

COMMONWEALTH OF PENNSYLVANIA

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

TASK FORCE ON ADOPTIONS, GUARDIANS AD LITEM

AND COURT-APPOINTED SPECIAL ADVOCATES

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In Re: House Bills 1533 and 1838

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Verbatim record of hearing held in the
Gold Room, Allegheny County, Courthouse
Pittsburgh, Pennsylvania, on Thursday
March 23, 2000
1:00 p.m.

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MEMBERS OF THE COMMITTEE

HON. CRAIG A. DALLY, CHAIRMAN
HON. JANE C. ORIE
HON. DON WALKO

ALSO PRESENT:

Hon. Paul Costa
Jane Mendlow, Research Analyst
David Bloomer, Research Analyst

Reported by:
Nancy J. Grega, RPR

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1 CHAIRMAN DALLY: I'd like to call the
2 hearing of the Judiciary Committee, Task Force
3 on Adoptions, Guardians Ad Litem, and
4 Court-Appointed Special Advocates to order.

5 I am Representative Craig Dally. I
6 represented North Hampton and Monroe counties
7 in the eastern part of the state, and also
8 serving on the task force is Representative
9 Jane Orie from Allegheny County and
10 Representative Don Walko from Allegheny
11 County. Also joining us from Allegheny County
12 is Representative Paul Costa. I thank the
13 representatives for being here today.

14 I'd also like to introduce Dave
15 Bloomer who is on the Republican Judiciary
16 Committee staff and Jane Mendlow who is also
17 on the Democratic Judiciary staff.

18 We are here today to seek additional
19 testimony on two House bills that have been
20 introduced by Representative Kevin Blaum.
21 Particularly, those are House Bill 1533 and
22 House Bill 1838. These bills pertain to the
23 issue of consent to adoption as well as
24 relinquishment of parental rights, adoption
25 counseling and adoption medical history

1 information.

2 We held a previous hearing on this on
3 October 13 in Harrisburg and this is our
4 second hearing, and we thought it would be
5 best to come to western Pennsylvania to secure
6 witnesses from this area of the state to get
7 their feedback on the legislation.

8 The first person to testify today or
9 listed on our agenda was the Honorable Paul
10 Zavarella, but Judge Zavarella would like to
11 sit and listen to some other testimony and
12 then provide some insight as to his
13 experiences in the courtroom and relate that
14 to what's been said today.

15 So, with that being said, Jackie
16 Wilson. I know, Jackie, you don't want to go
17 first but you will be fine. Welcome, Jackie.

18 MS. WILSON: Good afternoon. I have
19 been invited today to offer testimony
20 regarding House Bills 1533 and 1838. I'm
21 Jacqueline Wilson, and I am the Executive
22 Director of Three Rivers Adoption Council here
23 in Pittsburgh.

24 I would like first to commend the
25 House on their understanding the need to visit

1 the issues related to these House bills since
2 they are timely and they need to be visited.

3 Regarding House Bill 1533, we agree
4 that it's certainly necessary to shorten some
5 of the timeframes that we have for revoking
6 consents to relinquishments. The current
7 ability to revoke often lingers until
8 finalization and then that leads to an
9 uncertainty for the child, uncertainty on who
10 they are, where they belong, and the stability
11 they need is not there when it lingers on for
12 such a long period of time. So, it gives them
13 some, again, stability in an expeditious
14 manner that they are deserving as children.
15 Oftentimes, of course, children don't have a
16 right to say what's best for them. So, as
17 adults, we need to be the ones that are able
18 to make those decisions and they need to be in
19 the best interests of the children.

20 The termination subcommittee, I know,
21 was recommending that the time to revoke
22 consent be reduced to ten days versus the 30
23 days that is being proposed and certainly the
24 shorter timeframe, the better the ability to
25 bring some closure and some finalization on

1 the mandate of enacting counseling for both
2 parents, that is certainly a step in the right
3 direction. Both parents who are contemplating
4 relinquishing their rights to their children
5 deserve to have counseling. They deserve to
6 be able to make sure that the decision they
7 have made is the right decision. They need to
8 be able to know all of the options that they
9 have, including adoption, but certainly there
10 are other options they can choose. We need to
11 make sure that they are clear with that.
12 Oftentimes, in deciding to relinquish parental
13 rights, sometimes it is well thought out and
14 sometimes it is a spur of the moment, dealing
15 with the conditions that they are in at that
16 moment, and we need to make sure that it is a
17 clear-cut decision that they have made, one
18 that they have made that has been well thought
19 out with all of the things that they need to
20 go through and deal with. So, having the
21 counseling is certainly one thing that we
22 think is vital to ensuring that all of the
23 options are discussed with them.

24 However, one of the things that
25 concerned me was the wording in Section 2502

1 where it states that if the parent "requested"
2 adoption-related counseling, and I think it
3 would better serve the Bill and the birth
4 parents if the Bill read that they all were,
5 they were all "referred" to counseling. I
6 don't think the birth parents should have to
7 request it. I think this is an important
8 enough step for them. Their needing to make
9 that decision is not another decision that
10 they need to make. I think it needs to be
11 offered to all of them and then they can, of
12 course, choose to accept that counseling but
13 at least to be offered to them. So, I think
14 that would better serve the Bill if we changed
15 that language.

16 Section 2533(3.2), it seems to
17 indicate that adoptive parents will be asked
18 to pay for adoption-related counseling
19 received by birth parents. That's my
20 understanding that I received when I read the
21 Bill and it states, without regard to the
22 adoptive parents' income; that's reasonable
23 reimbursement. It seems that they may be
24 reimbursed for the expenses that they have
25 paid for both birth parents' counseling, and I

1 think if we put that in the Bill, I think that
2 hinders people from adopting children.
3 Adoptive parents should not have to pay for
4 counseling sessions that a birth parent
5 receives. I know the Bill talks about each
6 county setting up a segregated fund and that
7 those kind of payments should come out of that
8 fund and not out of adoptive parents' pockets.
9 If a birth parent does not have access to
10 third-party payment including medical
11 assistance, then we need to look toward the
12 segregated fund and you can make sure that all
13 of the counties have established that fund and
14 if they have surpluses that they are adding to
15 that fund from the \$75 filing fee and, in
16 addition, some of the surpluses they might be
17 running through the county budget, but by no
18 means should adoptive parents need to pay
19 that.

20 With all of the children we have that
21 need to be adopted, with all of the push that
22 we have in trying to encourage adoption from
23 people because it is a good step for them to
24 make to become adoptive resources for
25 children, we don't need to hinder that by

1 asking them to pay for that kind of a service
2 for birth parents. I think that would be very
3 crucial and devastating to this Bill. That
4 would be all that I have. Are there any
5 questions?

6 CHAIRMAN DALLY: Thank you very much.
7 Any questions? Representative Orie?

8 REPRESENTATIVE ORIE: In regards to
9 your last statement with creating a fund, did
10 you say that from the filing fees themselves
11 create almost like the fund for the counseling
12 that needs to exist or what was your
13 alternative?

14 MS. WILSON: From my understanding
15 from the Bill, that there is a \$75 filing fee
16 that adoptive parents pay and that this would
17 go into the fund. Now, counties and adoptive
18 agencies do have the right to waive that fee
19 from adoptive parents because they may not
20 even have that money, but from my
21 understanding of the Bill, that that fee would
22 be a part of that segregated fund. That
23 should be set up by every county and then that
24 county can also supplement that fund as well
25 with additional monies.

1 REPRESENTATIVE ORIE: You are taking
2 it from that fee?

3 MS. WILSON: Right. That's where
4 that needs to come from. It needs to come
5 from out of that fee.

6 REPRESENTATIVE ORIE: If I could go
7 back to Section 1533 where you were indicating
8 the ten days versus the 30 days, you didn't
9 think that using the 30 days would cause
10 impairment to the child or confusion; that it
11 should be reduced to ten days?

12 MS. WILSON: I don't know if the ten
13 days versus the 30 days, you know, two weeks
14 versus a month, and so there needs to be some
15 kind of a compromise with that. I think
16 whatever the timeframe that we choose, I think
17 we need to make sure that it is enforced; that
18 it be no more than or no less than. Perhaps
19 it could be no less than ten days but no more
20 than 30 days. I have not seen the termination
21 subcommittee's full report to know what all
22 they have placed in that. I think it's just
23 real important that we have some concrete
24 guidelines set aside so that when someone is
25 relinquishing their rights to the children,

1 the birth parents can move on to what they
2 need to do in their lives so that there is
3 some closure for all of them.

4 REPRESENTATIVE ORIE: Would you also
5 say that the adoptive parents should also get
6 counseling? Who should get the counseling?

7 MS. WILSON: I think the counseling
8 primarily needs to be with birth parents
9 because adoptive parents have gone through a
10 lot of training and they know a lot of the
11 resources that are provided to them and a lot
12 of the agencies they go through, they do
13 provide some of those services for the
14 adoptive parents. I know at the Three Rivers
15 Adoption Council, we also have an adoption
16 preparation group for children. So, there are
17 a lot of things for children but we don't see
18 those same things for the birth parents. So,
19 the counseling needs to be for the birth
20 parents and needs to happen before they sign
21 the consent. Once they have signed the
22 consent, they have done it already, they need
23 to know what their options are and we need to
24 make sure that they make decisions
25 thoughtfully and it has not just been on the

1 spur of the moment.

2 REPRESENTATIVE ORIE: When you
3 indicate that Three Rivers had something for
4 the parents that are going to adopt, are there
5 resources developed for the birth parents or
6 would they utilize the same type of resources
7 for their counseling or is there something
8 that exists along that line?

9 MS. WILSON: I think that there are a
10 lot of private providers and a lot of
11 counselors and therapists. Again, the Bill
12 mentions the Department of Public Welfare
13 developing a list of people who are qualified
14 to provide these services. Certainly, I think
15 some things need to be done and established
16 and funds need to be set aside on the county
17 level for the development and implementation
18 of specific adoption-related counseling
19 services for birth parents. I think we need
20 to provide it for them and the state and
21 counties need to make sure that these services
22 are offered in the manner which they need to
23 be offered. A lot of therapists can do a good
24 job at counseling but they are not aware of
25 adoption issues and the specific issues

1 related to them. While they may do an
2 excellent job, they may not know all the
3 issues that they need to get to with those
4 people.

5 REPRESENTATIVE ORIE: I have no
6 further questions. Thank you.

7 REPRESENTATIVE WALKO: Thank you,
8 Miss Wilson, for being here and for your
9 testimony. Three Rivers Adoption Council is
10 an umbrella agency; is that correct?

11 MS. WILSON: That's correct.

12 REPRESENTATIVE WALKO: And do you
13 work with the county, CYF organization?

14 MS. WILSON: That's correct. We have
15 approximately 62 agencies that are members and
16 affiliates with the county, with the agency,
17 throughout the state. So, we do have
18 contracts and affiliations with Allegheny
19 County Children and Youth Services, Washington
20 County, Beaver County. So, we do service a
21 lot of the counties, Fayette, Cambria.

22 REPRESENTATIVE WALKO: You had
23 referred to a \$75 filing fee provided in the
24 legislation. I was trying to find that. Is
25 that in 1838? What I'm getting at is, there

1 is no similar fee now for an adoptive parent?

2 MS. WILSON: From my understanding,
3 there is a fee now. This was something that
4 was already in the legislation, that there is
5 a \$75 fee now but it is waived a lot of times
6 by the agencies that provide adoption services
7 to adoptive parents because they can't always
8 afford it.

9 REPRESENTATIVE WALKO: Just following
10 up on what Representative Orie was saying
11 about birth parent counseling, typically is it
12 a birth parent that comes to you and says, I
13 have a child that I would like to put up for
14 adoption?

15 MS. WILSON: We do get some phone
16 calls from birth families, from birth parents,
17 but for the most part, we are a resource of
18 getting adoptive resources for the children
19 that are available. So, someone from Cambria
20 County may call and say we have an infant, or
21 the Children's Home may call and say we have a
22 baby; do you have a resource for them. So, we
23 are part of a national exchange and a state
24 exchange to provide adoptive resources.

25 REPRESENTATIVE WALKO: Thank you.

1 CHAIRMAN DALLY: Representative

2 Costa?

3 REPRESENTATIVE COSTA: Good morning,
4 Miss Wilson. I like your name. I agree with
5 you as far as this counseling goes. As you
6 probably know, parents that are going through
7 custody are required to take mandatory
8 counseling. That's a very important decision.
9 To make an important decision as to give up
10 your children, that is not required, which
11 amazes me. I'm glad that this is part of the
12 Bill and I think this should stay in it.
13 Thank you for bringing it up.

14 MS. MENDLOW: There were a couple of
15 points, Jackie, that I wanted to touch on, if
16 possible. One thing was you did mention the
17 subcommittee on terminations. I just thought,
18 for the record, it probably would be important
19 to clarify that that was a subcommittee of the
20 Joint State Government Task Force on
21 Adoptions.

22 MS. WILSON: That's correct.

23 MS. MENDLOW: So that, just for the
24 record, it was not a legislative standing
25 committee or anything.

1 MS. WILSON: That's correct.

2 MS. MENDLOW: The other point I
3 wanted to touch on was the question about, and
4 this is a point of clarification, as to
5 whether or not the counseling, the expenses
6 related to adoption counseling should be paid
7 by the adoptive parents, and what
8 Representative Blaum, and speaking in his
9 behalf, was trying to do here, on page 9 of
10 the Bill, House Bill 1838, was basically
11 permit those expenses to be paid by the
12 adoptive parents. The reason being that
13 various court decisions had determined that
14 adoptive parents were prohibited from paying
15 for the adoption counseling and certainly
16 there was no desire to force the parent to
17 take any type of particular counseling but the
18 idea was that any resources that might be
19 available to ensure that the birth parents get
20 this particular type of counseling should be
21 there, that was his objective, and whether or
22 not we need to revisit that as opposed to
23 making it a requirement. That really goes
24 back as well to what we had been finding, was
25 an enormous problem with access to the

1 counseling fund, and it seems like most
2 counties have not been using any of those
3 resources based on that \$75 filing fee that's
4 been in place since, I believe, 1992. So, the
5 idea was to try to get, you know, everyone
6 better linked up at the point they were
7 contemplating the possibility of relinquishing
8 their rights or consenting to adoptive
9 placement.

10 And I also had a question for you in
11 terms of your feelings about whether
12 adoption-related counseling should be provided
13 through or by an agency approved by the
14 Department of Public Welfare for doing that
15 particular type of counseling as opposed to,
16 as in current law, where it basically is left
17 very ambiguous and could be counseling
18 provided by someone who might not have any
19 expertise in adoption issues. I would be
20 interested in your feelings on that.

21 MS. WILSON: Well, certainly, as an
22 adoption agency, I would say, of course, that
23 an agency or providers who have been approved
24 by the Department certainly who meet certain
25 criteria would, of course, would be more

1 beneficial. That doesn't mean that it
2 couldn't be someone's pastor. If a group of
3 pastors thought they wanted to be approved to
4 be on that list, then they should submit their
5 resumes and the information that they have
6 that makes them able to do that. Certainly,
7 some people are going to be more comfortable
8 with their minister or their rabbi and that
9 should be okay. That should be permitted as
10 well, as long as it's been approved by the
11 Department as satisfactory counseling. They
12 may say they don't want any counseling at all
13 and I think that should still be okay, but I
14 think it needs to be offered to every single
15 person. That every hospital in the county and
16 every clinic needs to have that list to be
17 able to give to anyone who they think is
18 contemplating, anyone who is not quite sure.
19 Certainly, that is at the time of birth. So,
20 somehow -- I don't know how we back up even
21 beyond that for clinics -- where a young lady
22 or woman is coming in and doing prenatal
23 visits contemplating, it needs to be given
24 then. So, we need to get it before the
25 maternity ward as well.

1 MS. MENDLOW: Thank you very much.

2 CHAIRMAN DALLY: Any questions?

3 (No response.)

4 CHAIRMAN DALLY: Thank you very much.

5 (The following was submitted for
6 inclusion in the record:)

7 I am sure that many of us can cite at
8 least one case where a birth parent made the
9 decision to revoke their consent after their
10 child has been placed for several months with
11 their adoptive family. While this action is
12 undoubtedly difficult for all adults involved,
13 we must look at the impact such a decision has
14 on the child. For a child who has begun to
15 bond with their family and has had their role
16 in the family defined, this disruption can
17 have a long-lasting effect. The turmoil and
18 confusion created because of not knowing where
19 and/or to whom they belong ultimately
20 decreases the child's sense of self.

21 I would note that the Termination
22 Subcommittee is recommending the time to
23 revoke be reduced even further to ten days
24 versus the 30 days being proposed.
25 Consideration of this will bring a more timely

1 resolution to the adoption process. Prompt
2 closure will allow for an earlier sense of
3 permanency for the child and the adoptive
4 family.

5 With regard to HB 1838, enacting
6 legislation to mandate the offering of
7 counseling services to birth parents is a
8 positive step. The decision to relinquish
9 parental rights is undoubtedly a painstaking
10 one. Offering counseling prior to the consent
11 being signed is vital to ensure the birth
12 parents understanding of all options,
13 including relinquishment of right and
14 adoption.

15 However, the wording of Section
16 2502(a)(2) wherein it states "if the parent
17 requested adoption-related counseling
18 services..." would much better serve birth
19 parents if the Bill stated: If parent
20 accepted adoption-related counseling. This
21 terminology would assist in ensuring the
22 counseling services being offered to all birth
23 parents contemplating the decision to
24 relinquish parental rights.

25 Of concern is the terminology in

1 S2533(3.2), wherein it seems to indicate that
2 adoptive parents will be asked to pay for
3 adoption-related counseling received by birth
4 parents. Adoptive parents should neither be
5 asked or required to pay for such services
6 received by birth parents. Doing so
7 (particularly without with regard to their
8 income) can/will pose a significant hardship
9 to foster families (counseling services can
10 cost over \$100 per session.) It would be
11 suggested that if birth parents do not have
12 access to third-party insurance (including
13 Medical Assistance), to offset the cost of
14 counseling services, procedures must be
15 implemented with the service provider and the
16 county for reimbursement for services from the
17 segregated fund.

18 Taking this step could/would hinder
19 the adoption process as well as prohibit many
20 individuals from adopting. With the many
21 children needing permanent homes, we cannot
22 afford to alienate families by placing this
23 requirement in this Bill.

24 Thank you for your time in this
25 matter.

1 * * * * *

2 CHAIRMAN DALLY: Next person on the
3 agenda today is Mary Jo Meenan. Is she here
4 in the audience?

5 (No response.)

6 CHAIRMAN DALLY: How about Stephen
7 Kaufman.

8 (No response.)

9 CHAIRMAN DALLY: How about Joan
10 Shoemaker?

11 (No response.)

12 CHAIRMAN DALLY: You may be on the
13 spot here. The other witnesses are not here
14 yet. Would you care to testify now? Yes,
15 sir.

16 MR. EDWARDS: My name is Mark
17 Edwards. I am an attorney with the Juvenile
18 Court Project, part of the Allegheny County
19 Bar Foundation. We represent indigent parents
20 who are part of CYF proceedings. We were not
21 on the agenda to testify but would be willing
22 to address some of the issues today.

23 CHAIRMAN DALLY: Why don't you come
24 forward now and present your testimony and
25 then we'll have the judge follow you.

1 JUDGE ZAVARELLA: That's fine,
2 because I intended to comment on the practices
3 in Allegheny County between our Family
4 Division and the Orphans Court.

5 CHAIRMAN DALLY: After the hearing,
6 if you could, give your mailing address and
7 other relevant information to Mr. Bloomer so
8 we can stay in contact with you.

9 MR. EDWARDS: For the record, my name
10 is Mark Edwards. I'm an attorney with the
11 Juvenile Court Project, part of the Allegheny
12 County Bar Foundation. We represent indigent
13 parents in Allegheny County that are involved
14 in CYF proceedings and oftentimes we see the
15 issue before the panel coming up in
16 termination of parental rights proceedings in
17 cases in which the CYF reviews the cases at
18 90-day intervals.

19 On behalf of our clients, we feel
20 compelled to oppose the 30-day limitation of
21 the revocation of consent. This is an
22 extremely difficult decision for many of our
23 clients and we feel that additional time is
24 needed, and to basically shorten this
25 timeframe has an adverse effect on their due

1 process rights. I certainly would voice
2 strong concern to my colleague's comment that
3 she believes that it should be reduced even
4 further to ten days. Again, it's a very
5 serious issue for our clients. They are
6 emotional. I believe my colleague did note
7 that it's a very emotional time. Oftentimes,
8 it's a spur-of-the-moment decision, and we
9 feel additional time needs to be given to them
10 so they can confer with counsel about the
11 seriousness of this issue.

12 We oftentimes see this coming up as
13 part of the Adoption and Safe Families Act.
14 What happens is that basically if I go to a
15 termination of parental rights hearing and I
16 lose on behalf of my client, CYF can file a
17 petition for aggravated circumstances and if
18 that is found, the agency need not make
19 reasonable efforts to reunify on other
20 children and, therefore, from a legal
21 standpoint, these clients oftentimes give
22 consideration, if they feel it would be in
23 their biological children's best interest if
24 they would consent, and that oftentimes is the
25 nature that we see these type of issues.

1 Now, my understanding is that in
2 Allegheny County, Great Lakes Adoption, who is
3 also not here today, handled termination of
4 parental rights hearings on behalf of the
5 county. If a consent is signed by a client,
6 what happens is they wait 40 days and they
7 then proceed to get this on for a hearing
8 before the judge. So, basically, what we are
9 looking at is a 40-day waiting period and then
10 probably a month, no more than a month, to get
11 it on the docket before a judge. So, it's not
12 lingering for that long a time.

13 Again, I would thank the panel for
14 the opportunity to address you.

15 CHAIRMAN DALLY: Okay. Thank you.
16 Questions?

17 REPRESENTATIVE COSTA: Thank you,
18 Mr. Edwards. I'm ignorant to the facts as to
19 how the adoption process works. Can you
20 basically walk me through it very quickly from
21 the time that the birthing parents decide they
22 want to give a child up for adoption and what
23 steps are involved and the process of getting
24 them, through the adoptive parents?

25 MR. EDWARDS: Well, oftentimes my

1 understanding is, that the client would have
2 the ability to revoke or change their mind up
3 to the time that the decree is signed to
4 terminate the parental rights.

5 **REPRESENTATIVE COSTA:** That's a
6 minimum of at least 40 days right now plus the
7 additional 30 if this goes in?

8 **MR. EDWARDS:** It's all a matter of
9 semantics, but when you are looking at a
10 serious decision like that affecting our
11 clients, we don't think that is too long a
12 period to wait.

13 **CHAIRMAN DALLY:** Representative Orie?

14 **REPRESENTATIVE ORIE:** Just as a
15 follow-up. One of your colleagues had
16 mentioned the best interests of the child.
17 What about that aspect?

18 **MR. EDWARDS:** I certainly probably
19 have other panel members that would address
20 that. I'm looking after my client's interests
21 and that's what I'm concerned about.

22 **REPRESENTATIVE ORIE:** Thank you.

23 **CHAIRMAN DALLY:** Jane Mendlow?

24 **MS. MENDLOW:** Mr. Edwards, one of the
25 considerations in trying to address the

1 problems here is in terms of whether there
2 should be a time set in statute for revocation
3 of consent as opposed to current law which is
4 rather open-ended.

5 MR. EDWARDS: Again, with all due
6 respect, I would think that there is a window
7 on it. Again, there is the 40-day period and
8 then by the very nature of the court docket,
9 it's scheduled probably within 30 days. So,
10 there is some window there.

11 MS. MENDLOW: You know, again, just
12 from, I would say, this is over a course of
13 probably ten years where there has been a lot
14 of feedback to the legislators about this
15 process and concerns about how the
16 Pennsylvania law works and there was a
17 legislative Budget and Finance Committee
18 report that was done on the adoption process
19 back in 1991, and at that point that
20 legislative report recommended a 30-day, you
21 know, revocation period but the other thing
22 that Representative Blaum had tried to take
23 into consideration as well was what seemed to
24 be the state of the art and practice in other
25 states, not that Pennsylvania has to imitate

1 but to just try to understand more or less how
2 we fit in, and it appears that Pennsylvania
3 law is rather dissimilar and unique in having
4 this statute whereby the revocation really
5 could occur any time prior to the termination
6 of the parental rights or the adoption decree.
7 In terms of some information for the record,
8 Maryland has a 30-day revocation period; New
9 York, a 30-day period if the child is placed
10 with an agency or 45 days if a child was
11 placed in a private placement; Virginia, a
12 15-day period; the District of Columbia, a
13 10-day revocation period; Delaware, 60 days;
14 Connecticut, consents are irrevocable unless
15 the court finds fraud, duress, or coercion;
16 West Virginia is 20 days; Massachusetts,
17 consents are irrevocable; New Jersey, it's
18 irrevocable if a child is placed with an
19 adoption agency. I just throw those points
20 out for the purpose of discussion, and
21 sometime we can talk and maybe if you could
22 advise us as to whether or not you would offer
23 any other compromise points on this issue.

24 MR. EDWARDS: I would just note that,
25 again, we're in the trenches, so to speak. I

1 see this on a daily basis and it is never,
2 never an easy decision for these clients to
3 make and a lot of times they will go back and
4 forth and it rips them up because they are
5 actually consenting. They are saying it's in
6 their best interest, we are going to consent;
7 but it takes some time and I think the clients
8 should be given the time to do that.

9 CHAIRMAN DALLY: Paul?

10 REPRESENTATIVE COSTA: Again,
11 Mr. Edwards, thank you for answering those
12 questions. Do you agree with the counseling
13 portion of it prior to making the decisions
14 and the consent or do you think that even
15 makes a difference?

16 MR. EDWARDS: I think that the
17 counseling is a very important aspect to this.
18 I think that it's important that there be some
19 form of legal counseling given to the client
20 to advise them. Currently, the state of the
21 law in Pennsylvania is there is no open law
22 adoption. So, when they are giving up their
23 rights, the fact of the matter is it's totally
24 within the discretion of the adoptive parents
25 whether or not they have any continuing

1 relationship with that child and that's not --
2 there is absolutely no guarantee. They need
3 to be fully advised of that. There is
4 mediation in Allegheny County, a mediation
5 project, and we'll oftentimes suggest that our
6 clients participate in that. Again, what I
7 have to do is advise my clients that there is
8 no guarantee and that needs to be fully
9 explained to the clients.

10 REPRESENTATIVE COSTA: Thank you.

11 CHAIRMAN DALLY: Any more questions?

12 (No response.)

13 CHAIRMAN DALLY: Just, I guess, a
14 comment on my part. We held a hearing back in
15 October. We heard from a lot of parents,
16 prospective adoptive parents, that, I guess,
17 presented the other view and I think
18 Representative Orié touched on it about the
19 best interest of the child. In a lot of these
20 cases, the adoptive parents are in a position,
21 you know, their home has been prepared. The
22 child may even be with them and, you know, the
23 day before the decree is issued, revocation
24 comes and it just seems we need some kind of
25 finality. What you are saying then is under

1 the current system, they have -- there is
2 finality in the sense that it is in 70 days as
3 opposed to 30?

4 MR. EDWARDS: I'm saying that there
5 is a way to get that calendared on the court's
6 docket and it doesn't continue for an
7 indefinite period of time. Now, granted, what
8 you need to know is, assuming that our clients
9 did revoke their consent, the court obviously
10 will proceed and a petition for involuntary
11 termination would be filed and it would be --
12 it would eventually end up as a contested
13 termination of parental rights hearing.

14 CHAIRMAN DALLY: In cases like that,
15 where does the child usually remain?

16 MR. EDWARDS: The child remains with
17 the foster parent where the child has been
18 residing. So, the child is not removed.

19 CHAIRMAN DALLY: And does your office
20 or do you represent the natural parent then in
21 the termination proceeding also?

22 MR. EDWARDS: Absolutely. That's
23 solely what I do with our office and they
24 have -- they will have an interactional
25 examination. They will have the parent

1 examined with a psychologist and a caseworker
2 will testify. The psychologist will testify.
3 Any of the caseworkers or service providers
4 will testify and based on that information
5 that is presented to the judge, the judge will
6 make the decision as to whether or not
7 termination is appropriate.

8 CHAIRMAN DALLY: Thank you. Any
9 further questions?

10 (No response.)

11 CHAIRMAN DALLY: Thank you very much.

12 MR. EDWARDS: Thank you for the
13 opportunity to speak.

14 MS. FRANKOWSKI: My name is Kiersten
15 Frankowski. I actually work for the same
16 project as Mr. Edwards. He is my supervisor.
17 I just wanted to follow up on his testimony a
18 little bit.

19 CHAIRMAN DALLY: Come forward.

20 MS. FRANKOWSKI: For the record, my
21 name is Kiersten, K-I-E-R-S-T-E-N, Frankowski,
22 F-R-A-N-K-O-W-S-K-I. I'm also an attorney
23 with the Allegheny County Bar Foundation,
24 Juvenile Court Project, and actually,
25 Mr. Edwards, who just testified, is my

1 supervisor.

2 I have a little bit of a different
3 perspective because I'm at the stage where I'm
4 handling the cases prior to getting to the
5 termination stage and I think before I even
6 get into that, I think it's very important
7 that everybody in this room understand the
8 distinction between a private adoption process
9 and the adoption process coming through
10 Children, Youth and Family Services. It's
11 very different.

12 The first witness who testified from
13 Three Rivers adoption, I understood the point
14 she was making about an expeditious process
15 and that these children need to have finality
16 and permanence, and what I want everyone to
17 understand is that in a CYF case, you are not
18 usually dealing with a parent who is perhaps
19 considering this adoption process since the
20 child was in the womb and actually sought out
21 an adoptive resource and has a family already
22 lined up. The people that we deal with are
23 kind of in the system because the court says
24 so and they are at this point with having to
25 face a potential involuntary termination of

1 their parental rights or consenting to an
2 adoption because of the Adoption and Safe
3 Families Act. I think that is a critical
4 distinction that needs to be made. There is a
5 lot less thought and choice involved with the
6 people that we represent, with our clients.

7 With the Adoption and Safe Families
8 Act, when a child is out of a natural parent's
9 care for 15 out of the past 22 months, it's
10 mandatory that that child be referred to the
11 adoption department. We see this every day
12 because we do represent natural parents in
13 Children, Youth and Family Services
14 proceedings and, unfortunately, are times the
15 children are out of their care and are in
16 foster placements. Once the clock ticks to
17 that 15 out of the previous 22 months, CYF
18 immediately searches for adoptive resources if
19 the child is not already residing with a
20 preadoptive home and they take steps to file
21 an involuntary termination of parental rights
22 against the natural parent. What happens is
23 these are just filed. As the clock ticks, the
24 paperwork gets done. Their attorneys do their
25 work. Our clients get the paperwork. You

1 also need to understand we don't represent
2 ever single natural parent in the system. So,
3 there are people that slip by us. Not
4 everyone has someone to explain these papers
5 to them.

6 Mr. Edwards indicated that there is
7 now a problem with what is called aggravated
8 circumstances and that is part of the Adoption
9 and Safe Families Act. In the event that a
10 natural parent has their rights involuntarily
11 terminated to a child, any children that they
12 are still legally the parent of after that,
13 the more natural children, if they also are
14 involved in the system, if that child becomes
15 a dependent child, CYF can request that the
16 court find aggravated circumstances and they
17 can request that if this child is ever
18 removed, that no reasonable efforts to reunify
19 need to be made.

20 So, essentially, if aggravated
21 circumstances are filed, a child can be
22 removed for whatever reason and CYF, by
23 judicial mandate, can refuse to try to reunify
24 this family and that could be a first removal.
25 It could be a simple "home alone" case, just

1 something that hasn't been completely flushed
2 out, but if that child has been removed,
3 placed in shelter, and placed in a foster
4 home, they will not have to work to reunify
5 this family. That is why this is a very
6 sensitive issue for our project and our
7 clients because with these involuntary
8 terminations, unfortunately, we have a lot of
9 clients that have one or two of these on their
10 previous records and they have children that
11 they are working to reunify with. The county
12 is filing these aggravated circumstances
13 against them. What we need to do is try to
14 prove, in the event that the client did
15 consent, although the judge signed a decree
16 that said this was an involuntary termination,
17 we do have a record that says that the client
18 did show up and say, Your Honor, this is in
19 the best interests of my child and I'm not
20 going to fight this. We can beat aggravated
21 circumstances that way and, therefore, protect
22 our clients and their future children and
23 their families. This is how we have become
24 involved with the consents to adoption and
25 it's fairly recent for people that do our kind

1 of job because of the Adoption and Safe
2 Families Act.

3 I follow the cases prior to this,
4 before Mr. Edwards actually gets them at the
5 termination stage. What I try do is determine
6 at a soon enough point when that clock starts
7 ticking to the 15 out of 22 and I know that
8 Children, Youth and Families is going to
9 pursue an involuntary termination. I need to
10 be advising my client that you do have other
11 options. You can choose to consent to an
12 adoption, in which case that is how we will
13 avoid aggravated circumstances in the future.
14 On the other hand, you can receive your
15 petition for involuntary termination of
16 parental rights and we can proceed to trial
17 with that and you either win or lose. The
18 problem is when we do lose and when the facts
19 are against our clients, regardless of what
20 happened, it is aggravated circumstances and
21 it puts the future children and unity of the
22 family in jeopardy.

23 With these consents to adoption, we
24 have something to explain to the people, how
25 they can protect themselves and their

1 families, and I actually just sat down and did
2 one with a client and the county last week and
3 it's very helpful for that person to know that
4 until the judge says okay, I'm signing this,
5 they can change their mind. It's something
6 very different than where parents will go and
7 secure their own counsel, and this has been
8 worked out and thought about and mom knows the
9 adoptive parents, adoptive parents know mom.
10 It has worked out. I understand the reasoning
11 for the wording in the proposed Bill in that
12 arena, but it is a very different arena with
13 the child welfare cases and I think that
14 really needs to be considered.

15 CHAIRMAN DALLY: Thank you.

16 Questions?

17 REPRESENTATIVE ORIE: I'm completely
18 confused about this aggravated circumstances.
19 It's just not coming clear to me. Before I
20 get to that point, when these kids are put
21 into the system that you deal with, is this
22 because of neglect? What are the
23 circumstances behind that?

24 MS. FRANKOWSKI: There are various
25 reasons. What they are are child dependency

1 proceedings. Either the county or perhaps the
2 local police will petition for dependency.
3 Usually, it's CYF that does that and there are
4 several different grounds, but you are getting
5 the idea. It's neglect, and these are alleged
6 things. They have to go to a formal
7 adjudication. They have to prove their case.
8 Common cases, home alone, truancy, things of
9 that nature, not anything towards delinquency.
10 This is the dependency side. Once that child
11 is adjudicated dependent, that child is a
12 child of the system, a ward of the state,
13 whatever you want to call that, and once that
14 child is dependent, if that child is not
15 continued in the placement with his or her
16 natural parent during that whole time,
17 unfortunately a lot of times they are put in
18 foster care for whatever reason, temporarily
19 or whatever the plan is --

20 REPRESENTATIVE ORIE: That's what I
21 wanted to say about the 15 of the 22 months.
22 Is that what you are saying?

23 MS. FRANKOWSKI: Right.

24 REPRESENTATIVE ORIE: I guess my
25 point is does that not depend on the

1 circumstances as to like, for example, child
2 abuse?

3 MS. FRANKOWSKI: No.

4 REPRESENTATIVE ORIE: Does that have
5 any bearing on the 15 --

6 MS. FRANKOWSKI: No.

7 REPRESENTATIVE ORIE: The seriousness
8 of what --

9 MS. FRANKOWSKI: It may or may not.
10 It's the judge's discretion with regard to
11 placement of the child. Granted, the more
12 serious the allegations when the county
13 petitions for dependency, that will usually
14 determine if the child can remain in parental
15 care or foster care. You need to understand
16 that these aren't always horrific cases.
17 These are indigent people. These are people
18 without resources. Perhaps they lost their
19 housing. It's through no actual neglect or
20 abuse that the child has to be removed other
21 than the child needs to be somewhere safe
22 until the parents can locate suitable housing,
23 get a job, and provide, be able to provide for
24 this child. I mean, they are not always --
25 people always think, oh, if CYF is involved,

1 it's got to be horrible. That's not always
2 the case. A lot of these people need the
3 county's help and they are in the system not
4 through any fault of their own other than
5 their circumstances and the minute that child
6 is placed out of parental care, that clock
7 starts to tick and out of 15 months -- well,
8 out of 22 months, they'll look at a whole
9 22-month period. If 15 months of that time
10 has been spent outside of parental care in a
11 foster home or shelter, another placement,
12 they will have the court change -- they will
13 ask the court to change the goal to adoption
14 and they will file for an involuntary
15 termination of parental rights, and they are
16 following the Adoption and Safe Families Act
17 in that regard.

18 REPRESENTATIVE ORIE: When they file
19 that involuntary, the parents are then
20 entitled, the natural parents, to dispute that
21 or to challenge that?

22 MS. FRANKOWSKI: Yes.

23 REPRESENTATIVE ORIE: So that those
24 circumstances, for example, where God forbid
25 they don't have the money or resources, that

1 is something that a judge would make a
2 determination?

3 MS. FRANKOWSKI: Yes.

4 REPRESENTATIVE ORIE: I guess that's
5 my point with that. If, for example, it's
6 resources or whatever, 15 months is a pretty
7 significant period of time for these things,
8 too, whether you need to get a job, at least a
9 reasonable amount of time to make those type
10 of changes to determine whether or not you can
11 continue with your child.

12 MS. FRANKOWSKI: Right. I understand
13 what you are saying there, and if everything
14 worked perfectly, --

15 REPRESENTATIVE ORIE: Right, I know.

16 MS. FRANKOWSKI: -- that would be
17 great and the judge would have to determine
18 that, but all cases aren't like that.
19 Unfortunately, the Adoption and Safe Families
20 Act is new. There are many cases in the
21 system that have been lingering and lingering
22 and once the Adoption and Safe Families Act
23 was passed, CYF had to start filing the
24 terminations. We are seeing a lot of it and,
25 unfortunately, they are cases that we probably

1 can't beat in front of a judge just because --

2 REPRESENTATIVE ORIE: Because of the
3 circumstances of those kind of cases?

4 MS. FRANKOWSKI: A child that has
5 been with his or her grandparent all of his
6 life and perhaps has a relationship with the
7 parents, maybe not. Maybe the parent wasn't
8 the most involved but, I mean, that would be a
9 mild case. I mean, just a long time out of
10 care. I mean, to go to an involuntary
11 termination with that, it's highly unlikely,
12 regardless of the issues, to be successful.

13 REPRESENTATIVE ORIE: And I guess
14 that's where I come from. I understand that's
15 where you represent but sooner or later the
16 best interests of the child, in my opinion,
17 should prevail over all of this.

18 MS. FRANKOWSKI: That is why the
19 judge is sitting there hearing all of this,
20 and in all of these hearings there is an
21 attorney present for the child, there is an
22 attorney present for the county. Those are
23 issues that are best settled at an involuntary
24 termination stage, but what I'm saying is for
25 the interest of my clients and their new

1 families of children that happen to be in
2 their care, this is an older child that has
3 been out of their care, if it goes to that
4 involuntary termination and we are
5 unsuccessful and those are terminated, that
6 can come back and affects the rest of the
7 family in the future always. To be able to
8 advise them about these consents in the cases
9 where it's highly unlikely that we would be
10 successful at an involuntary termination, the
11 parent can sit and think and try to understand
12 and realize what's in the best interest of his
13 or her child and just to know that until the
14 judge has the final say is somewhat of a
15 comfort because these aren't people that are
16 choosing to be there and not that all private
17 adoptions are that way either. This is
18 someone that is in a position because of the
19 system they are in. They are kind of forced
20 into this position and they get these
21 involuntary termination papers and it's kind
22 of hurry up, you have to decide. They are
23 either going to go to trial or we can get you
24 to sign these papers, and for them to have
25 that time to let that sink in and for us to be

1 able, because all of these families are
2 involved with CYF.

3 We could have their caseworker help
4 with setting up counseling which was something
5 that was spoken about before, and I know that
6 Three Rivers Adoption does do counseling for
7 birth parents and adoptive parents, and in
8 this system, CYF would be paying for that.
9 So, I don't even need to comment on having
10 adoptive parents pay for --

11 REPRESENTATIVE ORIE: I guess my last
12 question, and I understand what you are
13 saying, is from the point of view of CYF.
14 With the number of cases that are in the
15 system, is there enough manpower to have that
16 type of one on one with these parents to go
17 over these things, or are you guys inundated
18 and very few staff? What about those
19 circumstances?

20 MS. FRANKOWSKI: It's a problem but,
21 I mean, there are the collateral agencies out
22 there such as Three Rivers Adoption. There
23 are many other agencies that are involved that
24 work with CYF cases, and we do have our judges
25 and hearing officers order those things to be

1 explored in cases like this so that our
2 clients are able to make the most informed
3 decision that they can.

4 I guess the bottom line over all of
5 this is that this is something that gets
6 thrown at these parents and it's very
7 delicate. It's something completely different
8 than in the private arena. I think that that
9 needs to be taken into consideration.

10 REPRESENTATIVE ORIE: I understand.
11 Is there counseling along those lines with
12 these parents? Is there right now?

13 MS. FRANKOWSKI: It is available,
14 yes, and we have had judges and hearing
15 officers order the parties to mediation,
16 adoption mediation. Unfortunately, the
17 agencies that provide adoption mediation will
18 refuse to mediate if the parent is thinking
19 about contesting. So, it defeats the purpose
20 before we get there.

21 CHAIRMAN DALLY: Representative
22 Walko?

23 REPRESENTATIVE WALKO: I'm a little
24 confused, Miss Frankowski, so forgive me.
25 You're only concerned about the situation

1 where there is an involuntary adoption
2 proceeding initiated and then a consent
3 entered?

4 MS. FRANKOWSKI: Not necessarily.
5 What we're moving towards is trying to, if we
6 have the case that is right for a consent and
7 our clients are informed and it's something --
8 it's a tool that we can have to prevent the
9 involuntary termination from even being filed.

10 REPRESENTATIVE WALKO: The entry of
11 the consent is?

12 MS. FRANKOWSKI: Yes.

13 REPRESENTATIVE WALKO: And you're
14 concerned that the incentive there might be
15 the wrong incentive for a parent to consent to
16 the adoption because of the impending
17 involuntary termination?

18 MS. FRANKOWSKI: Yes.

19 REPRESENTATIVE WALKO: What I was
20 wondering, typically how long do those
21 proceedings take from the initiation of the
22 involuntary until the entry of a decree?

23 MS. FRANKOWSKI: It varies. It
24 varies. It depends on the facts of the case.
25 It depends on the testimony presented at the

1 actual hearing and docketing, court
2 scheduling. I would say on average, a few
3 months to at least from the filing of the
4 petition to actually getting it before a
5 judge, several months, and then from the
6 hearing until the judge entering a decree, it
7 varies. They could sign it right there or the
8 judge could say, I'm taking this under
9 advisement and then you are at the Court's
10 mercy.

11 REPRESENTATIVE WALKO: Thank you.

12 CHAIRMAN DALLY: Representative
13 Costa?

14 REPRESENTATIVE COSTA: No.

15 CHAIRMAN DALLY: Miss Mendlow?

16 MS. MENDLOW: Kiersten, could you
17 possibly clarify for me, in the situation
18 where a child has been in the custody of the
19 agency for 15 out of 22 months, is there not
20 allowance if the agency feels that there
21 should be an exception why this termination,
22 why the girl shouldn't be adopted, isn't there
23 an exception made in the Juvenile Act?

24 MS. FRANKOWSKI: Yes, there are
25 exceptions. There are several exceptions.

1 The child is placed with a family member. If
2 the child is over 12 and will not consent to
3 an adoption. There is also a catch-all --
4 they just feel it will not serve the needs and
5 welfare of this child. Unfortunately, that is
6 usually our argument being presented to the
7 judge. It's pretty common for them to just
8 seek the termination, except in the case of
9 older children that are with family members
10 and just aren't going to consent.

11 MS. MENDLOW: So, they are just
12 automatically filed. That's the practice
13 nowadays?

14 MS. FRANKOWSKI: If the judge and
15 hearing officer finds that the goal be changed
16 to adoption and generally if it's past 15 out
17 of 22 and the child is not with a relative,
18 like what I just explained, they will.

19 MS. MENDLOW: Thank you. The other
20 question I have is, are you familiar in terms
21 of the involuntary termination proceedings in
22 Allegheny County, do you find that there is a
23 reluctance to terminate unless an adoptive
24 parent has been identified?

25 MS. FRANKOWSKI: Absolutely.

1 CHAIRMAN DALLY: Miss Frankowski, I
2 have one question. You mentioned once a child
3 is in custody for the 15 out of 22 months, it
4 moves to adoption. So then, the natural
5 parent is then presented with a choice of
6 either signing a consent for adoption or going
7 through the involuntary termination
8 proceedings?

9 MS. FRANKOWSKI: They are not
10 presented with a choice. That is another
11 problem. And that is not ever their option.
12 They are presented with a petition to
13 involuntarily terminate their parental rights.

14 CHAIRMAN DALLY: Then, what do you
15 advise?

16 MS. FRANKOWSKI: We are pushing. We
17 are trying to make it so there is a choice so
18 that rather than the attorneys justifying the
19 papers -- sitting down and saying, do we even
20 need to file these papers, that this could be
21 a case appropriate for consent.

22 CHAIRMAN DALLY: Oh, I see.

23 MS. FRANKOWSKI: Unfortunately,
24 people who aren't represented by us or don't
25 have their own counsel might not even know

1 this exists.

2 CHAIRMAN DALLY: So, in other words,
3 if a child is in custody, the natural parent
4 isn't approached to sign, they just file an
5 involuntary termination?

6 MS. FRANKOWSKI: Unfortunately, yes.

7 CHAIRMAN DALLY: At that point in
8 time is when you consult with the natural
9 parents and say to avoid aggravated
10 circumstances, you can consent to this
11 adoption?

12 MS. FRANKOWSKI: In an ideal case, we
13 would have caught it early. Generally, if I'm
14 at a hearing with a client and that goal is
15 changed to adoption and CYF indicates that
16 they are going to file the petition, I'm
17 talking to that client immediately explaining
18 the options.

19 CHAIRMAN DALLY: So, it's at that
20 point in time when you would get the consent
21 signed, assuming once the involuntary petition
22 is filed, that is representing aggravated
23 circumstances?

24 MS. FRANKOWSKI: Only if the rights
25 are involuntarily terminated.

1 CHAIRMAN DALLY: After the petition
2 is filed, that negates the aggravated
3 circumstances situation?

4 MS. FRANKOWSKI: They can show up at
5 an involuntary termination proceeding and
6 decide in the middle that they are no longer
7 contesting.

8 CHAIRMAN DALLY: Okay. Is that what
9 you were going to say, Mark?

10 MR. EDWARDS: That is the policy that
11 is being taken in Allegheny County. It's not
12 written anywhere. If I show up at a contested
13 hearing and my client then agrees to consent,
14 at that time the county solicitor will not
15 follow up and pursue aggravated circumstances.
16 That's the policy in Allegheny County.

17 CHAIRMAN DALLY: That's not
18 necessarily the law. They could pursue?

19 MR. EDWARDS: They could.

20 CHAIRMAN DALLY: Thank you very much
21 for your testimony. I'd like to hold off the
22 judge for one more witness, if we can, because
23 I think it's important for the task force to
24 hear these other people even though they are
25 not on our list. Melanie and Craig Kollar,

1 would you be willing to speak to the panel as
2 far as your situation is concerned? I know
3 you are not prepared to do that today but the
4 other members of the task force were not at
5 the hearing in October and I think it is
6 important that they hear your story. I'm
7 sorry to put you on the spot like that.

8 CRAIG KOLLAR: My name is Craig
9 Kollar, K-O-L-L-A-R.

10 MELANIE KOLLAR: I'm Melanie Kollar,
11 K-O-L-L-A-R.

12 CHAIRMAN DALLY: If you want to.

13 CRAIG KOLLAR: Our situation was that
14 we are or currently still have temporary
15 custody of a child. Our situation is an
16 agreed open adoption originally gone awry.
17 The birth mother changed her mind some three
18 months after placing the child in our care.
19 She was offered counseling prior to that and
20 refused the counseling. Since that three
21 months, we had worked with her to try and
22 reach a mutual agreement. We were
23 unsuccessful at first. She had visitation
24 rights. Those visitation rights were
25 subsequently terminated because of her lack of

1 interest.

2 Currently, now, we are in pursuit of
3 involuntary termination waiting approximately,
4 according to our attorney, if we wait
5 approximately six months with no contact from
6 the birth mother or birth parents, that we
7 would have a reasonable chance at
8 involuntarily terminating her rights. We are
9 still -- it's still precarious circumstances.
10 We understand that the birth father could
11 suddenly emerge because he's never really been
12 involved. We never met him. We don't know
13 who he is, in fact. There were paternity
14 tests taken but nothing proven conclusively.
15 So, even if the birth mother agrees to the
16 adoption or her rights are involuntarily
17 terminated and, in fact, the birth father's
18 rights are involuntarily terminated, he could
19 suddenly emerge and claim ignorance in the
20 whole matter and presumably have a reasonable
21 chance of contesting the whole ordeal.

22 Anything I left out?

23 MELANIE KOLLAR: Our daughter is
24 almost 15 months.

25 CRAIG KOLLAR: She's 15 months now

1 and she's -- you know, the three months that
2 happened and it tore our lives apart. We
3 literally had to flee our home because the
4 birth mother told us she was coming to pick
5 the baby up and she had every right to come to
6 our house, knock on the door and take the baby
7 and never let us see her again. Fortunately,
8 she told us she was doing that. We left and
9 we had to go to a hotel and hide out which
10 legally we could do. We didn't really have to
11 make ourselves available. It wasn't
12 kidnapping, and until we could get a temporary
13 court order, a temporary custody court order
14 which we did -- she didn't show up for the
15 temporary custody hearing. So, we questioned
16 really what her motives are; why she really
17 wants this child.

18 MELANIE KOLLAR: She hasn't seen
19 Allison since October 27th. There has been no
20 contact and then she did try to negotiate an
21 adoption agreement with us at the end of the
22 year. She just stopped contact and we haven't
23 heard anything from her since.

24 CRAIG KOLLAR: We think, too, in
25 terms of the consent and the termination of

1 rights, certainly in our case and what was
2 mentioned by Mr. Edwards earlier, I think
3 those are different cases altogether. We had
4 the agreement upfront. The birth mother had
5 some six months to mull over this decision.
6 It wasn't like the baby pops out and now all
7 of a sudden she has to decide. I don't always
8 buy the argument that you have the baby and
9 you are cut off. You've had nine months and
10 now the baby is here and all of a sudden, I've
11 changed my mind. I don't think we have --
12 we're not necessarily concerned with our best
13 interests. I think once again we want a
14 mutual agreement that is in the best interest
15 of everyone. There is certainly a lot of
16 emotion at stake here for the adoptive parents
17 and I know that firsthand and Melanie knows
18 that firsthand.

19 MELANIE KOLLAR: Financially as well.
20 We have cared for this child for 15 months and
21 we have a lot of financial investment.

22 CRAIG KOLLAR: It's like the burden
23 is really on us. Nobody seems to really
24 consider the adoptive parents so much. It's
25 like, well, you'll get another one. Once you

1 have that baby, I think it's really not an
2 issue.

3 As far as the money is concerned, it
4 is a very huge financial burden but the
5 emotional burden is certainly far greater than
6 the financial burden. I mean, we have spent a
7 lot of money in legal fees to this point and
8 all because the birth mother decided to change
9 her mind. Did she really? Tomorrow she could
10 come out of the woodwork again and seriously
11 fight this and we are right back to where we
12 started.

13 I want to make another point. That
14 what we are asking for in these Bills, we want
15 it to be as swift and decisive period as far
16 as the termination goes. We are not saying
17 that any birth parent is under the obligation
18 to sign 72 hours or five days or ten days.
19 They have all that time in the world before
20 they sign, but once they do sign, that it's
21 final. They are under no obligation to sign
22 at any particular point.

23 CHAIRMAN DALLY: Craig, in your
24 situation then, the child that you are in the
25 process of adopting or have adopted, that

1 agreement was signed prior to her birth; is
2 that correct?

3 MELANIE KOLLAR: We had an adoption
4 agreement prior with the birth mother.

5 CHAIRMAN DALLY: So, Children, Youth
6 and Families were not involved in your case?

7 MELANIE KOLLAR: No.

8 CHAIRMAN DALLY: You had the child
9 since the child was born?

10 MELANIE KOLLAR: Yes. She signed a
11 consent following the birth of the child which
12 she later revoked.

13 REPRESENTATIVE ORIE: I just have a
14 comment. I mean, that's my point on these
15 types of circumstances versus yours. It's the
16 interest of the child clearly, it's evident to
17 me, over this 15-month period. That would be
18 my only comment.

19 CRAIG KOLLAR: I think we are a
20 different situation.

21 REPRESENTATIVE ORIE: Absolutely.

22 CHAIRMAN DALLY: Representative
23 Costa?

24 REPRESENTATIVE COSTA: Under your
25 situation, when does this come to finality?

1 CRAIG KOLLAR: As I said earlier,
2 even if the birth mother, her rights are
3 terminated involuntarily or she consents to
4 the adoption, there are things that we can do
5 to terminate the birth father's rights but,
6 once again, he could claim ignorance in the
7 whole thing, come out at any point afterwards
8 and contest it.

9 REPRESENTATIVE COSTA: Would it have
10 to be ignorance to the fact that he didn't
11 know the mother was pregnant?

12 CRAIG KOLLAR: Yes, yes.

13 REPRESENTATIVE COSTA: And there was
14 no contact?

15 CRAIG KOLLAR: That's one of the
16 points we want to make, too. Any man who
17 sleeps with a woman surely understands the
18 consequences. We don't want the burden to
19 be -- I mean, certainly, a man can't throw his
20 arms in the air later and say, gee, I didn't
21 know. I think he has an obligation to
22 maintain a relationship, a meaningful
23 relationship, with that woman.

24 MELANIE KOLLAR: Actually, there are
25 states that are taking -- have precedence for

1 that. They are putting some responsibilities
2 on the male to make sure that they are
3 responsible for determining if there was a
4 pregnancy that resulted. It's not -- states
5 are taking steps to place that responsibility.
6 I think New Jersey is one of them.

7 CRAIG KOLLAR: Jane mentioned that
8 earlier, that there are a lot of states that
9 are practicing different laws. This is not a
10 novelty. We definitely have examples that we
11 can follow.

12 MELANIE KOLLAR: In our case, because
13 our birth mother has named two men as
14 potential fathers, one we understand has been
15 proven not to be the father via DNA testing.
16 The other one -- both of them know about the
17 situation but our concern is that there may be
18 another man that is actually the father that
19 she is not naming but could come out later on
20 and claim ignorance. We don't know that. We
21 have to rely on the birth mother to give us
22 that information, and if she doesn't, then we
23 are kind of at jeopardy because two years,
24 three years, there is no statute of
25 limitations to prevent that from happening.

1 CRAIG KOLLAR: I think the current
2 laws are very archaic in that they were
3 created in the time of anti-adoption bias,
4 times when people did every single thing they
5 could to keep the family unified, and I
6 believe those times have passed. We need to
7 consider the child more.

8 REPRESENTATIVE COSTA: Are you saying
9 there is no obligation for the mother to point
10 out who the father is? Can't there be -- I
11 don't know what the term is, maybe the judge
12 could answer that, but there has to be
13 something that you have to produce and within
14 so much time to end this.

15 MELANIE KOLLAR: I mean, she is
16 supposed to tell you but she could lie or she
17 could withhold.

18 REPRESENTATIVE COSTA: I assume every
19 male that she introduces, there would have to
20 be a blood test?

21 MELANIE KOLLAR: In our case, we
22 could ask for an involuntary termination of
23 every man she named.

24 REPRESENTATIVE COSTA: Then again, if
25 they are not the real father and the real

1 father comes forward later on, that does
2 nothing?

3 MELANIE KOLLAR: Exactly.

4 REPRESENTATIVE COSTA: But I would
5 assume you would have to have a blood test to
6 prove who the father actually is. Who is
7 paying for the blood test?

8 MELANIE KOLLAR: She would have to.

9 REPRESENTATIVE COSTA: I hope not
10 you.

11 MELANIE KOLLAR: She would have to,
12 her and the potential father.

13 CRAIG KOLLAR: Once again, she
14 doesn't have to name all of the men that she
15 slept with.

16 MELANIE KOLLAR: You ask her to.
17 Initially, she named one man and then whenever
18 she revoked her consent, she said it's not
19 him, it's another man. So, how do we know
20 that it's not somebody else?

21 CRAIG KOLLAR: There could be three.
22 There could be four. We don't know that.

23 REPRESENTATIVE COSTA: I just can't
24 believe that the courts can't step in and say
25 you have a timeframe to come up with who the

1 father is or --

2 CRAIG KOLLAR: There are other
3 issues. In some other states, the birth
4 mother can simply say, well, he's told me that
5 if I ever name him as the father, he'll kill
6 me.

7 REPRESENTATIVE COSTA: Okay.

8 CRAIG KOLLAR: Things like that. So
9 they can terminate on that basis.

10 REPRESENTATIVE COSTA: I'm sure CYS
11 sees circumstances like that.

12 CRAIG KOLLAR: Sure, sure. If she
13 can't really name a father, they were
14 literally -- you'll have to advertise in
15 papers over a period of time, newspapers, that
16 kind of thing.

17 MELANIE KOLLAR: There are
18 requirements you have to meet like if she says
19 she doesn't know. You have to advertise in
20 papers and things like that, newspapers, to
21 try and locate the father. In our situation,
22 we have that issue as well which I don't
23 believe is necessarily addressed in this Bill.

24 CRAIG KOLLAR: Just one final thing.
25 We think there are a lot of things about the

1 current adoption law in Pennsylvania that
2 could be changed but the three primary issues
3 are the termination, the counseling, and the
4 birth father issues and I think if we just
5 nibble at it starting with those three issues,
6 we would do a lot to improving the laws in
7 Pennsylvania.

8 CHAIRMAN DALLY: Very good. Thank
9 you very much. Jane Mendlow has some
10 questions.

11 MS. MENDLOW: Yes. I was wondering,
12 Melanie and Craig, if you might want to also
13 mention something that you discovered, I guess
14 it was a bit later on, about the mother's
15 involvement with the Children and Youth Agency
16 to some degree, I think to a large degree. It
17 goes to a very serious issue as to the best
18 interests of the child, not in a situation
19 where we are trying to pit one family against
20 another because of any material benefits but
21 in terms of some issues that might relate to
22 abuse and neglect. I thought maybe you might
23 want to touch on that since others have spoke
24 about it.

25 MELANIE KOLLAR: Our birth mother,

1 this was her fifth child. Her first two
2 children were removed by Children and Youth
3 and her rights were eventually terminated due
4 to abuse and neglect.

5 CRAIG KOLLAR: More recently, if you
6 remember, Melanie had mentioned that we were
7 in the process before the end of last year of
8 maybe coming to an agreement again with the
9 birth mother and then she suddenly dropped out
10 of the picture. One of her children that is
11 still with her had actually burned down her
12 apartment complex with a cigarette lighter.
13 These are the types of issues we are dealing
14 with in our case.

15 MELANIE KOLLAR: In addition to that,
16 we remain in contact with her family and they
17 are supportive of the adoption being finalized
18 because of the welfare of the child. She has
19 proven that she has not been able to manage.
20 I'm not sure what I want to say.

21 CRAIG KOLLAR: The birth mother's
22 mother is actually willing to testify in our
23 behalf of the adoptive child. That is how
24 strongly she feels about the welfare of this
25 child. So, in fact, we are in contact with

1 her and she visits the child regularly.

2 REPRESENTATIVE ORIE: This waiting
3 period and all of this information that is
4 known, that doesn't expediate (sic) things so
5 that you can adopt this child under these
6 circumstances? That doesn't play a factor in
7 this at all?

8 CRAIG KOLLAR: No, no.

9 MELANIE KOLLAR: In fact, our
10 attorney advised us because her attorney made
11 contact in December to negotiate the adoption
12 that we have to wait six months from that
13 point even though she has not inquired about
14 the child or seen the child since October. We
15 still have to start back from December
16 whenever her attorney made contact with us and
17 wait the six months from that point.

18 CRAIG KOLLAR: All she has to do is
19 call us and say how is our daughter and that
20 is considered contact and we're back to square
21 one.

22 REPRESENTATIVE COSTA: So, if she
23 does this every five and a half months, it
24 keeps extending it?

25 CRAIG KOLLAR: Exactly. Sends us a

1 card, stops by for a visit.

2 REPRESENTATIVE ORIE: Even though
3 there is no one on one with the child?

4 CRAIG KOLLAR: We had some
5 visitation, as I said earlier, with her
6 through the Salvation Army. It was supervised
7 visits. We would drop her off 15 minutes
8 prior, pick her up 15 minutes afterwards.

9 MELANIE KOLLAR: She basically just
10 stopped showing up for the visits and
11 eventually they just terminated her.

12 CRAIG KOLLAR: And the burden, once
13 again, was on us. They were every Wednesday,
14 and every Wednesday, you could imagine, us
15 leaving this child with strangers and then
16 picking her up and sometimes she would show up
17 and sometimes she wouldn't show up. We would
18 have to go out of our way every week. We had
19 to drop her off like clock work but yet she
20 could show up. She missed four or five in a
21 row before they actually even terminated her
22 rights.

23 MELANIE KOLLAR: She probably missed
24 about two months, not necessarily all in a
25 row, and our attorney advised us that they

1 definitely went out of their way to give her
2 every opportunity to visit that child because
3 normally they terminate after three or four
4 missed visits.

5 CRAIG KOLLAR: What's even more
6 frightening is if something were to happen to
7 us, that child would immediately go back into
8 her care.

9 CHAIRMAN DALLY: Any further
10 questions?

11 (No response.)

12 CHAIRMAN DALLY: Thank you very much.
13 He's been waiting patiently, the
14 Honorable Paul Zavarella from the Allegheny
15 County Orphans Court. Thank you for joining
16 us, Judge.

17 JUDGE ZAVARELLA: You are welcome.
18 I'm glad I'm here and I'm glad I waited until
19 other persons gave you their testimony. I
20 certainly do not want to dispute or say
21 anything that would take away from their
22 statements, but I think for a Legislative
23 Committee, perhaps if I could, I'd just like
24 about ten minutes to tell you something about
25 the adoption process in Allegheny County.

1 I have been involved in it one way or
2 the other as a lawyer and a judge for more
3 than 40 years, I would think, and I'm sure the
4 Committee knows but perhaps some of the
5 persons here don't know, Philadelphia
6 County has their adoptions in the family
7 division. Our adoptions were always in the
8 Orphans Court division and there are some
9 counties that do not have court divisions, so
10 that it is very difficult to try to legislate
11 for every type of county jurisdiction we have.
12 Up until the late 70's perhaps into the 80's,
13 the Orphans Court division here handled all of
14 the terminations and handled all of the
15 adoptions including those that involved
16 juvenile court in those days and the Family
17 Division. The cases became burdensome so that
18 in Allegheny County, we separated the juvenile
19 court, if you will, the Juvenile Division of
20 the Family Division and they began to
21 terminate their own cases, the judges in that
22 division. We continue to hear the adoption
23 cases. A few years ago we determined that if
24 the Family Division juvenile judges terminated
25 the case, they should indeed hear the adoption

1 proceedings.

2 A lot of the matters in the Family
3 Division, juvenile section came about because
4 of federal legislation and as it exists now in
5 Allegheny County, they were correct that the
6 private adoptions, the agency adoptions,
7 individual adoptions take place in the Orphans
8 Court division. The Family Division adoptions
9 still, I believe, involved children who are
10 dependent or neglected and I feel certain that
11 they follow the statute on their adoption
12 hearings and on their termination hearings,
13 but it is indeed, as I said, it's a different
14 arena.

15 As far as the adoptions that we hear,
16 the last testimony was difficult for me to not
17 understand but there has to be some remedy for
18 cases like that. I agree with the plight of
19 the parents.

20 I reviewed the proposed amendments
21 together with Jan McNamara who has been in the
22 adoption field and I know she is younger than
23 I am but she has been with us for a long time
24 and we don't have too many comments in
25 opposition to the amendments. I noted there

1 is a 30-day period to withdraw the consent and
2 you still maintain the 40-day period in what
3 we call the confirmed consents. That may be
4 brought about by counties where they still do
5 relinquishments of parental rights and take
6 the consents of the natural parent. We did
7 that in prior years in Allegheny County.

8 Some time ago when I was President
9 Judge, the administrative judge determined
10 that we would no longer take consents from
11 persons who wish to voluntary appear and
12 consent to the adoption. That was the
13 practice in Allegheny years ago. We now rely
14 on the confirmed consent provisions of the
15 Adoption Act, so that I take it that you don't
16 contemplate shortening that 40-day period in
17 the confirmed consent.

18 I have to point out to you that we
19 have had just one case, and it's recent, in
20 which a person wanted to withdraw their
21 confirmed consent years after the consent was
22 given and authorized by the court. The
23 placement did not work in that case. The
24 mother's rights were terminated by the
25 confirmed consent here more than two years

1 relating to this type of objection were here
2 before the confirmed consent. So that it
3 might be perhaps a legislative purpose or to
4 deal with a case like that to say that even
5 though the confirmed consent was entered into
6 and the time period for changing your mind,
7 withdrawing expired, that somehow they might
8 be precluded from reaching back to upset the
9 whole process.

10 We submitted it to the four judges of
11 our division and we could not agree whether
12 unanimously we could say you are not entitled
13 to a hearing; your consent was given according
14 to the law and it stands. So, we are going to
15 give her a hearing, although the advocates
16 from the Family Division are raising that
17 issue again.

18 So, sometimes even in legislation, if
19 you do have a date to withdraw the consent, I
20 thought I'd point that out to you, that
21 sometimes lawyers try to go back anyway. So,
22 maybe you should at least consider a more firm
23 approach, 40 days and under no circumstances.
24 I'm not certain about that approach but I just
25 point that out to you.

1 I think in our Family Division they
2 have twice the number of adoptions that we
3 have. We may have 250 private adoptions, if
4 you will. The confirmed consent practice is
5 working in Allegheny County. We have very few
6 problems with it. Of course, most of our
7 cases come from agencies and they have been
8 able to, I suppose, with little problems, to
9 bring about the consent by confirmed consent.

10 I point out to you that our agencies
11 receive many children from other counties.
12 So, under the law now, they have their choice
13 to proceed where the agency is or where the
14 adopting parents are. I sometimes find that a
15 little bit difficult when people from other
16 counties, of course, appear in Allegheny
17 County but on balance, I suppose, it's better
18 to have the agency bring the people here than
19 us to go out.

20 I think your section on the putative
21 father was necessary although we have been
22 doing that in Allegheny County without the
23 section that you have in your statute here
24 where you refer to the lack of support and
25 lack of contact. Our lawyers have been doing

1 that and we have been approving it.

2 The counseling we agree with. I
3 don't really have too much contact with that,
4 but our adoption department does. I agreed
5 with the first speaker. It seemed a little
6 bit awkward to us to have the reimbursement
7 made to the birth parent for their counseling,
8 particularly since we have the funds that may
9 cover expenses such as that. We don't know
10 too much about the fund because the check is
11 deposited with the Register of Wills office.
12 It goes to our county controller and I don't
13 believe we have too much experience with that
14 fund, the counseling fund. Somehow maybe
15 lawyers don't really appreciate it or know it
16 here in Allegheny County. So that I know the
17 fund is being collected. It's now with our
18 county controller and we intend to take a look
19 at that.

20 I can point out another matter in the
21 Adoption Code that perhaps is not totally
22 appropriate here. We are having difficulties
23 with foreign adoption decrees. There seems to
24 be a good percentage of foreign adoptions
25 coming into our division. Certain foreign

1 countries will change the name in their
2 adoption decree. Other countries issue the
3 adoption decree in the name of the natural
4 parents. So, when that adoption decree is
5 presented for filing under Section 2908, the
6 parents are concerned about the name change.
7 If the name is changed by the decree, we have
8 adopted practices to let that be a part of the
9 filing of the foreign adoption and somehow the
10 birth certificate comes from the Commonwealth
11 in that name. If that doesn't occur, the
12 natural parents are concerned about filing a
13 change of name petition in the Civil Division
14 of the court because you have to advertise.
15 It's an expensive proposition. You have to do
16 a judgment search and that doesn't seem to be
17 warranted against a child who was adopted as
18 an infant in Russia or China or wherever. So,
19 I think maybe a look at this Section 2908
20 might have some benefit.

21 The Register of Wills or the clerk of
22 the Orphans Court has sort of adopted a
23 procedure because people in that, shall I say,
24 quandary, we're getting more pro se
25 litigation. So, our Register proposes to

1 bring them up to the motion's judge and try to
2 help them, but our Civil Division does have
3 the business of changing names. So, I call
4 that to your attention.

5 Other than that, we were able to live
6 with the present Adoption Code. I think the
7 amendments will help. I feel somewhat, I
8 don't know, maybe we'll take another look at
9 the Family Division situation. I now know
10 that if there is a Family Division problem not
11 involving Juvenile Division, if the parents
12 are separated and the mother has custody and
13 the father does not maintain his custody
14 rights, if that case develops into an adoption
15 case, the administrative judges agree which
16 division should handle it. If the Family
17 Division litigation has been there from the
18 beginning, the Family Division judges will
19 hear that termination case. If it is
20 something that totally did not involve any
21 parental rights during the breakup of the
22 marriage, we'll hear that in the Orphans Court
23 division.

24 So that I probably, I may talk to the
25 Family Division about the problems that I

1 heard today, but in my view now, those are
2 children that are dependent or neglected and
3 so forth and I think it's a federal mandate
4 and I'm not arguing with the county Bar
5 Foundation because they do a very splendid
6 job. We have pro bono lawyers who help. We
7 always appoint counsel for the child and we
8 have a list of lawyers that will do that. So,
9 all in all, we agree with the proposed
10 amendments.

11 CHAIRMAN DALLY: Thank you very much,
12 Your Honor. Any questions?

13 (No response.)

14 CHAIRMAN DALLY: Judge Zavarella,
15 based upon the testimony from the previous
16 individuals who testified, it seems like there
17 is a different standard or different set of
18 circumstances with children that are
19 dependent, have been declared dependent, and
20 those children such as in the Kollar situation
21 where there is a private adoption shortly
22 after birth. Do you think it would be a
23 workable situation where you could have two
24 different standards in terms of consent for
25 children that are dependent and children that

1 have not been declared dependent?

2 JUDGE ZAVARELLA: Well, it has been
3 some time since I did the Family Division
4 cases, but in my experience, the grounds for
5 termination were different. There existed a
6 condition in the home that couldn't or was not
7 repaired that led to the grounds of
8 termination and sometimes that was the issue
9 in the cases, that the family, the mother or
10 the father, could not, did not support the
11 child; did not visit; was placed with other
12 people. I don't know whether that is still
13 the grounds in the Family Division and perhaps
14 you could comment on that. It does seem to be
15 a different type of termination, yes.

16 CHAIRMAN DALLY: I guess I could ask
17 Mr. Edwards that question.

18 MR. EDWARDS: Grounds for termination
19 are set forth by statute.

20 CHAIRMAN DALLY: But my question was,
21 do you think it is workable to have two
22 different standards as far as consent is
23 concerned? Obviously, with your set of
24 circumstances as opposed to a voluntary --

25 MR. EDWARDS: Private adoption, yes,

1 I think that would be workable.

2 CHAIRMAN DALLY: And language to the
3 extent "except in cases where children are
4 declared dependent" or something like that?

5 MR. EDWARDS: That would be a fair
6 compromise.

7 CHAIRMAN DALLY: Okay.
8 Representative Costa?

9 REPRESENTATIVE COSTA: Thank you.
10 I'm actually asking you this. Are we
11 permitted to set double standards? I mean, I
12 guess you are saying that for a private
13 adoption or agencies, this is the procedure
14 that they have to go through and if it is
15 county related, this is the procedure. Is
16 that what you are proposing? I don't have a
17 problem with that but I'm just curious, are we
18 allowed to do that?

19 REPRESENTATIVE WALKO: I would think
20 the grounds of your concern was that it's not
21 real consent. Is that true? There might be
22 undue pressure. There might be certain -- so,
23 a consent could be fine tuned?

24 MR. EDWARDS: Correct.

25 REPRESENTATIVE WALKO: The definition

1 of consent.

2 CHAIRMAN DALLY: I think the issue is
3 whether their constitutional rights would be
4 violated because of the double standard, but I
5 think, because of the different set of
6 circumstances, certainly you can claim that
7 the parent that has the child is dependent, is
8 under duress because of the involuntary
9 termination and what have you. This agreement
10 to consent is much different than one who
11 gives it voluntarily.

12 REPRESENTATIVE COSTA: The more I
13 think about it, I worked in the Prothonotary's
14 Family Division and we handled thousands of
15 divorce cases, consensual and contested. So,
16 the rules were different for both. So, I
17 guess it would work.

18 CHAIRMAN DALLY: It's something we
19 will definitely look at.

20 JUDGE ZAVARELLA: I couldn't
21 understand, the consent was given to avoid
22 aggravated circumstances. Is that not a
23 consent to the adoption regardless of what it
24 does to the family? How do you take the
25 consent or how do our judges take it? How do

1 you acquire that consent? Do they sign
2 something that is filed?

3 MR. EDWARDS: That's correct.

4 JUDGE ZAVARELLA: And is it not under
5 the consent practice that's in the statute?

6 MS. FRANKOWSKI: Yes.

7 JUDGE ZAVARELLA: It's a confirmed
8 consent?

9 MS. FRANKOWSKI: Yes, that's exactly
10 what it is, Your Honor.

11 MR. EDWARDS: If the panel is
12 interested, we have a consent to adopt form
13 that is being used that would help the panel.
14 We could submit it.

15 CHAIRMAN DALLY: That would be
16 helpful.

17 REPRESENTATIVE ORIE: Judge
18 Zavarella, I do not want to put you in a
19 tenuous situation here but I have one question
20 for you. Under circumstances that exist like
21 the couple that had indicated to us the
22 problems they were having adopting, is there
23 any way the courts can take judicial notice of
24 this with the family, with the history of this
25 woman and with CYS and take more of, you know,

1 under circumstances like that to stop that
2 from occurring, to do something or intervene
3 or be proactive?

4 JUDGE ZAVARELLA: Well, I thought
5 about that when I was listening to the
6 testimony and I was going to ask whether it
7 was an Allegheny County adoption. It's not.
8 You see.

9 REPRESENTATIVE ORIE: Breathe a sigh
10 of relief.

11 JUDGE ZAVARELLA: No, no, no. I
12 would like to take a look at that case, yes.

13 REPRESENTATIVE ORIE: I guess it
14 disturbs me, I mean, clearly the blatant
15 circumstances in my opinion and when you see a
16 history that is there, and I understand it's
17 in the system, where her own family thinks
18 she's not capable, there should be a point for
19 the interest of the child, the interest of the
20 family, to move that to finality, to move on
21 without that pending fear of four and a half,
22 five months, whatever it is.

23 JUDGE ZAVARELLA: I don't believe --
24 most of the contested cases that we have are
25 not that way, shall I say.

1 REPRESENTATIVE ORIE: Blatant.

2 JUDGE ZAVARELLA: Blatant, yes. I
3 don't know what county this is coming from,
4 but it would be very hard to remedy the
5 situation by legislation.

6 REPRESENTATIVE ORIE: No, I agree.
7 That's why I'm asking about judicial
8 intervention. Clearly, none of us can do
9 anything about that.

10 JUDGE ZAVARELLA: It would be hard
11 for me to talk to the couple because I don't
12 know the lawyers that are involved. I don't
13 know anything about it, but there are perhaps
14 matters that could help them, yes, I would
15 think in the system somewhere, yes.

16 REPRESENTATIVE ORIE: Thank you.

17 MS. MENDLOW: I guess I would just
18 like to, with respect to Kiersten and
19 Mr. Edwards, the issue of the Juvenile Act, do
20 you feel that there needs to be clarification
21 that a parent should be given a choice
22 regarding a consent to an adoption versus the
23 involuntary termination of parental rights? I
24 guess I thought that under the Adoption and
25 Safe Family Act, the idea was to file a

1 petition for the termination of parental
2 rights but that could be achieved through a
3 consent and I can see where it's like a
4 downward spiral. If they go into involuntary
5 termination, it could jeopardize another child
6 they have.

7 MR. EDWARDS: The problem is the
8 involuntary petitions have to be filed quickly
9 and the county is reluctant to withdraw once
10 they are filed because of the time factors.
11 So, it would be an important factor.

12 MS. MENDLOW: You are recommending --
13 I'm trying to translate -- amendment to the
14 Juvenile Act that calls for presenting an
15 option or, you know, that could be something
16 that could be presented to the parent as
17 opposed to only at an involuntary termination,
18 an offer of a consent to an adoption or an
19 involuntary termination?

20 MR. EDWARDS: Yes. I think that
21 would be of benefit.

22 MS. MENDLOW: Okay.

23 CHAIRMAN DALLY: Okay. Thank you.
24 Our next two witnesses are Mary Jo Meenan,
25 Esq. and Steve Kaufman. They are both with

1 the court-appointed special advocates.

2 MR. KAUFMAN: We appreciate the
3 opportunity to appear before the Committee
4 today. I will somewhat abbreviate our remarks
5 in the written testimony and refer -- my full
6 testimony is contained in writing and has been
7 presented.

8 CASA is an organization dedicated to
9 achieving timely permanence for children. We
10 believe that each child is entitled to a safe,
11 loving, and permanent home in a timely
12 fashion. The children served by CASA are
13 dependent or without proper parental care or
14 control. Their lives and decisions regarding
15 their permanent placement rests not only in
16 the hands of their natural parents and
17 extended families, but also in the hands of
18 several systems including medical, legal,
19 judicial, and educational. The court's
20 ability to make timely decisions for children
21 has life-long ramifications for our clients.
22 The recent changes to the Juvenile Act, in
23 accordance with the Adoption and Safe Families
24 Act, recognize the importance of timely
25 decisions.

1 Based on our experience and our
2 belief in permanence, we support the
3 principles that are embodied in the two
4 pending bills.

5 Specifically, with respect to House
6 Bill 1533, this bill now defines the time
7 period during which a consent to adoption may
8 be revoked. This clarification in the law may
9 have the effect of expanding the pool of
10 potential adoptive parents.

11 The current law is extremely liberal,
12 allowing consent to be revoked up to the
13 moment of either termination or an adoption.
14 This time period can easily be in excess of 12
15 months from the time a consent is given. The
16 legal system's ability to hear and decide
17 these cases in a timely fashion varies widely
18 from county to county, and the child's welfare
19 does not appear to be the factor guiding the
20 timing of the process.

21 In Pennsylvania and in many other
22 states across the country, many adoptive
23 parents are reluctant to accept a child into
24 their home if they fear that the adoption is a
25 legal risk. Many potential adoptive parents

1 do not feel comfortable bringing a child into
2 their home and making a lifetime commitment to
3 them, knowing that the child may, in fact,
4 never be legally freed for adoption and/or
5 that the time period to revoke consent could
6 last for months, maybe longer. Delays in
7 legal proceedings can sometimes have the
8 impact of lessening the chances of permanence
9 with a potential adoptive family.

10 In any scenario where an adoption is
11 delayed unduly, children may suffer due to a
12 variety of factors. Sometimes they are faced
13 with confusion of having two families, each
14 with parent figures. We have witnessed other
15 children who are so confused and distressed by
16 not knowing where they will live, that they
17 present with serious mental health disorders
18 including night terrors and fecal smearing.
19 For a very young child faced with a move in a
20 critical time of development, psychologists
21 tell us that each new attachment has the
22 potential for being more fragile than the one
23 preceding it. Local practitioners have
24 trained CASA staff and volunteers on the
25 basics of attachment. In training, we have

1 heard that although a child who has formed a
2 healthy attachment can generally transfer it,
3 there are critical periods in their
4 development where a change in primary
5 caregiver can be detrimental to their well
6 being.

7 This Bill reflects an important
8 recognition by our legislature that while such
9 consent has enormous impact on the parent, it
10 likewise impacts the child and adoptive
11 parents as well. It makes sense to protect
12 the interests of all involved by the insertion
13 of such a reasonable time period.

14 With respect to House Bill 1838,
15 again, this Bill acknowledges that
16 relinquishment of parental rights is a
17 life-changing event. It should be made with
18 the benefit of counseling and we believe it's
19 a good companion piece to House Bill 1533.

20 When read together, the Bills
21 constitute a balanced approach. It takes into
22 account fundamental rights of both parent and
23 child. The counseling set forth in House Bill
24 1838 will ensure that the parent understands
25 the importance of a decision to relinquish and

1 that the decision will no doubt play a part in
2 their emotional well being for many years to
3 come. Provisions for specific counseling also
4 ensure that such a decision is informed and
5 not in any way coerced. It will also preclude
6 a parent from later making the case that the
7 decision was not arrived at in an ethical
8 manner.

9 The Bill appears to have been
10 carefully thought out and crafted to allow
11 parents many opportunities and forums to
12 request such counseling. We also believe that
13 each court having a complete list of approved
14 counseling agencies is a necessary safeguard,
15 as courts are often reliant on the litigants
16 before them when determining which agency is
17 most appropriate to provide a given social
18 service to a family. We would be happy to
19 answer any questions. Mary Jo Meenan is
20 executive director of our agency. I'm a
21 member of our board of directors.

22 CHAIRMAN DALLY: Questions?

23 Representative Walko?

24 REPRESENTATIVE WALKO: What would
25 your direct response to Miss Frankowski and

1 Mr. Edwards be concerning the concern about
2 the concerns they have raised with regard to
3 the consent and revocation of the consents?

4 MS. MEENAN: Unfortunately, we were
5 not here. If somebody could quickly summarize
6 their objections, we would try our best to
7 react to that.

8 REPRESENTATIVE WALKO: Would you,
9 Mr. Edwards, or Miss Frankowski, summarize
10 your positions?

11 MR. EDWARDS: Briefly, I think
12 everybody here has acknowledged that
13 termination of parental rights or adoption is
14 a life-changing event for a biological parent.
15 Specifically, the concern is the 30-day insert
16 on the proposed Bill. It is irrevocable at 30
17 days. We feel that is a very short period of
18 time for our clients and given the fact that
19 it's a very emotional decision for them, we
20 feel the 30 days is too quick and in essence
21 they are being railroaded.

22 MS. MEENAN: Would there be a time
23 period that would be reasonable? Are you
24 suggesting 60 days, 90 days?

25 MR. EDWARDS: The way the current

1 Bill stands, until the decree is signed. So,
2 there is a finite period placed on the time.

3 MS. MEENAN: I guess our only
4 reaction to that is that maybe every 30 days
5 is too quick. I haven't looked at other
6 states' statutes. I assume all of you have.
7 I think many do have 30 days. I would imagine
8 others choose 60 or 90. I would suggest some
9 time constraint rather than leaving it totally
10 open up to the moment where you are on the
11 witness stand realizing, as what happened in
12 juvenile court about three months ago, that
13 the mom was really making the decision only to
14 impact her newborn who was in foster care and
15 actually it is a bit ironic because parent
16 advocates are, in fact, put in the positions
17 under the parameters of the new law to
18 actually be encouraging new consents. So, I
19 think there is that whole new dynamic at play
20 in the dependency court.

21 MR. KAUFMAN: And if I might add to
22 that, I found the language in 2711(d)(1), the
23 actual contents of the consent reads, I
24 understand I may not revoke this consent if 30
25 days have elapsed since I signed this consent.

1 I think that could be put in a little more
2 plain English in the sense of, I understand I
3 may not revoke this consent, you know, after,
4 and put the date in there, April 5th, 2000,
5 which is 30 days from today's date or the date
6 I'm signing it so parents are absolutely clear
7 on what they are signing.

8 CHAIRMAN DALLY: Thank you.

9 MS. MEENAN: And actually, just one
10 more comment on the time period. I spoke with
11 one of the county attorneys who handles a lot
12 of the involuntary terminations. I'm sorry
13 that she was not able to make it today. She
14 informs me that that consent provision is used
15 very, very rarely currently, about 1 to
16 5 percent. Generally, if they feel they have
17 a case for an involuntary termination, they go
18 ahead and file, and apparently that is
19 different. Not contesting the involuntary is
20 different from doing the whole consent and
21 filing for consent. So, in her view, there
22 wouldn't be a major impact on dependency cases
23 in any event even with this change.

24 CHAIRMAN DALLY: I don't know whether
25 you heard the testimony of the Kollars or not.

1 They gave an example of a child that wasn't
2 dependent and the adoptive process there and
3 the struggle that they are facing now because
4 the natural mother revoked the consent prior
5 to the final decree. It appears there are two
6 different sets of circumstances.

7 MS. MEENAN: How much time had
8 elapsed?

9 CRAIG KOLLAR: Three months.

10 MR. EDWARDS: It's a private
11 adoption.

12 MS. MEENAN: That can certainly be
13 devastating. I just would like to point out
14 to the Committee that we did contact the
15 Children's Home of Pittsburgh and there is a
16 representative here today, Christin Morris
17 Thompson, who would be certainly prepared to
18 comment somewhat informally to the Committee.
19 They handle a lot of infant adoptions that are
20 voluntary. They provide services to both
21 natural and adoptive parents. I think they
22 would see a lot more of the circumstances that
23 you were envisioning with these Bills.

24 CHAIRMAN DALLY: Representative Orie?

25 REPRESENTATIVE ORIE: I have one

1 question in regards to counseling. This is
2 what is disturbing to me. I understand this
3 is a traumatic and very difficult decision to
4 make and what I see is where they have an
5 option to take this counseling. I think it
6 should be mandatory. I think any couple
7 should have to take counseling so that they
8 can't say later I didn't realize how bad this
9 was. Anybody making a decision like that
10 should have that available to them. I wanted
11 your input on that because I don't like the
12 option or they may or I think it should be
13 something that they should do because it's
14 such a big decision. It's something you can
15 always fall back on and at least we know we
16 have covered everything we should do.

17 MS. MEENAN: I think that is a very
18 valid concern, but from speaking with
19 therapists, what they generally tell us is if
20 it's forced therapy, it is not therapy at all.
21 If someone really doesn't want to be there,
22 just providing it and going through the
23 motions may or may not have an impact on the
24 ultimate decision. I would defer, I guess, to
25 the mental health experts on that. I'm really

1 not certain.

2 REPRESENTATIVE ORIE: I get that, but
3 the point is, most of the ones that come back
4 and say they want to revoke, they didn't
5 realize the big decision they made and even
6 though they may go in there and there is no
7 input whatsoever, they are aware of exactly
8 what is going to happen at that point in time.
9 They can't fall back and say, oh, my God, this
10 is worse than I thought. To me, those are the
11 ones that are going to come forward, the ones
12 that didn't have the full disclosure, didn't
13 have the full understanding, didn't have the
14 personal or professional, whatever. So,
15 that's my point on this.

16 MS. MEENAN: I don't know how it
17 works in other states, but that might be also
18 a good thing to research, whether that is, in
19 fact, a ground. Do a lot of people come back
20 for that reason?

21 CHAIRMAN DALLY: Representative
22 Costa?

23 REPRESENTATIVE COSTA: I have to back
24 up what Representative Orie said. I had asked
25 Jane about an hour and a half ago under this

1 Bill, is it mandatory. Can birthing parents
2 sign a waiver. I don't think they should be
3 able to sign a waiver and I understand where
4 you are coming from, but I'm afraid, and
5 again, my background is I worked in the Family
6 Division and we used to have to deal with
7 waivers and consents and pretty much it's
8 like, sign this, sign this and if it gets to
9 the point where there is even, in a divorce,
10 when you go through a divorce, when you go
11 through to file a Complaint in Divorce, you
12 have to say you acknowledge that there is
13 counseling available. How many people are
14 actually going through the counseling? Maybe
15 one out of a thousand. The rest of them are
16 just signing off on it. I hate to see a
17 decision made like this in that the parents
18 don't have the opportunity to realize what
19 they are doing and the rights they are giving
20 away. I agree, if we can make it mandatory,
21 there should not been a waiver that they can
22 sign off on. I understand your point though,
23 if they are not accepting it or wanting to
24 hear it, that's one thing, but at least if you
25 give them the information and they have it, if

1 somebody reads it to them, and definitely make
2 them understand you are giving up your rights,
3 maybe it will sink in at that time.

4 REPRESENTATIVE ORIE: Then, you don't
5 have the problem with the days, 30 days,
6 whatever it is. I guess that's my point.
7 Anybody else have any questions?

8 REPRESENTATIVE COSTA: Jane brought
9 up the point we have mandatory counseling for
10 custody that you have to go to mediation but
11 Jane brought up a good point. What if the
12 birthing parent chooses not to go to the
13 counseling after you set everything up? That
14 could delay the process, too.

15 MS. MENDLOW: On that issue, the
16 question I think we had and we were trying to
17 develop was one thing is you suggested looking
18 at other states. New Jersey was one state
19 that was particularly held up as a good
20 example where counseling is an extremely
21 important part of their whole system, all tied
22 in with the agencies and a very expedited
23 process. The question that we had was do you
24 want to totally have consents break down if
25 someone just doesn't show up and they are

1 cantankerous; they don't go to the counseling;
2 counseling is offered; they have set the
3 appointment and then what do we do when you
4 are trying to help people who want to be
5 adoptive parents and you're trying to do a
6 good job; what happens then in the process is
7 do we inadvertently bring it to a standstill?

8 REPRESENTATIVE ORIE: Why can't there
9 be a stipulation with that that if you don't
10 undergo it, you do not take this; that goes in
11 regards to your waiver so that these people
12 know that is something that is going to be
13 weighed in the decision to do that? I think
14 the counseling, if you don't have that, I
15 think everybody should have that opportunity
16 to hear whether they want to hear it or not or
17 to participate or not.

18 MS. MEENAN: That sounds like a
19 reasonable compromise. I know, I used to work
20 in criminal mediation in the Boston courts,
21 and we actually find the forced mediation in
22 Allegheny County kind of unusual. Mediation
23 by definition is purely voluntary, yet we are
24 making people participate in the process.
25 It's kind of a twist on the pure form of

1 mediation.

2 REPRESENTATIVE COSTA: But the
3 difference between the adoption process and
4 the custody process is that in custody, the
5 parents want to see the children. Basically,
6 they would hold themselves up from being able
7 to see the child. On this side, what's the
8 incentive? And I agree with Representative
9 Orie; that if you refuse to go to counseling,
10 you have waived your right to revoke and
11 that's the end of it. That would expedite it.

12 MR. KAUFMAN: That's different than
13 saying there can be no consent without a
14 counseling period. I think we all agree
15 counseling is much better than no counseling.
16 Everybody should be encouraged. I think
17 important steps could be taken to make sure
18 counseling is readily available as opposed to
19 something that is very difficult for somebody
20 without a car or whatever to get to. It
21 should be made as easy as possible and
22 strongly encouraged.

23 MS. THOMPSON: My name is Christin
24 Morris Thompson. I'm the director of
25 adoptions at the Children's Home of

1 Pittsburgh. Mary Jo actually was very
2 gracious in asking us to come along today. I
3 thought if I had an opportunity to say
4 anything, it would be about the counseling
5 component. That's why I'm back here shaking
6 my head vigorously.

7 That's such a big part of our
8 program, and we feel it is so necessary. So,
9 in terms of where the Children's Home would
10 stand on that as a private nonprofit social
11 service agency would be to make the counseling
12 mandatory. I hear what Mary Jo is saying,
13 that you can't force somebody to go to
14 counseling, and you cannot, but we have
15 licensed master's level social workers on
16 staff at the Children's Home that are very
17 good at being able to talk to the birth
18 mothers and birth fathers and say, a lot of
19 people don't feel they need mental health
20 services. If you say to them, do you think
21 you need counseling, many cases not. We talk
22 to many attorneys that say, we offer the
23 counseling. They didn't want to go to
24 counseling. When they work with the
25 Children's Home, we go to the hospitals to

1 visit them. When we go to the home, we go to
2 them. It doesn't hold up the process. If
3 they can't get to us, we go to them.

4 What we are offering to them is to
5 sit down and talk about this adoption plan.
6 Have you thought this through? You know, what
7 do your family members think of this? Is
8 there anyone in your family that could
9 possibly parent this child? Would that be
10 your first option? Let us help you explore
11 that. An adoption plan is a very serious
12 decision and we are very supportive of that if
13 that is something they have thought through
14 and they have talked that through and they
15 have had comprehensive counseling options
16 presented to them.

17 I get a little concerned about we're
18 all for the shorter timeframe if they have had
19 good counseling services. So, I'm not as
20 concerned about a 30-day time limit if I know
21 that they have been in counseling with an
22 agency that is providing good services to them
23 and comprehensive services. It's not good
24 enough -- I've had attorneys call up and say,
25 can you meet with her for an hour to review

1 her options. I don't have a relationship with
2 that woman or that man and for me to go in for
3 an hour, if they don't want to be there, they
4 are probably not going to say a whole lot. It
5 really is a counseling relationship of going
6 in and talking and it is as simple as saying,
7 we need to talk to you about this adoption
8 plan. It is very important that in order for
9 you to make this decision, you need to talk
10 about this adoption plan and let me just hear
11 what you are thinking about and we'll let you
12 know what options are out here for you.
13 Offering them foster care until a decision --
14 until they feel like they can make a good
15 decision for themselves and their child is
16 such a benefit and that is something we are
17 able to do.

18 So, there is a lot -- I think the
19 other piece of the counseling is the funding
20 stream. Judge Zavarella talked about a fund
21 being available. What we have been told about
22 that is that there is not a whole lot of money
23 there. It's so hard to access, don't bother.
24 So, I know it's confusing and I guess I want
25 to hear more about that, but we have never

1 been able to get access to that fund. The
2 Children's Home has to foot the cost of
3 counseling and it is very, very difficult.
4 Many places will not foot that bill and they
5 will flat out say to both parents, we don't
6 get paid for this. We're not going to provide
7 that service. So, that is a concern. That's
8 another concern of ours. We believe that
9 counseling is so important that it should be
10 mandatory but there has to be some kind of
11 funding.

12 REPRESENTATIVE ORIE: I think if you
13 put that option in for the state, then there
14 is an appropriation and then the state can
15 also contribute to that which then has some
16 number that at least we can look to. We are
17 not leaving the counties without that as well.
18 I agree with you. If we are going to do
19 anything, everybody should have counseling.

20 MS. THOMPSON: Absolutely.

21 REPRESENTATIVE ORIE: I agree with
22 the fairness and with the decision and I
23 understand what both sides are saying on that.

24 MS. THOMPSON: It's the
25 responsibility of the agency then that if the

1 birth mother is coming and planning an
2 adoption but the birth father hasn't been in
3 contact yet, don't go and place the child and
4 find out two months down the road that the
5 birth father did want to parent the child or a
6 family member wanted to parent. That's part
7 of the counseling process, to get the social
8 workers out there on the phones. It's hard
9 work. It's not an easy thing but make sure
10 that that happens and that is all a part of
11 the counseling process. It's not just sitting
12 down with the birth parents but it is us doing
13 our diligent searches and finding the players
14 that are involved in all of this.

15 REPRESENTATIVE ORIE: Thank you very,
16 very much.

17 MS. RICH: My name is Linda Erin Rich
18 and I'm the Director of the Allegheny County
19 Bar Foundation, Juvenile Court Project. I'll
20 just take a moment of your time because we
21 have taken a lot of it, but I just wanted to
22 make it clear that I certainly believe that we
23 support strongly the counseling aspect of this
24 but we feel there has to be something that
25 must be a part of that, and that is some

1 explanation to the parents of the legal
2 ramifications of this, because in
3 Pennsylvania, we don't have open adoption.
4 There are parents who are willing to consent
5 because they have established a bit of a
6 relationship with the foster parent. They
7 have talked to the foster parent. The foster
8 parent says, oh, yes, you can have some
9 contact with your child in the future and then
10 as soon as they sign the consent and
11 everything is final, the adoption is final,
12 the adoptive parents have changed their phone
13 number or moved or whatever and the parent's
14 expectations are completely impossible to
15 fulfill. They need to know that this can be
16 done and the adoptive parents are within their
17 rights to do this as the law stands in
18 Pennsylvania. I think you can't do counseling
19 without including the legal aspects as well.

20 MS. MENDLOW: Is it Christin?

21 MS. THOMPSON: Christin Morris
22 Thompson.

23 MS. MENDLOW: If you could tell me,
24 the first page of House Bill 1838 we define
25 adoption. I would just like your opinion on

1 this. Do you have any problem with, in the
2 Adoption Act, the kind of counseling services
3 that we're looking, are adoption and related
4 counseling services that should be provided by
5 the agency approved by the Department of
6 Public Welfare?

7 MS. THOMPSON: I would agree. I
8 think the only thing I would consider adding
9 to that language might be that it is actually
10 a licensed social worker or a licensed
11 counselor so that -- I do know -- I have known
12 of licensed facilities that sometimes have
13 volunteers providing counseling; that may have
14 someone, an intern, providing counseling, and
15 I am uncomfortable with that. I think it
16 needs to be a professional that is providing
17 the service.

18 MS. MENDLOW: On that point, here is
19 my problem, I guess, or concern. First off,
20 couldn't we address that concern that you have
21 regarding, you know, that someone like a
22 volunteer who has no training is doing this
23 adoption counseling by our Department of
24 Public Welfare regulations regarding this type
25 of service through an agency?

1 MS. THOMPSON: Yes.

2 MS. MENDLOW: Here is what I'm trying
3 to get at: I'm concerned about our listing
4 all licensed MSW's, anyone who has an MSW
5 through our Department of State, Bureau of
6 Professional and Occupational Affairs, would
7 suddenly become an approved entity. The
8 Department of Public Welfare doesn't regulate
9 individuals, it only regulates agencies. So,
10 I guess what I'm wondering is do you feel that
11 there is some measure of, you know, safety,
12 you might say, in the regulation by limiting
13 this type of service to a service provided
14 within a regulated agency that our Department
15 of Public Welfare has the legal authority to
16 then better clarify what that agency should be
17 doing, who should be doing it, what should be
18 contained in this counseling?

19 MS. THOMPSON: Absolutely. I guess
20 what I was thinking about was actually having
21 licensed social workers as employees of
22 agencies.

23 MS. MENDLOW: Not out there on their
24 own?

25 MS. THOMPSON: No, no.

1 MS. MENDLOW: Okay. Okay.

2 MS. THOMPSON: So, you know, they
3 have the adoption experience.

4 MS. MENDLOW: Thank you very much.

5 MS. FOY: My name is Celia Foy,
6 C-E-L-I-A F-O-Y. I'm from the Pennsylvania
7 Council for Children's Services. I just
8 wanted to say a lot of good points have been
9 raised today. I'm not prepared to offer
10 input, but I am wondering if we are able to
11 submit something in writing and if there is a
12 deadline and where it is sent to?

13 REPRESENTATIVE WALKO: There is
14 probably no deadline.

15 MR. BLOOMER: Representative Walko,
16 if anybody wants to send any kind of testimony
17 at a later date, that's perfectly fine. We
18 can have copies for our Committee. A person
19 on your agenda, James Mahood, was called to
20 another court case in an emergency. He will
21 not be able to present his testimony but we
22 are reading his into the record as well. Just
23 to let you know, there is no kind of deadline.
24 Whenever you can get any kind of testimony or
25 any kind of information, it's more than

1 welcome. Send it to me. I can give you a
2 copy of one of our cards or you can make it to
3 Representative Thomas Gannon who is the
4 chairman of the Judiciary Committee. I just
5 wanted to stress that you have plenty of time.

6 REPRESENTATIVE WALKO: And this task
7 force will be meeting again probably in
8 Philadelphia in the near future and I know
9 Miss McMeekin may have comments or statements
10 to submit. We would appreciate it and I think
11 at this time, we'll have to adjourn this
12 hearing and we thank you for being here and
13 for all your insight and testimony.

14 (The following were additional
15 comments by Mr. Kaufman presented for the
16 record:)

17 The national CASA movement began 23
18 years ago when a Judge in Seattle developed
19 the concept of assigning trained community
20 members to especially complex abuse and
21 neglect cases.

22 In 1994, the local CASA
23 Program opened its doors, largely in response
24 to a tragic death in foster care that occurred
25 two years prior, in 1992. A panel comprised

1 of community members and child welfare
2 professionals recommended that the Court
3 Appointed Special Advocate Program may be one
4 important addition to the child welfare and
5 court system. The Task Force and the local
6 Judge believed that the case monitoring and
7 frequent contact with children carried out by
8 CASA volunteers would increase the likelihood
9 of child safety. The local professionals
10 applied to the National CASA Association for
11 startup funding.

12 Today, almost seven years later, CASA
13 has 100 community volunteers and the capacity
14 to serve over 300 children. CASA volunteers
15 push for quality services to both children and
16 parents. They clarify important issues for
17 the court. They provide the court and parties
18 with an important historical context and, with
19 thorough fact-gathering, present the current
20 status of the child in detail. Knowing a
21 child's special needs is critically important
22 when making permanence decisions for the
23 child.

24 * * * * *

25 (The following was submitted for

1 inclusion in the record:)

2 House Judiciary Committee

3 Task Force on Adoptions, Guardians ad litem

4 and Court Appointed Special Advocates

5 March 23, 2000 Public Hearing

6 Adoption Reform Legislation

7 Testimony of James E. Mahood

8 By way of background, I have been
9 engaged in the private practice of law in
10 Pittsburgh for the past 20 years. During that
11 time, I have limited my practice to the area
12 of family law. Before that, I practiced law
13 for six years with Neighborhood Legal Services
14 in Pittsburgh. A good portion of my practice
15 as a neighborhood attorney with NLS was also
16 devoted to family law.

17 I am the immediate Past Chair of the
18 Family Law Section of the Pennsylvania Bar
19 Association, which is an organization of more
20 than 1800 lawyers from across the state of
21 Pennsylvania who practice in the area of
22 family law. I am Chair of the Family Law
23 Section's Task Force on Adoption. I am a
24 Fellow of the American Academy of Matrimonial
25 Lawyers. The Academy is a national

1 organization of lawyers whose practice is
2 almost exclusively limited to the area of
3 family law. There are approximately 50
4 members of the Academy in Pennsylvania and
5 less than 2,000 nationally. I also serve as a
6 Member of the Joint State Government
7 Commission Advisory Committee on Adoption Law.
8 Finally, I am an adoptive parent of a six year
9 old.

10 On September 13, 1995, I appeared
11 before the Senate Committee on Aging and Youth
12 and offered testimony at a public hearing in
13 Pittsburgh concerning six Senate bills then
14 pending regarding Adoption. At that time, as
15 an officer of the PBA Family Law Section, I
16 offered the resources of the Section in
17 review, critique and drafting of proposed
18 legislation concerning adoption, in part
19 because, as here, the Section had not had the
20 opportunity to obtain Bar Association approval
21 for comment on the specific legislation then
22 proposed. I also made the plea that the
23 Legislature adopt the comprehensive review of
24 the Pennsylvania Adoption statute because of
25 the importance of the subject matter, rather

1 than approach problems as might arise in a
2 very interrelated statute on an ad hoc basis
3 which might, in the end, lead to
4 counterproductive or unintended results. I
5 will renew that plea today for the same
6 reasons and also because of the pending
7 efforts of the Joint State Government
8 Commission Advisory Committee on Adoption.

9 Through joint resolution¹, the
10 Legislature has directed the Joint State
11 Government Commission² to establish a task
12 force and an Advisory Committee to study the
13 Commonwealth's adoption law and make
14 recommendations regarding the law to the
15 General Assembly. While the Commission has
16 employed the Advisory Committee concept in
17 other areas of law in the past, including
18 Commonwealth procurement and eminent domain,
19 this is the third currently active Advisory
20 Committee in the area of family law. The
21 other two are the Advisory Committee on
22 Decedents' Estate Laws, which has been
23 advising the General Assembly on probate
24 matters for more than 53 years, and the
25 Advisory Committee on Domestic Relations Law,

1 which had its first meeting in 1995. All
2 three committees are ongoing, which means that
3 their work is not finished with the
4 presentation of one report on a specific issue
5 to the General Assembly. Each Committee is
6 tasked with continuously studying its area of
7 the law, and each will make recommendations to
8 the General Assembly throughout the coming
9 years as appropriate.

10 Chaired by Nancy Newman of Montgomery
11 County, the Advisory Committee on Adoption Law
12 has 35 members, including birth parents,
13 adoptive parents, adult adoptees, child
14 advocates, persons working in the adoption
15 field, lawyers, judges, a court administrator,
16 a professor, and a representative of the
17 Department of Public Welfare.

18 The Advisory Committee had its
19 organizational meeting in January of 1998 and
20 met again in March and October of 1998; April,
21 June, October, and December of 1999; and
22 February of 2000. A meeting is anticipated
23 for May of 2000. Four subcommittees were
24 formed to study specific areas of adoption law
25 and have held numerous meetings to date. The

1 subcommittees are Placement and Costs, Search
2 and Information, Special Needs, and
3 Terminations.

4 Materials being reviewed by the
5 subcommittees include the federal Adoption and
6 Safe Families Act of 1997, the Model State
7 Adoption Act which was developed under the
8 authority of the federal Child Abuse
9 Prevention and Treatment and Adoption Reform
10 Act of 1978, the Uniform Adoption Act, case
11 law, adoption literature, and laws of other
12 states.

13 Procedurally, the Advisory Committee
14 will prepare proposed amendments to the
15 Adoption Act and present them to the
16 commission's Task Force on Adoption Law³,
17 which is chaired by Senator Stewart J.
18 Greenleaf. If approved by the Task Force,
19 legislation containing the Committee's
20 recommendations will be introduced in the
21 General Assembly by Task Force members. The
22 proposed legislation will be accompanied by a
23 report containing official comments. It is
24 anticipated that the Committee's report will
25 be published in June of 2000.

1 While I cannot speak for the Advisory
2 Committee concerning the subject matter of
3 House Bill 1533 or 1838 because the
4 Committee's work is not yet complete and I
5 have not been given that authorization, I can
6 say that the subject matter of both HB 1533
7 and 1838 is included in the draft of proposed
8 legislation which is being debated by the
9 Advisory Committee. As you might expect given
10 the varied background of the Committee
11 membership, many statutory provisions receive
12 extensive debate. Nonetheless, the Advisory
13 Committee expects to have a final
14 comprehensive draft to submit to the Task
15 Force in the next several months.

16 While I cannot offer comments on HB
17 1533 or 138, either as a representative of the
18 Advisory Committee or the PBA Family Law
19 Section, as an individual, I can offer the
20 following:

21 HB 1533

22 HB 1533 would change the law which
23 currently permits a birth parent to revoke a
24 consent to adoption up until the time of entry
25 of a decree of termination of parental rights

1 or adoption, to limit the time for revocation
2 to 30 days of execution of the consent to
3 adoption. This section impacts birth mothers
4 and birth fathers differently, since a birth
5 mother's consent cannot be obtained under
6 current law until after 72 hours following a
7 child's birth, whereas a birth father's
8 consent can be obtained at any time after
9 notice of a child's expected or actual birth.
10 Accordingly, the earliest a mother's consent
11 could be final would be 33 days after birth,
12 while a father's consent could be final months
13 prior to a child's birth.

14 I see no reason to treat men and
15 women differently under this section of the
16 Adoption Law. While current law permits a
17 father to give a consent to adoption prior to
18 birth, either parent can revoke the consent up
19 until a decree of termination or adoption is
20 entered. This at least gives the father the
21 opportunity to experience a child's birth and
22 see if that life-changing event alters his
23 willingness to consent to adoption.

24 I believe that the giving of a
25 consent to adoption of one's child is too

1 profoundly important to unduly shortcut one's
2 able to reconsider that decision. I think
3 this is particularly true in those many cases
4 where the fathers themselves, though legally
5 adults, are little more than children. Since
6 a child is not available for adoption without
7 the consent or termination of rights of both
8 birth parents and neither current law, HB
9 1533, nor any other pending provision would
10 alter this, I believe it is more advisable to
11 keep the time limit on revocation of consent
12 to adoption the same for both birth mothers
13 and birth fathers.

14 Beyond this and the scope of HB 1533,
15 I would go one step further and change current
16 law to preclude a consent from a birth father
17 until after a child's birth. As a new parent,
18 I personally discovered a depth of feeling
19 that was unimaginable before the birth of my
20 son. Current law recognizes this and also the
21 physical and other emotional factors which
22 might impair a mother's ability to give a
23 knowledgeable consent by precluding execution
24 of a consent to adopt until 72 hours after the
25 birth of a child. Particularly since a child

1 is not free for adoption until the rights of
2 both parents have been terminated, there seems
3 no fair reason not to permit fathers the same
4 opportunity to experience the effect of a
5 birth of one's child before they can, with
6 knowledge, be called upon to make so important
7 a decision as consent to adopt.

8 As to the 30-day limit for revocation
9 of consent, this would somewhat shorten the
10 time for a termination decree under the
11 alternate procedure of Section 2504, which
12 permits a petition to terminate rights to be
13 filed 40 days after a consent has been given,
14 with the hearing to be scheduled no sooner
15 than 10 days after the petition has been
16 filed. Making no allowance for the time when
17 a hearing might be scheduled, a termination
18 decree cutting off revocation of consent could
19 issue 50 days after a consent under current
20 law, contrasted with the 30 days proposed by
21 HB 1533. By itself, this shortening of time
22 seems likely to affect only a small percentage
23 of birth parents who would change their minds
24 in the after 30-day timeframe, whereas in the
25 far greater percentage of cases where no

1 change of heart is present, the adoption could
2 be finalized more quickly to the great relief
3 of the adoptive family. Since the line must
4 be drawn somewhere, and since there seems no
5 good reason why 30 days is worse than 50,
6 subject to the above caveat, the 30-day
7 provision of HB 1533 seems reasonable.

8 HB 1838

9 HB 1838 adds definitions of
10 "adoption-related counseling services" and
11 "putative father." As to the former, HB 1838
12 also specifies that only an agency can provide
13 adoption-related counseling services and makes
14 provision for an acknowledgement that
15 counseling services were offered to or
16 requested by the birth parent and, if
17 provided, by whom. Other provisions of HB
18 1838 provide implementation of
19 adoption-related counseling services and
20 clarify that the expenses of such are a
21 permissible reimbursement. The provision for
22 counseling services is salutary because it
23 recognizes the fundamental importance of a
24 knowledgeable consent to adoption of one's
25 child.

1 Like HB 1533, HB 1838 would also
2 limit revocation of consent to adoption to the
3 30 days following the consent. My comments to
4 this provision in HB 1533 also apply to HB
5 1838.

6 HB 1838 would also add a provision
7 conditioning validity of consent to adoption
8 in the case of birth parents under the age of
9 18 upon a provision of the consent advising
10 the birth parents of the availability of
11 adoption-related counseling services. This
12 also is a salutary provision increasing the
13 likelihood of a knowledgeable consent to
14 adoption of one's child. I would go further
15 and recommend that legislation require
16 acknowledgement of the availability of
17 adoption-related counseling services in the
18 consent to adoption for all birth parents,
19 regardless of age, particularly since other
20 provisions of HB 1838 require notice of such
21 services and an acknowledgement executed by
22 the birth parent would be the best evidence
23 that the notice had been given.

24 Other provisions of HB 1838 are very
25 troublesome. HB 138 would amend Section 2503

1 (b)(3) and 2504(C) to eliminate the notice now
2 provided to a putative father as to what
3 specific actions he must take to preserve his
4 parental rights. Currently, both sections
5 specify that a notice be given alerting the
6 putative father that his rights are subject to
7 termination if he fails to file an
8 acknowledgement or claim of paternity under
9 Section 5103, and fails to either appear at
10 the termination hearing to object to the
11 termination of his rights or file a written
12 objection prior to the hearing. HB 1838 then
13 goes on, having eliminated the notice of what
14 specific acts are required to preserve
15 parental rights, to specify that a putative
16 father's rights are terminable if he fails to
17 do any of the following: File a written
18 objection prior to hearing and appear at the
19 hearing and provide substantial financial
20 support and make substantial and ongoing
21 provision for the child's care.

22 These changes, without notice of the
23 statutory requirements, raise a specter of
24 terminating the parental rights of a putative
25 father who has provided financial support and

1 care for his child, and who has appeared at
2 hearing to object to the termination of his
3 rights, simply because he did not also file a
4 written notice of objection prior to the
5 hearing. Imagine the young 18-year-old
6 putative father who falls into this trap.
7 Parental rights should be subject to
8 termination for substantial reasons, not
9 because one was unwary of the legal
10 technicality, particularly where notice of
11 statutory requirements are eliminated. I urge
12 that these provisions of HB 1838 proposing
13 amendment to Sections 2503(b)(3) and (d) and
14 2504(c) be reconsidered and withdrawn.

15 Again, since the Legislature's
16 directive to the Joint State Government
17 Commission is shortly to bear fruit with the
18 report of the Advisory Committee on Adoption
19 Law setting forth a comprehensive review of
20 the entire Pennsylvania Adoption Law, I hope
21 that the House Judiciary Committee, and
22 members of the House and Senate generally,
23 will take into consideration the thousands of
24 hours of work of the Advisory Committee and
25 its subcommittees in the very important

1 Legislative debate will set the face of
2 adoption in Pennsylvania in the future.

3 ¹ 1995 Senate Resolution 72, Pr.'s
4 No. 1488, a concurrent resolution, was adopted
5 by both the House and the Senate in 1996.

6 ² The Joint State Government
7 Commission was established in 1937 as the
8 bipartisan, bicameral research agency of the
9 Pennsylvania General Assembly. One-time and
10 ongoing projects on a variety of subjects are
11 performed by the Commission as requested.
12 Topics of past studies include the Clean and
13 Green Act, public residential education, east
14 European business development, and
15 defense-related industries. In addition to
16 providing objective research services of the
17 General Assembly, the commission staff
18 responds on a daily basis to requests for
19 information from government agencies and
20 institutions within the Commonwealth and from
21 other states, the federal government and
22 foreign governments.

23 ³ TASK FORCE ON ADOPTION LAW.

24 SENATE MEMBERS: Sen. Stewart J.
25 Greenleaf, Chair (R-Montgomery); Sen. Robert

1 J. Mellow (D-Lackawanna); Sen. Jeffrey B.
2 Piccola (R-Dauphin); and Sen. Jack E. Wagner
3 (D-Allegheny).

4 HOUSE MEMBERS: Rep. Lita Indzel
5 Cohen (R-Montgomery); Rep. Mark B. Cohen
6 (D-Philadelphia); Rep. Edward H. Krebs
7 (R-Lebanon); and Rep. Constance H. Williams
8 (D-Montgomery).

9 Thank you

10 Respectfully submitted:

11 James E. Mahood

12 Pittsburgh, March 23, 2000.

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14 (The hearing terminated at 3:25 p.m.)

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C E R T I F I C A T E .

I hereby certify that the proceedings and evidence taken by me in the above-entitled matter are fully and accurately indicated in my notes and that this is a true and correct transcript of same.


Nancy J. Grega, RPR/nmm