who do custody, visit with mediation
19 investigations, things of that nature, a team assigned to
20 one or more specific case types. And then that team
21 follows the family or the family follows the team
22 throughout the system albeit sometimes different judges.
23 Because, as I told you, judges get laterally transferred,
24 get laterally between and among the different divisions.

25 I sat uniquely in the family division for 12

1 years. Most judges sit two or three years here, a couple
2 years here, a couple years here, a couple years here. We
3 believe in a lot of cross-training and well-rounded
4 judges. There's also the burn-out factor in family court
5 which we can talk about, if you want, which is becoming
6 less and less a phenomena, by the way, in New Jersey.

7 So we break our case types into four integrated
8 docket teams all of which are heard by family court
9 judges. Judges are assigned to hear any number of these
10 cases. And the way you stop burn-out is have them rotate
11 from among the different assignments within the family
12 court, non-dissolution cases which are paternity, custody,
13 parenting time, child support, things of that nature where
14 the issue of dissolving the marriage is not before the
15 Court are handled. A lot of pro ses in this area, a lot
16 of pro ses.

17 And I can talk if you want about pro ses and
18 some of our experiences with them. Then there's the
19 divorce or what we call dissolution, about 50,000. These
20 include -- by the way, not 50,000 couples or 100,000
21 people get a divorce in New Jersey each year. These also
22 include post judgment, meaning after the judgment of
23 divorce is entered then the parties have to come back to
24 modify support, fight about custody, whatever they choose
25 to do. It includes that within that number as well. So

1 probably about 25,000 divorce cases actually per year and,
2 of course, in a divorce case all of the above issues,
3 custody, paternity to the extent it exists, parenting
4 time.

5 We call classically what you might believe to
6 be visitation parenting time, also statutorily in New
7 Jersey. Visitation is a dirty word. Parenting time means
8 what it says and that is that each parent shares time with
9 the child albeit that one may have the large bulk of the
10 time being the residential custodian.

11 Domestic violence, restraining orders. John
12 hits Mary. John abuses verbally Mary. Mary comes in and
13 gets a restraining order. We get about 65,000 of those
14 per year throughout the state. And then we have domestic
15 violence contempt which is a criminal, what we call in our
16 state, a disorderly person is what you might call here, a
17 petty offense of up to six months imprisonment, \$1,000
18 fine maximum penalties, proof beyond a reasonable doubt.

19 Those are also heard by family court judges
20 when someone is alleged to have violated they're
21 prosecuted by the state's attorney, in our state the
22 prosecutor's office. And we hear those as well. And
23 there are about 12,000 of those a year.

24 Then there's juvenile delinquency, about
25 100,000 cases, and family crisis intervention where it's

1 not some incorrigible, runaways, things of that nature,
2 being abusive in the home, that type of thing. We comply
3 services.

4 And then finally there is the children-in-court
5 phenomena which is adoptions, child abuse, and neglect
6 cases, termination of parental rights cases which leads to
7 adoption, if they are granted, and child placement review
8 when a child placed out of home needs to have their
9 placement out of home statutorily reviewed on a periodic
10 basis to make sure it's appropriate, to make sure that
11 services are in place, to try to reunite families.

12 And, of course, the sad part is that they
13 usually go from a child placement review case to a -- or
14 from a child abuse neglect case where the child has been
15 abused in some way or neglected up to a determination of
16 parental rights case and then an adoption case. Hopefully
17 there's a lot of reunification, of course, with families
18 who are in distress.

19 Family court, Jeff used the term therapeutic
20 justice. We like to think that that's appropriate. I
21 can't emphasize to you enough that what we found out in
22 our system is that what's more important than the judges
23 are staff and resources to make it work.

24 And we've been able to do that. And you can do
25 that in a whole number of ways including but not limited

1 to marshalling resources in existing government and the
2 executive branch. We have interagency agreements. We
3 also go to the community, develop programs. We have
4 standing committees that are always reviewing these things
5 at the Supreme Court level. I sit on three or four of
6 them.

7 We're constantly making recommendations. We
8 have adopted the concept that family problems are
9 community problems. They need to be solved through a
10 community input. Every committee we have in the system
11 consists not only of judges but lawyers. We have a
12 partnership with the Bar that works very well. And we
13 bring in psychologists. We bring in volunteer people.
14 It's a community effort.

15 We've developed a we're-all-in-it-together-type
16 of approach. Most recently the two major efforts have
17 been -- and, by the way, you can see from 1983 up to 1999
18 is a long time to fine-tune an instrument called the
19 family court. But that's what it takes. There's no easy
20 snap-of-the-finger solution to family problems.

21 I forgot to say what you just told me to say.
22 And that is that I'm here today to merely outline the New
23 Jersey experience. And, of course, rules of judicial
24 conduct specifically prohibit me from taking a position or
25 advocating a position in any one thing. We're certainly

1 neutral. And I don't want to violate the rules of
2 judicial conduct even in Pennsylvania.

3 REPRESENTATIVE COHEN: No long arm of the law
4 on that.

5 JUDGE FALL: I don't know. But these are our
6 two most recent efforts. And the Supreme Court Committee
7 on Special Matrimonial Litigation which I sat and chaired
8 a subcommittee, Judge Feinberg was the Chair, co-Chair.
9 That was designed to -- and you, I'm sure, heard one of
10 the representatives speaking about family problems, people
11 not happy with the court system. We get that in New
12 Jersey despite the fact that there is a family court from
13 time to time.

14 Family problems generate a lot of problems.
15 They don't like the way a particular judge handles a
16 case. They run to their favorite legislator or their
17 favorite whatever or go to their favorite newspaper. And
18 before you know it it's an issue and everybody gets all
19 excited.

20 Well, it's because there's no easy answer to
21 solution of divorce cases. Divorce is where the money
22 is. That's where the attorneys are. And this case
23 type -- I would venture to say probably 70 percent, 75
24 percent of the Bar is located in this case type, meaning
25 divorce case type.

1 And probably only about 10 or 15 percent of the
2 cases of non-dissolution are represented. Domestic
3 violence more so these days because they usually link some
4 way to another family court matter, another family court
5 matter like a divorce case. But in juvenile delinquency a
6 lot of pro ses unless it's a potential incarceration and a
7 lot of pro se threats.

8 But the power of the Bar is where the money is,
9 and that is in the -- nothing wrong with that -- is in the
10 divorce area. So we had a very, very, I should say, a
11 renaissance in terms of trying to get the partnership of
12 the Bar to work. Bar's been terrific in New Jersey in
13 that regard.

14 And we had a whole divorce study commission
15 that was commissioned by the legislature to study what's
16 wrong with divorce. And we had to act on information that
17 certainly would indicate that horror story here, horror
18 story there.

19 Again, I just harken back to if you're going to
20 throw people into family court you better be sure that
21 you're throwing them into a court that has the resources,
22 that has the paraprofessionals, that has all the necessary
23 components to make it work because the judge alone once he
24 or she hears a case and the people trot outside with the
25 piece of paper in their hand, the piece of paper doesn't

1 mean anything, or hardly anything, unless it can be
2 enforced and unless and until the real underlying problems
3 that stigmatize people who have family court problems are
4 going to be addressed through an implement through a court
5 order.

6 We have staff in New Jersey that is terrific.
7 We have custody investigations. We have mediation. We
8 have mandatory parent education. We've developed
9 programs, videotapes, booklets, handouts, pro se kits. We
10 try to make the system user-friendly. And when you make
11 it user-friendly and provide the resources or how to get
12 the resources to these people they respond overwhelmingly
13 positively.

14 We piloted in our county a parent education
15 program. And you can see it. And I went and for the
16 first, maybe, 10 or 15 times and gave a speech to them and
17 talked to them. And the reviews of that were you could
18 see they were thirsting for more. They're out there alone
19 as the most important relationship they've ever had has
20 now been fractured. They're angry; they're scared. They
21 don't know what their fate is. And just think how the
22 children might feel if the adults feel this way.

23 So it's a horrible thing. And if you just put
24 them in a courtroom and say, Well, we're judges, we don't
25 get involved, we're not social workers, you're just

1 missing the point if you do that. And we never allowed
2 that to be done.

3 And we had greater success from the counties
4 within our state and vicinages in our state that took more
5 effort to address those problems. The judge is not a
6 judge just on the bench. The judge has to be a community
7 leader and has to be involved and responsive to the needs
8 of the community. And that gets into the role of judicial
9 leadership.

10 The reason that our system works is because
11 judges don't run for office and wind up -- you know, run
12 to be a family part judge. You're going to get a good
13 one; you're going to get a bad one. And what happens if
14 you get a bad one?

15 My point is that with this system if there's a
16 problem, Chief Justice of the Supreme Court is very
17 responsive to and always has been under Justice Wilentz,
18 now under Justice Poritz, but to the needs and response of
19 the judges and the needs of the assignment judges.

20 And there was never a point in time where I
21 couldn't pick up the phone and say, You know, Chief -- or
22 to the assignment judge and say, who I have lunch with
23 every day, We need to do something about this particular
24 situation, meaning we need to put a judge here, over here,
25 or whatever and get a good one here. And it gave us a lot

1 of flexibility.

2 And as a result of that there have become more
3 career, good career family court judges in the State of
4 New Jersey. And that's evolved over a process. There's
5 no instant solutions. Don't think that you pen a piece of
6 legislation where you have the voters vote on referendum
7 and all of a sudden there's going to be a magical
8 solution.

9 It takes time, work, hard work, committed
10 people, and effort. And if you don't have that, you might
11 as well forget about it. You need people committed. This
12 is not just a political phenomena, family court, or
13 it-sounds-good-so-we-should-do-it kind of thing.

14 You're either committed to this or you're not.
15 You're either going to vote resources to it and staff to
16 it or you're not in order to make it work. There have
17 been some great experiences Jeff has outlined from around
18 the country and some great family courts that exist that
19 have brought the community in.

20 You may have -- sounds to me like maybe you've
21 had women's groups and men's groups and whatever. Perhaps
22 you've heard horror stories about the way family court
23 matters -- well, you don't have a family court classically
24 here, but -- are handled. We brought those people in.

25 When I had our judicial council in Ocean County

1 it included members of the women's group, members of the
2 men's group, members of every community group you could
3 think of. And we solved problems at the table. And the
4 person who was the loudest critic of the Ocean County
5 Court System became the person who got judiciary volunteer
6 of the year award. And it worked out terrific.

7 So there are success stories that can happen.
8 If you want some of these things -- this report is the
9 best standards and practice report.

10 It took many, many years and includes manuals
11 and how you handle all the different case types that I
12 showed you before. But, more importantly, it structures
13 the court system in an efficient, centralized, appropriate
14 way. And it's very detailed. I'll give it to you if you
15 want it. It's a great document. And it took us years to
16 develop it.

17 I think you have already the Supreme Court
18 Committee on Special Matrimonial Litigation. But there's
19 another copy of it. So that's really all I have to say.

20 REPRESENTATIVE COHEN: Will you submit yourself
21 to questions?

22 JUDGE FALL: Sure. Sure.

23 REPRESENTATIVE COHEN: Turning the tables on
24 the judicial system.

25 JUDGE FALL: Always ready to have somebody take

1 their best shot.

2 REPRESENTATIVE COHEN: Well, having a summer
3 home in Ocean County we'll go gently.

4 JUDGE FALL: Oh, that's a very nice thing.
5 Whereabouts in Ocean County?

6 REPRESENTATIVE COHEN: Long Beach Island.

7 JUDGE FALL: Oh, sure. I love the island.
8 It's great. I used to represent when I was an attorney
9 the island or many of the towns on the island.

10 How can I help you?

11 REPRESENTATIVE COHEN: There we go. I just
12 wanted to make three comments. I think the crux of what
13 you stated and we have been saying for the past many years
14 that we've been working on this leads to merit selection.
15 And, obviously, one of the problems that we have in
16 Pennsylvania is because we have an elected judiciary. And
17 we seemed to be ending up there when we start working on
18 this whole system.

19 It's interesting to me that you also mentioned
20 that you had tremendous Bar Association support and
21 support from the attorneys. We have found the same is
22 true here much to our surprise because by making an
23 efficient system, obviously, you're cutting down on hours
24 that lawyers spend on each particular case.

25 So I was interested to see that you mentioned

1 that in New Jersey you also had Bar Association support.

2 JUDGE FALL: Attorneys want the system to
3 work. They really do.

4 REPRESENTATIVE COHEN: Yeah, they do.

5 JUDGE FALL: It doesn't help an attorney to
6 bill 5,000 hours in a year and only get paid for 2,000
7 hours in a year because those 3,000 uncollectible dollars
8 [sic] do not help -- you can only write off so much. And
9 that's what attorneys were faced with in family court
10 matters that operate in an inefficient system.

11 REPRESENTATIVE COHEN: I think so. And that
12 was very heartening certainly to those of us that are
13 attorneys and get a bad rap all the time. The attorneys
14 are interested in efficiency. And, lastly, some of the
15 comments that we've had from the Common Pleas judges
16 throughout the state is that, well, particularly as Jane
17 had asked in the smaller counties where there's only one
18 judge. We can't do it; it's too much for us to handle.

19 And by your mentioning the importance of staff
20 I think is absolutely critical in this whole process
21 because even in judicial districts where there is only one
22 judge as opposed to numerous judges in some of the larger
23 districts we have to rely on staff to work on this team
24 effort. And I was glad to hear that it works in New
25 Jersey.

1 JUDGE FALL: Less than five percent of the
2 cases are tried which means that you need to have staff to
3 do alternative dispute resolution. Mediation of custodial
4 issues is a tremendous way to resolve cases. Now, of
5 course, the caveat is you can't put two parties that have
6 a restraining order because of the danger and unequal
7 bargaining power in the same room.

8 I'm not talking about mediating family violence
9 cases, but resolving a custodial issue through mediation.
10 We have economic mediation now in New Jersey. We borrowed
11 from Florida's experience. And it's starting to really
12 take hold, quite frankly. And we have volunteer attorneys
13 unique unto New Jersey called the Early Settlement Panel
14 where attorneys, matrimonial attorneys, volunteer their
15 time, volunteer.

16 In my county I had 50 volunteer attorneys. And
17 every week I had five of them every Tuesday come in. And
18 they would essentially resolve 95 percent of the cases
19 early on. We stuck them -- we had a very good aging
20 report. Justice delayed is justice denied. And that's
21 important to the system. The more efficient the system
22 is, the quicker the matter gets resolved.

23 But you're correct. Staff is actually more
24 important than judges, quite frankly. You need to have
25 the judicial resources and judges to hear the cases. But

1 if you think you're doing somebody a favor to give them a
2 trial, all you're doing is essentially ruining their lives
3 because they can't afford a trial. And 99 percent of the
4 cases it's not good for the children and so on.

5 So we've provided a whole number of alternative
6 or complimentary dispute resolution methodologies that
7 have been terrific and resolved cases early on. You're
8 always going to get -- I used to say in my courtroom,
9 Every dysfunctional person that lives in Ocean County one
10 day or another is going to walk through that door. But I
11 want to tell you that 99 percent of you come through are
12 good, decent people. And we're going to resolve your case
13 for you. That's how I used to talk to them.

14 Judges need to talk to them that way. And the
15 staff develops an attitude and they talk to them that way
16 and resolve cases. I'm sorry. I give a speech every time
17 you say something.

18 REPRESENTATIVE COHEN: Oh, that's fine. Thank
19 you. Thank you. Representative Petrarca, do you have
20 anything? Representative Maitland?

21 REPRESENTATIVE MAITLAND: Yes. Just a
22 question, Judge. In your seat on the Appellate Court do
23 you see a family part cases come up to the Appellate
24 Court? And, if so, is there any kind of trend in what
25 they consist of?

1 JUDGE FALL: Remember we have ten different
2 case types in family courts. We see them all. We get
3 quite a number of divorce appeals, mostly equitable
4 distribution property issues that they are disputing the
5 judge's determination.

6 A lot of times -- the favorite one to me
7 because it's the hardest to put a handle on and grab and
8 say, Ah, there it is, and that's alimony. Determining
9 when a case is an alimony case or not is a product of
10 analysis that involves probably 15 factors, everything
11 from length of the marriage to the financial circumstances
12 to economic dependency.

13 So you get judges making calls below, Yes, it's
14 an alimony case or, No, it's not -- and you get appeals on
15 that -- probably more often than anything else in the
16 divorce hearing.

17 REPRESENTATIVE MAITLAND: Do you have a formal
18 structure or system to take the information to say, Now,
19 look. It seems like we get a lot of alimony cases
20 appealed to us; why don't we try and identify why that is
21 and take it back down to the lower level?

22 JUDGE FALL: Absolutely. That's my pet
23 project. I go with another one of my friends on the
24 appellate division who has family court experience. And
25 we go every year, every year to as many of the vicinages

1 or the counties, the trial level as we can. And we go
2 over -- if you don't have it, you should have it.

3 There's a statute in New Jersey -- a lot of
4 statutes in New Jersey -- that deal with factors that the
5 Court is required to take into consideration when
6 equitably distributed property, factors the Court is
7 required to consider when deciding whether alimony is
8 appropriate or not, factors to this and factors to that.

9 Sometimes judges don't make findings and
10 conclusions based upon analysis of factors. Or sometimes
11 the attorneys don't offer proof on the factors. So I do
12 this to the Bar Association. We have the Institute of
13 Continuing Legal Education.

14 I make presentations annually, a number of
15 times annually on making the appropriate findings because
16 the standard of review is the judge has analyzed and made
17 findings of fact and analyzed those facts to the law.
18 It's pretty hard to appeal a decision like that. So you
19 get less appeals. And I think we have shrunk the number
20 of appeals in that area by doing that.

21 The last judicial college put all the statutory
22 factors on an 8-and-a-half-by-14 piece of paper. And we
23 had it laminated so they could keep it on their bench and
24 can ask questions, What about this factor, what about
25 that? That's been very helpful. And judicial education

1 is so important in the system.

2 And when you have a system that does those
3 kinds of things -- and it took us a while to realize we
4 should be doing other things. You never should think
5 you're at a plateau, that you think you can't do more.
6 We've been able to instill that in our judges, but it
7 takes effort and it takes judicial leadership and the
8 cooperation of everybody including maybe most importantly
9 the legislature, quite frankly, which in our state has
10 been very responsive to family court needs and problems.

11 REPRESENTATIVE MAITLAND: Thank you.

12 REPRESENTATIVE COHEN: Counsel Dalton.

13 MS. DALTON: Your Honor, it's a pleasure to
14 finally see you. We've spoken over the phone a couple of
15 times.

16 JUDGE FALL: Yes, it's very nice meeting you,
17 also.

18 MS. DALTON: Thanks so much for coming. You
19 had mentioned before the ongoing reform effort in New
20 Jersey. I want you to know that this is my copy of the
21 Supreme Court of New Jersey Special Committee on
22 Matrimonial Litigation. As you can see, I've tabbed it;
23 it's dog-eared; it's underlined. I was the prime drafter,
24 with great input from Mr. Kuhn, of House Bill 1976 and
25 1977 borrowing heavily from this wonderful work.

1 And I noticed as well that the Supreme Court of
2 New Jersey recently instituted new family court rules
3 effective in April of this year which put many of the
4 recommendations from the special committee into practice.

5 And I'd like you, if you could, Your Honor, to
6 talk about some of the new rules that New Jersey has
7 instituted which we also have in our legislation, just to
8 talk about how beneficial they are, what they actually
9 bring to the benefit of families and children.

10 JUDGE FALL: Since you have them and certainly
11 you're going to be sharing them with the task force, but
12 it was an outgrowth, really, of the documents as it went.
13 You held it up. It's a special committee report which is
14 an outgrowth of the legislative divorce study commission
15 that pointed out some problems with attorney's fees, with
16 people alleging they were too high. It turns out that
17 really they were high because people wanted them to go to
18 court, quite frankly, as opposed to the attorneys doing
19 anything wrong. They were not. They were certainly just
20 billing for time.

21 And this report was done over about a year.
22 And then they went to the Supreme Court. And the Supreme
23 Court issued administrative determinations and then
24 eventually did the court rules. The court rules, I guess
25 you can break them into a lot of areas. I don't want to

1 take a lot of time on them except to point out a couple of
2 things.

3 First, we adopted a client's bill of rights
4 that clients are entitled to from attorneys certain
5 specific things. That's in there. You have that. The
6 differentiated case manager was a big thing. We took
7 family court matrimonial cases and we differentiated
8 depending on the complexity of them into various tracks of
9 being processed, fast tracks and complex tracks and so
10 on.

11 And we stiffened the criteria for experts.
12 There were a whole host of things we did in there about
13 fees or issues about whether -- can attorneys take a
14 mortgage on a person's property to secure their fee. You
15 know, can't do it, that kind of thing. So we analyzed all
16 these issues.

17 But the major thing was to streamline the
18 process in terms of appointment of experts, differentiated
19 case management into early settlement panel mediation and
20 then to regulate the retainer agreements between the
21 attorneys and the clients and the client bill of rights.

22 Our experience with them is about six to eight
23 months maybe at this point in time. And they seem to be
24 working well, the reports I get back. I ask questions all
25 the time and meet with the family court judges all the

1 time. And they said they're working making the system
2 better.

3 There are things in here that I think have
4 improved the system. It was more of a fine-tuning,
5 however, than really a revamping of the system. But it
6 pointed out -- you have to always be willing to be
7 criticized. If you're willing to be criticized, you
8 better be willing to try to find a solution.

9 MS. DALTON: Well, Your Honor, there are many
10 things, if I could just go through the list. The
11 differentiated case management system prior to these new
12 rules you had three tracks and then you went to four
13 tracks. Our legislation adopts your four-track approach.

14 The other thing that you had was the case
15 information statement being filed before the case
16 management conference. We're also asking that
17 Pennsylvania adopt that. We call it the family
18 information statement. The idea about continuous trials,
19 that they be tried continuously to conclusion so you don't
20 have one day of trial in March and then another day in
21 April and then you come back in June. And maybe by the
22 time the summer ends you have the case resolved.

23 The idea about the affidavit of insurance
24 coverage, that that come into the court early on to make
25 sure that children and family members still have insurance

1 coverage. We're also asking for that in the family
2 information statement. The case management conference has
3 to be held 30 days after the last time of permissive
4 pleading is allowed. We're also going with the case
5 management conference.

6 JUDGE FALL: These are all good things. I
7 mean, I can comment on each one, if you want. But
8 probably you've heard enough. My wife usually says that.

9 MS. DALTON: Could I ask you about one thing,
10 though?

11 JUDGE FALL: Yes.

12 MS. DALTON: In the report that I held up
13 before, the special committee, talked more about judicial
14 education. And I know that New Jersey already had
15 judicial education for their judges. You had your own in
16 New Jersey. And correct me if I'm wrong, but I believe
17 you actually sent folks to the National Council of
18 Juvenile Family Court Judges in Reno.

19 JUDGE FALL: All the time.

20 MS. DALTON: And the report came back and said
21 you needed more for family court judges. Could you speak
22 to why you need --

23 JUDGE FALL: I'll tell you what it was. First
24 of all, you have to have judicial education. You have
25 to. There's nothing more healthy for judges to go around

1 the country and see other family court judges because you
2 find out how they handle things. The National Council of
3 Family Court Judges is a tremendous resource of
4 information technically and otherwise.

5 But beyond that what this spoke to more was --
6 we have a lot of judicial education. It spoke more to the
7 issue of, okay, a new judge coming on board. And let's
8 say the judge is going to be assigned to the family
9 court. You just don't put him out on the bench. And that
10 was the problem.

11 We have a new judges college once a year. We
12 have a college for all the judges once a year. And we
13 have plenty of information that we can hand to them. But
14 the failing that we had was not having in place specific
15 criteria and a specific application of judicial education
16 for that judge before he or she heard one case.

17 So that was more the impetus for addressing
18 judicial education. We want to make sure that we're not
19 going to put judges on the bench because assignment judges
20 want -- they get anxious to make sure they can move the
21 cases. And they may want to put a judge on a little too
22 quick. So that was what that was about.

23 And the lawyers were very supportive of that.
24 We developed a whole -- we have the curriculum. We
25 developed a process where each assignment judge and family

1 part judge now are required to develop a course that no
2 judge will go on the bench and hear cases until at least
3 two or three weeks after they've been appointed and have
4 been sitting with a judge, includes education, includes
5 many, many things.

6 I do a lot of it myself. I go around the state
7 and apply that new course to a lot of trial judges. So
8 that's what that was geared to. The case information
9 statement is a wonderful document.

10 It provides all the information in one document
11 about the financial history of parties and, of course, the
12 insurance which would prevent someone, which we've had,
13 from canceling a policy of insurance and then everybody's
14 left holding the bag if, God forbid, there's a death or
15 certainly not a death but how about medical insurance.

16 Sounds like you have a lot of good components
17 that are -- we think our components work. We know they
18 work. And we know that our system always has to be
19 reviewed to see if it can get better all the time. We do
20 it all the time.

21 MS. DALTON: Your Honor, thank you.

22 REPRESENTATIVE COHEN: Thank you. Jane?

23 MS. MENDLOW: Judge, I was wondering if you
24 could help us in one area. And that is in respect to the
25 requirement for parents to participate in some type of

1 workshop or seminar or parenting education program when
2 there is dissolution of a marriage or custody issues.

3 In many counties it appears that some judges
4 don't feel that it is their place to order that and some
5 judges in Pennsylvania, again, feel it's very effective.
6 And I was just wondering if you could comment on that and
7 the idea of having some mandate or clear authorization for
8 the courts in terms of these types of parenting education
9 programs.

10 JUDGE FALL: I'm just looking for the parent
11 education booklet that was developed by a psychologist,
12 myself, and the illustrations are by Elliott Banfield who
13 does illustrations for the New York Times. Here it is.
14 If you want this, you can keep it. Surviving the Pain of
15 Divorce and Separation. That's the handbook. We also
16 have a video. I do not have a copy of that with me. That
17 goes hand in hand with the handbook.

18 And we have trained -- people who have the
19 master's degrees in social work or MAs in sociology.
20 There's not a psychologist on staff per se. They use the
21 handbook to try to make people be sensitized to not only
22 the pain of their children, pain of surviving the pain of
23 divorce and separation, but also the pain that they are
24 going through and how they can cope with it. And it
25 provides in a very basic handbook fashion how they can do

1 that.

2 Now, what we found is that when we do the
3 initial session we do it, by the way, at a round --
4 psychologists tell them -- it's a round -- all the tables
5 are round. It's a round-table type thing with chairs
6 around it. And we're in the middle. And we go through
7 some of the eight steps to surviving pain of divorce and
8 separation. We show them the video.

9 We also see what level they are at. We find
10 that the dynamics of the group help each other, meaning
11 that if you're a great parent and you're there because you
12 have to be there, just talking will help me who's not such
13 a great parent. You see what I mean, the intergroup
14 dynamics help people. And then you see what people want,
15 what are you looking for, how can we help you?

16 Then we had different more intensive courses,
17 one-on-one type of counseling sessions and that type of
18 thing. If they are having problems with their child, we
19 are able to channel them into some counseling for the
20 child, that type of thing. Sometimes one child gets very
21 angry at one parent or the other parent. It's your fault,
22 Mom, that Dad's not here. Or, I hate you, Dad, what you
23 did to Mom, that kind of stuff.

24 And how do you deal with that because it's a
25 real strong dynamic. So you can really identify -- help

1 people by doing this. We found it's a terrific program.
2 We have a kids' program. And the kids come in and see the
3 court system. And the judge comes out in a robe and goes
4 over and has them draw pictures of what they think. And
5 then the psychologist will look at that.

6 It's really therapeutic justice. And it really
7 works. I can't believe I have stacks and stacks of
8 letters from people -- we all do -- about, Judge, what a
9 great program that was. It really helped me understand
10 such and such a problem. That's what you're looking for
11 in family court.

12 Family court's become an emergency room for
13 every sociological dysfunctional ill that vests upon a
14 family that splits. And you just can't have an emergency
15 room. A hospital doesn't function with just an emergency
16 room. You have to have treatment. You have to have a way
17 to deal with problems. You can't use the old iron-clad
18 approach that we're just judges; that's not our function;
19 that's not our job.

20 Society is not like that anymore. It is our
21 job. We are community leaders and we need to make it our
22 job and our business to ease people through the system.

23 REPRESENTATIVE COHEN: Thank you. Your Honor,
24 it's very difficult for me to really convey my thanks and
25 the thanks of the other representatives and the members of

1 task force and staff.

2 I suppose the only two ways that I can convey
3 to you how indeed grateful we are is, number one, to tell
4 you that we've been conducting these hearings for the past
5 six years on various aspects of this project. And I've
6 become known as the Iron Lady in Harrisburg insisting that
7 both the people who make presentations to us as well as
8 staff and representatives stick to the timetable.

9 And, obviously, today between you and Mr. Kuhn
10 we have not only because every word that you've said is so
11 very vital. We felt it important to hear everything you
12 said. And, secondly, when we are finished. And, of
13 course, even House Bills 1976 and '77 are almost mirror
14 images of what you have done in New Jersey.

15 So, obviously, the most sincere form of
16 flattery is our presentation and our laws are really
17 almost, as I said, mirror images of what you have provided
18 to us in New Jersey. So we thank you so very, very much
19 for the materials that you've brought us and your
20 willingness to help us.

21 And certainly Counsel Dalton has called on you
22 on many occasions and you've been very, very helpful.

23 JUDGE FALL: You know where I am. If you need
24 help, let me know. I'll come and talk to your judges if
25 you get to that point when it's appropriate to do. We're

1 more than willing because people are people whether they
2 live in Pennsylvania or New Jersey or anywhere. They have
3 all the same problems.

4 I'm going to leave you the chart and we'll
5 leave you this. That's pretty heavy to carry home.

6 REPRESENTATIVE COHEN: Thank you so much. We
7 do appreciate it. The next person to make a presentation
8 to us is Catherine McFadden who is an attorney in Center
9 City Philadelphia or with a Center City firm, rather.
10 She's the former director of the Bucks County Family
11 Master's Office.

12 And, Ms. McFadden, welcome back because you've
13 been with us before.

14 MS. MCFADDEN: Good morning. What a pleasure
15 to see you. I am of counsel at Schnader, Harrison, Segal
16 & Lewis in Philadelphia. And before that I worked for 17
17 years for a family court in Bucks County.

18 I'm a member of the Joint State Government
19 Commission's Domestic Relations Advisory Committee. I
20 just finished a three-year term on the PBA Family Law
21 Sections Council. I'm not speaking for any of those
22 groups but I guess on my own behalf and based on my own
23 observations over the years made from a variety of
24 viewpoints in and out of the family court offices.

25 I think that the task force should be honored

1 for the concern and effort that has been devoted to the
2 development of these bills. I spoke with Karen from time
3 to time over the years about these bills and this work.
4 And I'm aware of the tremendous amount of research and
5 work she has done in an effort to help Representative
6 Cohen's vision for family court become a reality for the
7 citizens.

8 The end product of all that effort demands
9 respect from anybody who takes a look at these bills from
10 anybody who has ever tried to design a family court system
11 or who has been involved in a family court system.

12 People may agree or disagree with some of the
13 provisions in these bills. And the discussion and
14 exchange will probably strengthen the bills. But the
15 vision, the intent behind them, I don't think, should be
16 compromised. The bills set out in Section 7203, eight
17 clear, simple points that we all need to work on to make
18 reality for people.

19 I think it was the judge who said that most
20 people who are in family court are good, decent people.
21 And they deserve for these goals to be reality now. They
22 have a right to expect that family court will help them
23 promptly, fairly, and with courtesy; that the people who
24 make decisions for them will be adequately trained and
25 that they will be able to proceed with their case even if

1 they don't have an attorney.

2 And I know I used the word right. And I don't
3 really think I use that loosely. People have a right to
4 that. Now, I have some observations about specific
5 sections of the proposal. Regarding Section 7209 which is
6 Intake and Screening, and Section 7228 which is Family
7 Resource Center, I strongly support these concepts.

8 My idea, my thought, is that these two units
9 should probably be in one location. They should be a
10 place where people can go when they need help and find out
11 what's available and what's appropriate. If they want to
12 find out about the impact of divorce on children, they can
13 go there. And if they want to find out what to do because
14 their son seems to be having some kind of psychological
15 problem and they have no money and they can't cope, this
16 is a place where they can go and find out which of the
17 levels shown on the other side of the judge's chart is
18 appropriate for them. Where should they go here?

19 I really think that such a center has the
20 potential to eliminate a lot of wasted time for desperate
21 people with serious problems who just have no idea what to
22 do or where to go.

23 It also has potential to reduce the degree to
24 which cases are fragmented because you can help people get
25 to the right spot at the outset and because a properly

1 operated system could spot situations where coordination
2 will be required, where a case may already been -- for
3 instance, may already be involved in some aspect of this
4 box but now needs to be involved with some aspect of this
5 box.

6 So that the intake center and the resource
7 system working together could help reduce and prevent
8 fragmentation that people sometimes suffer now. The
9 counties, the courts, and the state all provide a large
10 number of services for people who are victims of domestic
11 violence, who have addiction problems, whose children may
12 be delinquent or dependent, who have medical needs or
13 financial needs.

14 It would be so much easier for a person in
15 crisis to have one place to go to provide at that one
16 place the name, social security, the address, the date of
17 birth and all the background family information much of
18 which is required by the family information statement.

19 And that all goes into the computer one time.
20 And from that computer at that time the forms that person
21 might need to be generated, the form may be a petition for
22 protection from abuse or a complaint for support or a
23 complaint for custody. But the information doesn't have
24 to be repeated over and over and over again.

25 Ideally at the same time the next step could be

1 scheduled. It might be the intake conference -- I might
2 have the name of that step wrong -- the case management
3 conference. It might be an emergency PFA hearing. But
4 whatever the next step is it can be set up. The client
5 can be told when, where to go, what to expect and leave
6 feeling that something has been accomplished. So those
7 are my thoughts on those two aspects.

8 Regarding the case management conference, my
9 suggestion is that it should never be scheduled unless and
10 until it's requested. This conserves time for the system
11 and for the parties who might be paying lawyers to be
12 involved in that conference. Saving time, of course,
13 saves money for the system and for the parties.

14 Many divorces are uncontested. They don't need
15 the conference. In some divorces though the complaint is
16 filed, neither parties are actually ready to proceed. And
17 to schedule and actually hold the conference isn't really
18 useful for those people.

19 Section 7217, Continuous Trials. I strongly
20 support this provision which insists that trials in family
21 matters be held on consecutive days until completed
22 instead of one day at a time over a period of months.

23 Some court systems may resist continuous trial
24 scheduling in family court simply because they don't do
25 it. There's always resistance to new ideas. But

1 continuous scheduling carries with it an efficiency factor
2 of eliminating a necessity for a judge to review and
3 review again the transcripts, briefs and other materials
4 filed in the past in an effort to remember what this case
5 is about to be able to deal with the case competently each
6 time the case appears.

7 Continuous trials is important to the parties
8 because the decision at the end concludes the dispute and
9 permits them to move on with their lives. Continuous
10 trial is particularly important to children. Judith
11 Wallerstein wrote about how children feel when their
12 parents are involved in divorce.

13 One of the things that she said in an article
14 that was published in 1996 in the American Bar Association
15 Family Law Section of the Journal quarterly was, Children
16 at the time of the rupture between their parents are
17 concerned with their parents as well as themselves.

18 They worry about whether and how their parents
19 will be able to manage. They're distressed and
20 particularly worried about the depression they see in
21 their father and mother at the time of the breakup. This
22 worry is exacerbated when children witness high conflict
23 between their parents. But even in families where little
24 anger is openly expressed children feel uncertain and
25 insecure. Their sorrow is intense as they mourn the loss

1 of their family.

2 And then later in the article the authors say,
3 We have mounting evidence that children are in terror
4 during court proceedings. I think you need to get the
5 proceedings done and let the children start to heal.

6 On Section 7218, Tentative Decisions. This is
7 a great idea. It makes sense for the court system and for
8 the parties. From the system's standpoint it's expensive
9 to operate a courtroom. A courtroom requires a highly
10 paid judge and a variety of support staff including court
11 reporter, clerks, and other officers.

12 From the parties' standpoint going to court may
13 require them to take time off work and pay lawyers. If a
14 decision can be rendered on the paperwork filed without
15 bringing all of these people into the courtroom, it's much
16 more efficient. It's a good way to run a system.

17 Section 7221, Family Law Masters. I believe
18 that Part E of this section -- I could be wrong -- but as
19 I read Part E, it seems to me that it would prohibit the
20 practice of permitting non attorneys to serve as domestic
21 relation officers who make decisions about interim support
22 awards.

23 And I have very serious reservations about this
24 provision. The interim support award provides a flow of
25 money for the dependent spousal children pending the court

1 hearing. Once the hearing is held, the amount of the
2 order can be adjusted up or down retroactively if it was
3 incorrect to begin with.

4 But the interim support award system should be
5 preserved because it provides a needed flow of money and,
6 b, it's a disincentive to the payor to delay the court
7 proceedings in any way that the payor can try to do that.
8 The vast majority of support cases actually don't present
9 challenging issues of fact or law. The support officer
10 needs to look at the financial information provided which
11 is often pay stubs from a W-2 type employee.

12 This work is not sufficiently complex or
13 difficult to justify hiring only lawyers to do it. It's
14 hard for me to imagine that you could attract bright and
15 enthusiastic lawyers to do this kind of work or manage to
16 keep them even if you were able to attract them. And I
17 think you would probably see a constant turnover every two
18 years or less of beginners. So that's my thought on
19 that.

20 Mediation. I think that a requirement that the
21 courts establish a program of mandatory mediation would
22 create a risk of undoing all of the good accomplished by
23 setting a goal of disposing of a child custody case within
24 six months. Mediation is attractive in theory and it
25 certainly is appropriate in some cases.

1 Some cases can end amicably in mediation. And
2 the parents and children then can get on with their
3 lives. However, some cases can't end in mediation. And
4 they need a judge's decision. Mediation prolongs the time
5 period before the decision can be made.

6 Some cases may end in mediation only because
7 the parties can't deal with going on. They may get
8 emotional at the time investment in participating in the
9 mediation proceedings. And this investment is made often
10 close to the time that people separate when their
11 emotional resources may not be very high. They are under
12 a lot of stress. They are unhappy. They may not be able
13 to cope with more than just mediation whether they are
14 content with the result or not.

15 Mediation can be used as a means of harassing
16 the other party by the constant raising of issues and
17 demand for compromise. Some spouses intimidate through
18 means other than physical abuse. And if one of the
19 parties doesn't want to be forced into direct negotiation
20 with the perceived, rightly or wrongly, but perceived
21 intimidator, this wish should be respected.

22 Regarding the time frame, I try to visualize
23 how it will work, what will happen. Suppose a custody
24 complaint is filed January 1st. There's a 30-day period
25 thereafter during which service should be made. Ideally

1 the case management conference is February 1st. I don't
2 think it could be earlier. And at that conference suppose
3 the parents are referred to a separating parent seminar.

4 Mother misses the seminar for a good reason,
5 but Father doesn't believe her. He's annoyed. He thinks
6 she's deliberately delaying this case to better establish
7 herself as the primary parent. So he refuses to return
8 the children after a weekend visit. This forces Mom into
9 filing a petition for emergency relief.

10 That gets scheduled in March. The interim
11 dispute is resolved. Mom finishes the seminar. It's now
12 April. They both start the mediation orientation
13 program. Then they go to the mediation. They finish that
14 at the end of May. They have no agreement nor do they
15 have an evaluation from a psychologist.

16 So now it's June 1st. If an evaluator is
17 designated at the case management conference in February,
18 then the parties could move into the evaluating phase. If
19 no evaluator was designated they will need another case
20 management conference or something.

21 In any event, evaluation interviews are going
22 to consume the next four to six weeks, I think,
23 conservatively. And then the evaluator is going to need
24 30 days to do a report. So now it's sometime between
25 August 1st and September 1st. The parties are 30 to 60

1 days past their six-month deadline and they haven't
2 started trial yet.

3 If the parties voluntarily entered into the
4 mediation process knowing the potential advantages and
5 disadvantages I think that the delay is arguably
6 acceptable. If they were forced into mediation, I don't
7 think this delay is justifiable.

8 Finally, in relation to mediation, I note that
9 House Bill 1977 contains provisions to increase -- these
10 are good provisions -- to increase the accountability of
11 family court employees for the quality and promptness of
12 their work. I'm concerned about placing large numbers of
13 family court cases into the hands of individuals who are
14 not court employees who work outside the court system and
15 who are not directly supervised by the case management
16 team leader.

17 Some mediators do very good work, just like
18 some judges and some masters. Some don't. They need
19 supervision and control. That's my thoughts on
20 mediation.

21 Finally, Continuing Judicial Education. That's
22 7232. I think this is a good provision. I would set the
23 initial requirement for masters at 40 hours instead of
24 20. And I would require additional training or education
25 each year thereafter with programs designed for court

1 employees. Masters can take advantage of all sorts of CLE
2 programs for lawyers.

3 Being a master is a specific kind of job that
4 requires some specific knowledge and skills. And there
5 ought to be some programs that are designed for those
6 folks specifically.

7 Thank you.

8 REPRESENTATIVE COHEN: Thank you. Thank you
9 very much. That was helpful, indeed. And we appreciate
10 you going through the bills section by section. That was
11 excellent. Thank you. Representative Maitland, do you
12 have any questions?

13 REPRESENTATIVE MAITLAND: She answered the ones
14 as they came to my mind. So I don't have any right now.
15 Thank you.

16 MS. DALTON: I, of course, do, Cathy.

17 MS. MCFADDEN: I was going to help you get back
18 on your schedule here.

19 MS. DALTON: Okay. I just have a couple. I
20 took notes on everything that you said. And I will go
21 back and I'm sure that we'll talk about this stuff. Some
22 of these are really good suggestions. I want to come back
23 to the part where you talked about family law masters.
24 And how many years were you in the Bucks County master's
25 office?

1 MS. MCFADDEN: I worked for family court for 17
2 years. About 15 of those were in the master's office.
3 The previous couple years were in the support office.

4 MS. DALTON: So you've seen it all pretty
5 much?

6 MS. MCFADDEN: Well, that system gives you --
7 because in the family master's office in Bucks County we
8 did child custody, property distribution, alimony, a
9 little bit of support work and some family court
10 administrative work. It does give you a good view. Other
11 systems have much, much more specialized job assignments
12 for the masters.

13 MS. DALTON: The first -- I just have two areas
14 that I want to ask you about. The first has to do with
15 family law masters. And I just want to state -- and we
16 probably already did talk about this -- why we're going
17 with the idea that only masters or judges can make
18 recommendations or orders about amount of support.

19 And I realize that there's an argument on the
20 other side. But just to kind of get that on the record.
21 This task force took testimony from many people. And it
22 just seemed that when you put folks that are not
23 law-trained in the role of making a judicial decision
24 about what's the right amount of support, when it's more
25 than just going through the grid or plugging in the amount

1 of income and how many kids do you have, oftentimes that's
2 what you get. You get one line here, one line down and
3 that's the number.

4 When the law in Pennsylvania said those grids
5 are not the final determination, that there's something
6 called earning capacity meaning if you're a neurosurgeon,
7 you can't quit your job because you divorced your wife and
8 you don't want to pay for the kids. You can't quit your
9 job as a neurosurgeon and go work at McDonald's. So
10 there's that.

11 The idea was to kind of eliminate a step to
12 make -- to give a place where folks could actually make a
13 legal argument about why the presumptions are not right,
14 why the grids are not right, and to kind of speed up the
15 process and also since masters can consolidate the other
16 matters except custody, again, to speed up the process.
17 But I understand there's another argument to be made. So
18 I just wanted to kind of get that out.

19 And the other is with respect to mediation. I
20 know that there's a debate about whether it's proper to go
21 with mediation as opposed to conciliation. But
22 Representative Cohen's bill picked mediation. But I know
23 that there's a counterargument that maybe conciliation is
24 the way. But then you have the folks that are proponents
25 of mediation that say, No conciliation. I don't like

1 that. That's not a good idea.

2 You have people just saying, Well, come on.
3 Can't you just make a decision? Can't you agree? What do
4 I have to do to get an agreement almost as if, What can I
5 do for you today to put you in that Jeep out there.
6 That's what we heard from people talking about that.

7 With respect to the case management conference,
8 I'm going to go back and take a look at the language. And
9 maybe there needs to be a provision that talks about a
10 custody evaluator being appointed.

11 MS. MCFADDEN: I think that there is. I just
12 wonder sometimes you would be -- not every case is going
13 to need an evaluator. So I wondered in just a real
14 practical way how this might work. You would be sitting
15 there with your manager. And maybe you'd agree to do the
16 parenting seminar. And maybe you'd agree to do the
17 mediation orientation program.

18 And everybody there would know the kind of time
19 frame that that's going to involve. And everybody also
20 would know, as the judge said, that the vast majority of
21 family court cases do settle and that only a small
22 percentage go to trial. So do you try to pick an
23 evaluator for these folks at that time? Or do you say
24 it's academic; the chance that they are going to need an
25 evaluator is small; let's let that issue wait.

1 So I don't know what's the best way to handle
2 it. I can see two arguments on either side of what to do
3 with that.

4 MS. DALTON: If we let people opt out of
5 mediation, what should we send them to then to have
6 custody resolved?

7 MS. MCFADDEN: I think that people should be
8 required to take part in one brief sort of settlement
9 program. I don't think it -- I think it should be
10 flexible enough so that -- the person who runs that
11 program should be flexible enough so that if mediation is
12 appropriate, then what is done with that particular family
13 is mediation.

14 But if mediation is not appropriate for
15 whatever reason, then the settlement effort is approached
16 in some other way. Conciliation, which is a rather common
17 thing, is one choice. You can do -- there's other
18 models. If you pick the model that works for the family,
19 I think that would be better. And then have the person --
20 I would make the person a court employee and I would make
21 it part of the system. And I would control it so that
22 it's brief.

23 The effort to settle a case can become an
24 obstacle to ending the case. You have to have some
25 balance so that a family that can't settle can get their

1 decision and move on. That's what I think.

2 MS. DALTON: Thank you very much.

3 REPRESENTATIVE COHEN: Again, we want to thank
4 you for being here.

5 MS. MENDLOW: Ms. McFadden, since you've gone
6 over this bill very carefully maybe you could help us on
7 one point at least that I'm confused on. And it's in
8 Section 7211 dealing with the testimony of a minor child.

9 Do you have a copy of that?

10 MS. MCFADDEN: I can try. Yes, I have it. I
11 thought this was okay.

12 MS. MENDLOW: Could you just try to help me
13 understand --

14 MS. MCFADDEN: Tell me what page.

15 MS. MENDLOW: Page 23, bottom of the page,
16 1977.

17 MS. MCFADDEN: Got it.

18 MS. MENDLOW: If you could just clarify. I'm
19 not quite sure I understand why the legislation is
20 suggesting that the child's testimony not be relevant.
21 I'm sure I'm misunderstanding something.

22 MS. MCFADDEN: Well, I read this as direction
23 that before a child testifies this issue should be brought
24 to the judge and the judge must permit the testimony. My
25 thought when I read that was that the judge will permit

1 the testimony whenever it's relevant. No other decision
2 would be proper.

3 But I thought that the goal here was to keep
4 children out of the courthouse unless their presence has
5 been specifically approved by the judge, to keep them away
6 from the battle, the conflict, the tension, the problems.
7 That's what I thought.

8 REPRESENTATIVE COHEN: Exactly. That was the
9 intention. If I may just answer the question. And when I
10 started one of the things that I had mentioned was that
11 one of our goals in addition to so many others, but one of
12 the goals and the major goal is to protect the children in
13 all of these instances.

14 And unless it's the -- 7211 was put in there to
15 say that unless it's absolutely necessary, we will protect
16 our children by not specifically involving them unless
17 it's necessary. And the judge will make that decision in
18 order -- before we just willy nilly bring the children
19 in.

20 What we have found from all the testimony, and
21 you've been at these hearings, is that this is a very
22 painful ordeal for everyone and particularly for the
23 children. And I think, Ms. McFadden, you used the word
24 healing in your testimony. And that is exactly the reason
25 why it cannot be a given that children will be brought

1 into the courtroom. And it is for the judge to make that
2 decision.

3 Thank you. Again, we really appreciate all the
4 help that you've given, not just for today but through the
5 years that we've been working on this. And hopefully we
6 will be able to call on your services again.

7 MS. MCFADDEN: It would be a pleasure.

8 REPRESENTATIVE COHEN: Thank you so much.
9 Thank you. Before we continue, how is our court reporter
10 doing? Are you all right?

11 THE COURT REPORTER: I'm fine.

12 REPRESENTATIVE COHEN: All right. Just
13 holler. Anybody else need a break? Video persons?
14 You're all right back there, Bill?

15 (Nodding head up and down.)

16 REPRESENTATIVE COHEN: Then the next person to
17 appear before us is Merrilee Weiss, an attorney, the
18 managing attorney of Support Center for Child Advocates.
19 And I suppose that the last question and comments were a
20 perfect segue into your presentation today.

21 MS. WEISS: Absolutely. Thank you. Good
22 morning. The Support Center for Child Advocates is a
23 Philadelphia pro bono program for abused and neglected
24 children. We team our trained volunteer lawyers with
25 staff social workers to represent more than 500 children

1 each year.

2 Our work is focused on four core programs:
3 Abuse and neglect, representing medically needy children,
4 our kinship care program, and adoption. And for more than
5 20 years we've served to represent children as a resource
6 to this legislature and its staff. And I thank you for
7 the invitation today.

8 I would like to address the House Bills 1976
9 and '77 because they can have a tremendous impact upon
10 children. Several provisions specifically and effectively
11 meet the legislative intent to protect and ensure the
12 safety of children and victims of domestic violence.

13 Specifically the ones I want to address are the
14 provision for representation of children in cases where
15 there is a history or allegations of child abuse, neglect,
16 sexual abuse, or domestic violence; secondly, the
17 procedures for the speedy resolution of litigation; and,
18 third, the information and services provided by the family
19 action intake service, the separating parent seminar, and
20 the resource center all of which are terrific and very
21 much needed.

22 One of our Dependency Court judges in
23 Philadelphia noted recently that the cases that we hear in
24 Dependency Court where children may be removed from their
25 parents because of abuse and neglect actually have the

1 same fact pattern as the cases that are heard in Domestic
2 Relations Custody court.

3 Just for some reason the Department of Human
4 Service hasn't gotten involved in those cases; and,
5 therefore, they are treated on a separate track. And the
6 result of them being on that other track in Custody Court
7 is that not only is there no county caseworker who can
8 provide the pertinent facts to the Court, but there also
9 is no representation of the children as in dependency
10 cases where there is an entitlement for every child to
11 have a guardian ad litem or an attorney appointed to
12 represent them.

13 So, therefore, in the custody cases there is
14 nobody to investigate the facts, to know the history of
15 the case and the parties, or to represent the interests of
16 the child. Because of the adversarial process, the
17 parents are entitled to act in their own interests and
18 sometimes have lawyers to zealously advocate to those ends
19 sometimes to the detriment to the child and in many ways
20 that are never revealed to the Court. The judge doesn't
21 know a lot of what's actually going on behind the scenes.

22 We get calls daily from caretakers whose cases
23 have been heard in Custody Court who beg for a means to
24 allow the judge to hear their child's concerns regarding
25 the other parties. They are scared to visit their

1 parent. They've been sexually abused. The judge wouldn't
2 hear it.

3 Now, some of these callers may have objective
4 concerns about their children; some may not. Some may be
5 acting on their own concerns. But what's very clear to us
6 is that very often these issues of abuse are not heard.
7 And further that often there are teachers, there are
8 psychologists, there are professionals who have evidence
9 and expert opinions about the children who also don't get
10 heard because the litigants usually are unrepresented and,
11 therefore, do not have subpoena power.

12 So a child may have been seeing a therapist for
13 years about abuse or any issue involved and yet that
14 person is not brought to court and the judge doesn't know
15 about it. That is, we think, not the way that it should
16 be. Therefore the requirement that a guardian ad litem or
17 a court-appointed special advocate for these cases where
18 there are allegations of abuse will provide the judge with
19 information which is vital to the child's safety.

20 And I think that the CASA program, the
21 Court-Appointed Special Advocate, is really especially
22 well-suited to those cases, to be the fact finders, to get
23 that information that the judges in Dependency Court would
24 have. I think that that would work very well. And while
25 requiring an advocate in all of those cases where there's

1 an allegation of abuse might seem burdensome, I think that
2 using the CASA volunteers to gather that information is a
3 good way to meet that burden.

4 The second point that I wanted to raise is that
5 differential case management system that gives the child
6 custody cases a priority status. We've heard before about
7 how necessary it is for kids that there be a speedy
8 resolution. And it just can't be said enough. Time goes
9 very slowly for children. And meanwhile their
10 developmental growth actually stops while they are under
11 the stress of awaiting the outcome of a trial.

12 It stops. They can -- all the things that they
13 would be mastering as their next steps just stop. We talk
14 to teachers all the time who tell us, I'm so glad that you
15 called to tell me that that's what's going on with Johnny
16 because he hasn't been himself since last month. He's
17 acting out; he's hitting people; he can't sit still; he's
18 falling asleep in class. Now I know why and I'm so glad
19 that you told me.

20 These kids suffer academically. They suffer
21 emotionally. And it's torture for them. It really is.
22 There has to be a resolution that is faster. And as an
23 example, for us the holidays seem much too soon. How will
24 we ever get all this shopping done in two weeks? But for
25 kids these two weeks seem like an eternity. They just

1 can't wait to get their presents. And it seems like
2 forever.

3 For them waiting for a year for a custody
4 outcome is just too long. It is too long and it is the
5 terror that was just described to you before. Further,
6 the case management team approach gives families easier
7 access to the Court and to alternative dispute
8 resolution.

9 I want to echo the tremendous need for
10 continuous trials. We have cases all the time that are
11 pending indefinitely. You hear one witness at a time, one
12 witness at a time, one issue at a time. And the judges
13 have to struggle to remember what was heard before. And
14 some of them do and some of them don't. And then the
15 calendar judge system changes and it's a new judge. And
16 we have to start all over again. That is not judicious
17 for anybody involved. I think that some of these are just
18 absolutely essential.

19 The third thing I wanted to mention are the
20 family action intake service, the resource center, and the
21 separating parent seminar. And I'm putting these all
22 together as informational services which really help the
23 whole family. And I think that the approach is really
24 right that these are families who are in crisis and who
25 need lots of help.

1 And I particularly like the intake service
2 which sort of screens cases where there's a need for more
3 help. As families who are embroiled in controversy, they
4 cannot see their child's needs. And even though the
5 standard is the best interest of the children, the parents
6 can't even see their children's interests at that point.

7 I was just in court yesterday where a parent
8 was convincing her son to tell the judge -- because he was
9 older and the judge wanted to hear what he had to say.
10 And she was clearly convincing him to say what she wanted
11 which was absolutely against his best interests. And he
12 couldn't help himself. He had to go along with what his
13 mom wanted to say because he couldn't hurt her.

14 And this happens all the time. So any -- the
15 need for representation for the kids and there's a need
16 for any placement of services and education for families
17 to alleviate that and minimize those kinds of situations.

18 I think it's terrific that also in the
19 screening process that there can be referrals for services
20 and also to the government agencies when appropriate.
21 Presently in Philadelphia there is no communication
22 between DHS, which is our Children and Youth Agency, and
23 family court and the custody court. There's no
24 communication between them.

25 And these cases, clearly there are allegations

1 all the time of abuse and they may never be heard by DHS
2 depending on what the judge thinks about them. So I think
3 it's great that there's the screening that may refer it
4 for help, may refer it to the government and, furthermore,
5 will ensure the representation of some kind of child
6 advocate from the beginning of the case because very often
7 a child advocate may get involved in the end of the case.
8 And that just may prolong the life of the case. It's very
9 important that services and our representation begin in
10 the beginning of the case.

11 Finally, I'd just like to mention the resource
12 room. A child-friendly, supervised waiting area for
13 children is essential. Every day in Dependency Court I
14 see children being brought into the courtroom hearing
15 horrible things said about their parents. And everyone
16 seems to treat that as though there's nothing wrong with
17 that. And there certainly is.

18 I don't know how parents are expected to parent
19 with respect while they are hearing the judge and other
20 people belittling their parents. Furthermore, neither
21 should the Court model having the children either wait
22 outside the courtroom by themselves unsupervised or worse
23 yet home alone unsupervised. And very often those are the
24 alternatives for the families who have cases in court.

25 So these bills offer tremendous hope for the

1 court system. Many of the recommendations in here were
2 made by the American Bar Association standards of practice
3 for lawyers who represent children in abuse and neglect
4 cases, in the training of judges and masters, in allowing
5 for alternative dispute resolution, in representation of
6 children, and for time expectations.

7 So I thank you very much for your commitment to
8 children.

9 REPRESENTATIVE COHEN: Thank you for being
10 here, Ms. Weiss. I can only reiterate what I said before
11 you started your testimony. And that is a prime goal of
12 the Pennsylvania Legislature is to protect our children.
13 And we have found that they get swept aside. And they
14 really -- of all the people suffering when a union is
15 dissolved it is the children, it appears to us, that
16 suffer the most. And they cannot initiate someone to
17 speak for them.

18 You folks are doing an excellent job. I have
19 worked with and been a part of the CASA program. And I
20 know what an integral part of our system it's become and
21 how critical it is to our system. I can only thank you
22 enormously for your presentation in giving us some of the
23 real life that actually happens and the reason for us
24 doing exactly what we're doing.

25 Representative Maitland, any questions?

1 Representative Petrarca? Karen? Jane?

2 (No response.)

3 REPRESENTATIVE COHEN: Well, obviously, you've
4 done a good job since we don't have any questions. Thank
5 you again. And we hope to be able to call upon you during
6 the whole legislative process.

7 MS. WEISS: Absolutely. Thank you very much.

8 REPRESENTATIVE COHEN: Thank you so much.

9 Well, certainly not least but last we have Mark Dischell,
10 an attorney, the Immediate Past President of the American
11 Academy of Matrimonial Lawyers, the Pennsylvania Chapter,
12 and the Vice Chair of the Family Law Section of the
13 Pennsylvania Bar Association.

14 We welcome you. Sorry for the wait. But as
15 you've heard, having sat here for a while, every word has
16 been relevant. And we appreciate your patience.

17 MR. DISCHELL: There was no wait at all. I was
18 very interested in everything that was said. I think
19 we're -- and I'm honored to be here. I've heard some
20 wonderful things. I'll just introduce myself. My name,
21 as your Chair indicated, my name is Mark Dischell.

22 I'm reading this statement prepared by Mary
23 Cushing Doherty and myself on behalf of the Pennsylvania
24 Bar Association Family Law Section in the Pennsylvania
25 Chapter of the American Academy of Matrimonial Lawyers.

1 Mary chairs the family law section. I'm its
2 Vice Chair. Both Mary and I are active practitioners in
3 family law with our practices predominantly in
4 southeastern Pennsylvania. We're also fellows of the
5 Pennsylvania Chapter of the American Academy of
6 Matrimonial Lawyers. I'm its immediate past president.

7 Additionally, the Joint State Government
8 Commission has honored us by our inclusion on its advisory
9 committee on domestic relations. I'd like to speak on
10 behalf of the two organizations and, if permitted, maybe a
11 couple of observations from myself.

12 I've been a family lawyer for 30 years. I
13 think that makes me emotionally practicing law for about
14 50 years. When I started in the very early '70s we had
15 fault divorce. We had the tender years doctrine for child
16 custody. Did not have an equal rights amendment. Did not
17 have after-divorce alimony. Did not have equitable
18 distribution. Did not have the protection from abuse
19 statutes. Didn't have much respect.

20 I think that previously family law when I
21 started was, if you will, the Rodney Dangerfield area of
22 the law. I think things have changed. And in all due
23 candor I think your committee is one of the primary
24 reasons that things have changed.

25 This week representatives of the section and

1 the academy, myself and Mary and others were invited to
2 participate today. As family lawyers we embrace many of
3 the proposals contained in Bills 1976 and 1977. We also
4 applaud the hard work and concern reflected in the report
5 of the task force on domestic relations of your
6 committee.

7 Neither the section nor the academy has taken
8 an official position on Bills 1976 and '77. But there
9 will be a formal position taken by both groups early 2000,
10 next month. You will hear, however, that the topics
11 discussed today have been considered and are being
12 considered by a Pennsylvania Bar Association Task Force
13 for quite some time.

14 These lawyers involved in the task force of
15 family court reform are anxious to see comprehensive
16 improvements in the management of family court litigation
17 in Pennsylvania. Though Mary who chairs the task force
18 regrets she can't be here, we want to present the
19 statements so that you know what the lawyers in
20 Pennsylvania have already done and are doing with your
21 help to further this cause.

22 The Pennsylvania Bar Association passed a
23 resolution in 1996 in favor of family court reform. At
24 that time the model for reform hadn't been developed, but
25 the work of the Pennsylvania Bar Association began in

1 earnest. In May of '97 at the Bar Association annual
2 meeting the Commission on Women in the Profession hosted a
3 day-long conference on unified family court.

4 The Honorary Chairs or co-Chairs were Sandra
5 Schultz Newman, Justice of the Supreme Court, and Kate
6 Ford Elliott, Superior Court Judge. Members of the family
7 section and the academy participated in that conference.

8 The task force for family court reform was
9 formed also under the auspices of the Pennsylvania Bar
10 Association both its family law section and the Commission
11 on Women in the Profession. The American Academy of
12 Matrimonial Lawyers likewise added its support and its
13 members who joined the task force.

14 The needs of Pennsylvania litigants were
15 effectively recounted in the video produced by the
16 Association for the May '97 conference. That videotape
17 has been replayed both for the judiciary committee and
18 interested judges and legislatures across the state. It
19 was viewed at the February 1999 Pennsylvania conference of
20 state trial judges. The video was part of the day-long
21 presentation on the issue of family court reform for
22 family judges from across Pennsylvania.

23 At the 1997 conference members of the lawyers
24 task force learned of what had been done outside of
25 Pennsylvania to reform family court practices. We heard

1 family court reform has been tackled in individual
2 counties in certain states across the United States many
3 of which are small states, some that are what Judge Fall
4 said today.

5 The goal of our task force is not to reform one
6 county or the larger counties in Pennsylvania, but rather
7 we seek to design state-wide reform as do you. In May
8 1998, the ABA hosted a conference on unified family court
9 in Philadelphia. Members of our task force learned about
10 specific experiences in Atlanta, Rhode Island, Hawaii, New
11 Jersey, Cook County, Illinois, and the District of
12 Columbia.

13 Specific suggestions were made, but a
14 comprehensive plan for Pennsylvania would require more
15 research on the current operations in the courts in
16 Pennsylvania.

17 Over a year ago the Pennsylvania Bar
18 Association circulated a questionnaire to every family
19 court judge and received responses from most of the
20 counties. These surveys asked for information regarding
21 family court procedures but more importantly asked for a
22 description of what steps were being taken to consolidate
23 litigation and promote prompt and fair resolution of
24 cases.

25 Our task force members, about 50 attorneys and

1 judges from across Pennsylvania, have contacted the
2 responding counties. We believe the change that includes
3 dialogue with the counties will be more effective. As
4 lawyers we empathize with the clients' frustrations. We
5 need to listen to administrators and clients, to respond
6 to clients' concerns with reform that will work in all
7 counties small, medium, or large.

8 There is no one we have talked to that does not
9 welcome the idea of reform. The problem is how to
10 implement change so we do not have more bureaucracy and
11 more problems as a result of it. In our 67 counties and
12 60 judicial districts we have identified a wide range of
13 problems, positive suggestions for the administration of
14 family court.

15 Some of these suggestions are included in House
16 Bill 1977, a great many of them, and some have not been
17 which I'll speak to. One suggestion is the cases be
18 resolved quickly. In individual cases a speedy result may
19 not be the fair result. In most cases, however, the
20 length causes an exhausting drain.

21 When children are involved delays can have a
22 devastating effect on the development of the child. We've
23 all heard that. We all know that. It's gratifying that
24 many counties are trying to address the needs of children
25 and have embraced custody mediation. Families are

1 encouraged to use other alternative dispute resolution in
2 divorce mediation.

3 However, mediation is not the solution when
4 there's an abusive relationship between the parents. We
5 want to incorporate the best ideas in the reform model for
6 our Commonwealth. Soon the Pennsylvania Bar Association
7 and the Academy will have a specific position statement on
8 the two bills which are being discussed today.

9 It's hard for individual lawyers why it makes
10 sense to detour the process of reform by promoting a
11 constitutional amendment. House Bills '76 and '77
12 proposes shifting the administration of the portion of the
13 family court case load to the legislature.

14 How will the constitutional amendment
15 accelerate the process of effectuating reform for the
16 citizens of Pennsylvania? Why do we need a constitutional
17 amendment to upset the balance of power between the
18 legislature and the judiciary? I don't know. I really
19 don't know.

20 I'm here today as a member of the lawyers' task
21 force because we want to continue to listen and to
22 understand why the legislature feels a constitutional
23 amendment is appropriate under the circumstances. In the
24 meantime we're not going to stop working on a plan for
25 reform which will involve changes via rules and

1 legislation.

2 If this legislation signals that the House
3 judiciary members and members of our legislature are
4 willing to participate in the momentum for change, we
5 welcome that involvement and energy. It's clear that the
6 goals of the legislation are not different from the goals
7 from the lawyers on our task force. The means to a goal
8 may differ but we welcome the opportunity to join in a
9 partnership with all those interested in positive change.

10 The Bar Association Task Force members will
11 continue to develop models for family court reform. It's
12 our hope that there is an open door with the legislators'
13 interest in these items personally. And on behalf of my
14 groups I'm sure there is.

15 While we do not expect that the lawyers of
16 Pennsylvania will be supportive of a constitutional
17 amendment, we hope the active concern of the legislators
18 along with the concern expressed by judges, lawyers,
19 masters and citizens signals the change will come.

20 At this point it's expected that the Council
21 will pass a resolution at its next meeting for January 21,
22 2000. That resolution will be forwarded to the Bar
23 Association for approval. As soon as the Pennsylvania Bar
24 Association resolution is passed the House Judiciary
25 Committee will be advised.

1 Likewise, the American Academy of Matrimonial
2 Lawyers will pass its resolution in January of 2000 and
3 will advise the judiciary committee at that time.

4 Thank you for the opportunity to speak on
5 behalf of the groups. Thank you for the opportunity to
6 agree to disagree on the methods for reform. We hope to
7 work toward a mutual goal of effectuating reform for the
8 benefits of Pennsylvania. That's what I say on behalf of
9 my groups.

10 I've read over 1976 and I've read over 1977. I
11 laud, applaud your proposal on bifurcation. I've always
12 been an opponent of it. In my remarks I mentioned that
13 some divorce cases should not be dealt with speedily.
14 What I did not mean was that justice should be denied. I
15 just feel that in some cases people are not ready to be
16 divorced right away.

17 I think under those circumstances with proper
18 counseling, with proper staffing by some of the proposals
19 and some of the institutions that you would incorporate, I
20 think that could probably be accomplished. I also laud
21 the tracking devices which cases go first, which cases
22 have the priority. And I'm glad to see that the cases
23 dealing with children have the greatest priority.

24 I laud the private hearings. I think that
25 that's a terrific thing. I see no reason, never saw any

1 good reason why people should be permitted to sit in a
2 family court courtroom when they are not immediate
3 participants or witnesses in the cases. I don't feel,
4 while I'm a firm believer in the right of the press and
5 the right of people to go to court, I think family
6 cases -- I've seen too many people be stultified, be
7 totally quashed in what they want to say.

8 I also like the provision concerning the
9 testimony protecting the children from having to testify.
10 I know of nothing worse. I know of nothing a child can do
11 that would be more painful than say one parent is better
12 to live with than the other parent. But from the point of
13 what has happened in the past and what is going to happen
14 in the future, what type of reprisals there can be.

15 I think the seminars are great. I think the
16 resource center is a terrific idea. I think people -- I
17 think what is the greatest enemy of the court system other
18 than disrespect is ignorance. I think litigants, clients
19 have the right to know, must know about what the situation
20 is, what their situations are. And to have people to be
21 able to explain them in a simple book so that they can
22 understand that I think is critical.

23 As a lawyer myself and I guess a somewhat
24 grizzled warhorse for 30 years, I also believe in a
25 judicial education seminar. I think that not only should

1 the lawyers be compelled to attend CLE courses, I think
2 the judiciary should as well. There's too much going on
3 in this, what I consider to be the most vital of fields.

4 I think that most of our judges -- and, again,
5 I practice primarily in Montgomery and Bucks County --
6 judges that I am before are very good judges, very much
7 desirous of being informed of what the law is. But I
8 think it's something we should all be learning together.
9 There's too much going on.

10 I worry -- my own concern in these situations
11 especially right now is with your bill and with what's
12 going on with the domestic relations, the Supreme Court
13 Domestic Relations Rules Committee, with the guidelines
14 coming in and now being amended again, and with the
15 federalization of family law with support law, I think
16 that that's -- I think at the present time this is a
17 watershed.

18 The next ten years, the next five years are
19 going to be very critical in what happens in this system.
20 And I worry that with all of these elements, if you will,
21 coming to the same -- to the same delta of the river, I
22 wonder, I worry what all is going to come out of it. We
23 are all eager for reform.

24 The other thing -- the -- what I found in the
25 bill that I -- one thing that I noticed -- and, again, I

1 have not had weeks and weeks to study this. I wish I
2 had. But on a personal basis I am not so certain that
3 protection from abuse or problems under the Uniform Child
4 Custody Jurisdiction Act and a lot of what is excluded
5 should be excluded.

6 I would think that one-stop shopping at the
7 court system is probably better than excluding things. In
8 a custody case normally if there is a jurisdictional
9 issue, that's the first issue. Why can't the team, if you
10 will, the team that will be handling this take that on as
11 well to make a determination, possibly to make a tentative
12 decision as you've stated in the -- or put in the
13 statute.

14 Those are the words of my groups. Those are my
15 only editorializations. And, again, I applaud what you're
16 doing.

17 REPRESENTATIVE COHEN: I can't thank you enough
18 for making your presentation. And this is a perfect segue
19 into some of the comments that I wanted to make. And
20 you've kind of summed up many of the statements that have
21 been made today. I feel it incumbent upon me to respond
22 in many aspects.

23 First, I have to thank our counsel, Karen
24 Dalton, who's been working on this issue with me for the
25 last six years. She manages to find witnesses and people

1 to come testify that most us never heard of or heard
2 about. And everyone that has appeared before us has been
3 remarkable. And your comments have certainly been very,
4 very valuable. And I feel I have to respond to some of
5 these statement that you've made.

6 In the last six years we've heard from
7 thousands, thousands of people, not just the judiciary,
8 attorneys, staff, people who work with families, children,
9 etcetera, but from the people and from the children. We
10 have gone all over the state. We've had telephone calls,
11 personal visits, letters. We're still getting them. And
12 it is literally thousands of people. And that really is
13 just the tip of the iceberg.

14 There are 12 million people in Pennsylvania.
15 And if 50 percent of the marriage is dissolved, it seems
16 to me that every single human being that is a citizen of
17 this Commonwealth is affected by divorce.

18 Because if it's not a child and not the actual
19 litigants, it's grandparents, family, employers who want
20 to know why their employees need time off from work
21 constantly, why children -- and Ms. Weiss that appeared
22 before you said that teachers don't understand why the
23 children are crying and not doing their homework and
24 falling asleep because there's turmoil in the house.

25 So I believe that domestic relations no matter

1 what aspect of it affects all 12 million people in the
2 Commonwealth.

3 What I find absolutely almost mind-boggling is
4 where's everybody been? We have been working on this for
5 six years, as I say time and time and time again. You
6 mentioned the 1997 conference of the Pennsylvania Bar
7 Association. Very interesting that not one Pennsylvania
8 judge attended that conference.

9 It's very interesting that we've had support
10 for our efforts from the Bar Association, from mediators,
11 from all the people involved in family matters, and from
12 the people. And that's who we're here to serve, the
13 people. But the one group that has objected to what we've
14 done and you asked the question why a constitutional
15 amendment.

16 It is absolutely clear to me because the
17 judiciary -- and there are some exceptions. And Judge
18 Berin in Pittsburgh, Judge Panepinto in Philadelphia, we
19 have and we will add to the record a presentation, a
20 written presentation from Judge Bertin in Montgomery
21 County. And there are some cells of the judiciary here
22 and there that have responded and responded well.

23 But, generally speaking, the judiciary has not,
24 what we think, done what it should do to streamline and
25 make this process effective. It is only within the last

1 few months that the judiciary has stepped forward, not
2 stepped forward really, jumped into the fray because the
3 judiciary sees a threat from the legislature.

4 And we've heard comments such as the
5 legislature is overstepping its bounds. Why do we
6 need a constitutional amendment? I have to tell you,
7 Mr. Dischell, when we started this process it was our
8 opinion that we did not need legislation, that the
9 judiciary could do and should do what it's mandated to
10 do.

11 But the judiciary in all these years has not
12 done what it's mandated to do, what it's supposed to do.
13 And our constituents, our neighbors and friends, our
14 people, the people that have elected us that we serve are
15 suffering because the system hasn't worked. So when you
16 ask why do we need a constitutional amendment, because the
17 judiciary hasn't implemented this reform.

18 And now it's jumped in to say, We've done it;
19 we're doing it; we're continuing to do it. My concern,
20 and in order to protect my people, is that what the
21 judiciary giveth it can taketh away. And we've had
22 constitutional amendments before that have modified and
23 affected the judiciary.

24 I believe it is the obligation of this body,
25 the legislative body, to have this constitutional

1 amendment where -- and I did mention at the beginning of
2 this hearing it's the people that will pass this
3 constitutional amendment. It will go to the people on a
4 ballot question. They are the ones that will make the
5 decision. And I believe this is something that we have to
6 mandate.

7 I urge the judiciary, I absolutely urge the
8 judiciary to reform, to take the steps. They are not
9 objecting to most of the things that we have proposed
10 except, of course, for judicial education which everybody
11 agrees should be mandatory. If we as attorneys -- and
12 I've been practicing law for almost 35 years. If we have
13 to do it, certainly the judiciary must have continuing
14 education and be sensitive to these people, family,
15 children, issues.

16 But I believe we've gone this far and the
17 judiciary has not taken action. And we now with the
18 approval of the people, because it's the people that are
19 going to decide essentially what's in 1976 and 1977, they
20 must -- the judiciary then and we as legislators must take
21 these steps to ensure that this will become the law and
22 this will become the procedure in Pennsylvania.

23 Nobody's objected. As an aside to that, I have
24 to say that Counsel, for the committee, Dalton and I in
25 June attended a three-day conference of mediators and

1 lawyers, people that are involved in this whole area. It
2 was an international conference.

3 And when we got there we introduced ourselves.
4 We originally started telling people, We're from
5 Pennsylvania. And they laughed at us. People from all
6 over the country all over the world laughed. And after a
7 while we stopped introducing ourselves other than saying
8 our name. We stopped saying, We're from Pennsylvania
9 because Pennsylvania is far -- and I'll say it nicely.
10 We're not leaders in this area. We are the laughingstock
11 of the rest of the nation.

12 And we can give you a litany of 49 other states
13 let alone other jurisdictions that are far in advance of
14 Pennsylvania. We really trail on this one. And we're
15 talking about issues of justice. That's all we're talking
16 about, about serving the people of the Commonwealth who
17 are suffering emotionally, financially, in every way
18 possible. And this Commonwealth has done nothing to save
19 our people.

20 I truly believe it is up to us to save the
21 citizens of Pennsylvania. That's what our job is. So
22 having -- as you can tell, I'm passionate about this
23 issue. I will step down from my soap box and give you the
24 opportunity to respond.

25 MR. DISCHELL: The only response I have, again,

1 I applaud your exuberance and what I -- the causes you
2 espouse. I certainly don't speak for the judiciary.

3 REPRESENTATIVE COHEN: I understand.

4 MR. DISCHELL: But the groups that I do speak
5 for I do say that if your bills do become law, we will
6 endorse it; we will espouse it; and we will continue to do
7 our best for the people who are important, our clients.

8 REPRESENTATIVE COHEN: And I must compliment
9 you on that. We've spoken to probably a few hundred
10 attorneys who specialize in domestic relations. And what
11 didn't astound me as a lawyer but certainly astounds the
12 common man that we talk to and they say, Do you mean to
13 say that the Bar Association, that the attorneys that are
14 in this field support your efforts because they are
15 essentially cutting their income and cutting their
16 billable hours in many of these instances.

17 So I have to compliment you and the entire
18 domestic relations bar because we keep getting, as
19 attorneys, keep getting beaten up all the time. And this
20 is just an example of how public-spirited I believe
21 attorneys are and indeed want the best for their clients.
22 This will affect your income and yet you speaking for the
23 Bar have taken the honorable path. And for that I
24 compliment you.

25 MR. DISCHELL: I think to be a family lawyer

1 you have to be a people person to do it for a living and
2 to do it for a long time. I've heard Ms. Weiss speak and
3 tough things what she has to do. And I think to do this
4 area of law you have to have the good of the populous in
5 mind.

6 REPRESENTATIVE COHEN: So we thank you. Do any
7 other members have any questions? Karen? No. Jane? On
8 that note, again, our heart-felt thanks for setting the
9 record straight as to the attorneys in the Commonwealth.
10 Thank you so much.

11 Again, I want to thank all the people that
12 testified today and certainly the members of the task
13 force staff and everyone who's been here.

14 This will conclude the task force hearing on
15 domestic relations, House Bills 1976, 1977. You will hear
16 from us again. This is pioneering legislation. We hope
17 to bring Pennsylvania from last to first among the 50
18 states in our thoughtfulness and pursuit of justice. This
19 hearing is adjourned.

20 (Whereupon, the hearing was concluded at
21 11:33 a.m.)

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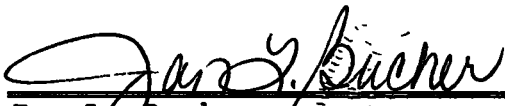
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I hereby certify that the proceedings and evidence are contained fully and accurately in the notes taken by me on the within proceedings, and that this copy is a correct transcript of the same.


Jan L. Bucher
Court Reporter-Notary Public

Notarial Seal
Jan L. Bucher, Notary Public
Carlisle Boro, Cumberland County
My Commission Expires June 5, 2000