

HOUSE OF REPRESENTATIVES  
COMMONWEALTH OF PENNSYLVANIA

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House Bills 1976 and 1977

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House Judiciary Committee  
Task Force on Domestic Relations

Lehigh County Government Center  
17 South Seventh Street  
Allentown, Pennsylvania

Friday, February 4, 2000 - 9:04 a.m.

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BEFORE:

Honorable Lita Cohen, Majority Chairperson  
Honorable Pat Browne  
Honorable Donald Snyder

**ALSO PRESENT:**

**Karen Dalton**  
Majority Chief Counsel to Task Force

**Mike Rish**  
Minority Executive Director

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1                   CHAIRPERSON COHEN: Good morning. And welcome  
2 to another hearing from the Pennsylvania House of  
3 Representatives Judiciary Committee, Domestic Relations  
4 Task Force. We have been conducting hearings throughout  
5 the Commonwealth for virtually the last six years dealing  
6 with the issue of domestic relations reform in the  
7 Commonwealth.

8                   We want to thank our host, Representative Pat  
9 Browne. And Representative Browne, if you would like to  
10 just say as much as you want.

11                   REPRESENTATIVE BROWNE: I just wanted to  
12 welcome Representative Cohen and the Task Force for  
13 Domestic Relations to Lehigh County. As a member from  
14 Lehigh County and a member of the Judiciary Committee, I  
15 know that she's worked very hard in this area, put together  
16 a comprehensive report on reform of the family law system  
17 within the Commonwealth.

18                   And I believe some of her goals and her  
19 purposes are basically the concerns of my constituents in  
20 the experience they have with the family law system within  
21 the Commonwealth. Many of them have to go through family  
22 law in terms of their contact with the court.

23                   It's probably for a lot of families the only  
24 contact they have with the court. And the things that  
25 she's looking to do, the goals that she has are laudable.

1 And I, really appreciate the opportunity to be a part of  
2 this and to work with her on achieving those goals. Thank  
3 you very much.

4 CHAIRPERSON COHEN: Thank you, Representative  
5 Browne. As Representative Browne has said, divorce touches  
6 probably all 12 million people in the Commonwealth even if  
7 you're not experiencing it yourself. And we know that 50  
8 percent of the marriages in this country are dissolved.

9 Certainly, we all have family members,  
10 friends, et cetera, that have experienced or are currently  
11 experiencing divorce and, therefore, going through the  
12 court system. And this is what -- our goal is to make as  
13 pleasant as possible a very unpleasant situation.

14 I'd like to introduce Karen Dalton, who is the  
15 Chief Counsel to the Task Force on the Judiciary Committee  
16 in the House, and to Mike Rish, who is the representative  
17 from the Democratic Caucus. Welcome and thank you.

18 The first person to testify is the Honorable  
19 Edward Reibman, the Administrative Judge of the Civil  
20 Family Division, Court of Common Pleas of Lehigh County.  
21 And I know you hear this all the time, Judge Reibman, but  
22 the son of certainly my favorite -- one of my favorite  
23 Senators, Senator Jeanette Reibman.

24 Welcome. And thank you for agreeing to  
25 testify. And you may begin any time you desire.

1                   JUDGE REIBMAN: Thank you, Representative  
2 Cohen. And thank you for the opportunity to testify. I'd  
3 also like to thank you to discuss -- for the opportunity to  
4 discuss an important issue facing each of us and our fellow  
5 citizens across the Commonwealth.

6                   First, allow me to make the obligatory  
7 disclaimer. I am here on my own and not as a spokesperson  
8 for the Court of Common Pleas of Lehigh County, of which  
9 there are nine very independent-minded, popularly-elected  
10 judges. Nor should my views be seen as representative of  
11 Pennsylvania's judiciary.

12                   Frankly, I do not know whether my views are  
13 reflective of the majority of Pennsylvania's trial judges.  
14 I do know, however, that a number of my colleagues across  
15 the Commonwealth share my frustration with our existing  
16 method of family litigation.

17                   Second, allow me to congratulate your  
18 Committee and Task Force for undertaking the initiative to  
19 provide a forum to evaluate our system of family litigation  
20 and propose fundamental changes to it. You have done a  
21 great service and deserve enormous credit for it.

22                   I came to the bench in 1992 from a sole,  
23 general civil practice which included very little family  
24 law. For the first three years of my judicial service, I  
25 presided over all aspects of family litigation exclusively,

1 including actions under the Protection From Abuse Act.

2           For the last three years, my responsibilities  
3 have been divided equally between the civil and family work  
4 of the court. I am the Administrative Judge of our  
5 combined Civil/Family Division. It did not take long to  
6 conclude what the findings in Section 7202(1) and (2) of  
7 House Bill 1977 state; that is, the procedure for  
8 litigating family law cases created undue hardship for  
9 children and families; was based on the traditional  
10 adversarial process; was multilayered, segmented, overly  
11 lengthy and costly; and oftentimes deepened the wounds  
12 caused by family breakup.

13           Indeed, the system tended to institutionalize  
14 an adversarial relationship between people who should be  
15 cooperating with each other and tended to facilitate the  
16 avoidance of responsibility by having someone at the  
17 courthouse make those decisions the principals should be  
18 making for themselves.

19           We instituted some changes to address those  
20 concerns but have felt constrained to do more without some  
21 major restructuring of the overall system and more  
22 resources. The proposed legislation addresses some of  
23 those concerns, fails to address others and raises a number  
24 of others, some of which are fundamental and troubling.

25           In 1993, Lehigh County was one of the first

1 counties in Pennsylvania to require parents of minor  
2 children, even if custody was not at issue, to attend a  
3 four-hour separating parents seminar which we call COPE for  
4 Co-Parent Education.

5           Stepparents and significant others are  
6 encouraged to attend as well. I do not believe the  
7 proposed legislation specifies who is to attend and whether  
8 such attendance is mandatory. We view COPE as a  
9 prophylactic program. We want separating parents to  
10 understand the situation in which they and their children  
11 find themselves and to avoid problems before they arise.

12           We have also built a mediation bias into our  
13 custody cases. Every custody case that is not disqualified  
14 due to a significant history or allegation of domestic  
15 violence or other screening criterion is sent to mediation.  
16 Only if mediation fails does the case proceed on an  
17 adversarial track.

18           Our purpose is to encourage parents to build  
19 upon their common interests and assume responsibility for  
20 themselves before pitting them against each other in an  
21 adversarial setting and having an outsider make parental  
22 decisions for them.

23           Our experience with both programs has been  
24 phenomenal. We conducted an exit survey during the first  
25 year of the COPE program. About 95 percent of the people



1 who attended it thought the program was good or excellent  
2 and well worthwhile even though they were court ordered to  
3 attend and pay \$25 for it. And the mediation program  
4 settles 50 percent of all cases referred to it. Both  
5 programs are beneficial and appear to be -- and appear to  
6 be accepted by the bench, bar and public.

7           In July, we will begin assigning one judge to  
8 each custody case requiring judicial intervention beyond  
9 our masters. We have one full-time and one part-time  
10 masters, both of whom are lawyers. The assigned judge will  
11 handle all aspects of the custody case from complaint  
12 through modifications and contempt.

13           We hope that will reduce the number of  
14 petitions for modification, potential for inconsistent  
15 results, and inefficient use of judge time. To some  
16 extent, I think your case management team is even better.  
17 I think the team should include a family counselor and/or  
18 psychologist. It gets us closer to the one family/one  
19 judge concept.

20           Section 7209 establishes a family action  
21 intake service. If this is the beginning of one-stop  
22 shopping, a sort of supermarket for family services, then I  
23 think it too is a great proposal. I would suggest,  
24 however, it be broadened to include job training,  
25 employment opportunities, literacy, English as a second

1 language, and parenting programs.

2           Additionally, I believe more should be done to  
3 encourage government and community-based services to reduce  
4 duplication of services; encourage more cooperation with  
5 each other, including information sharing which may require  
6 a thorough review of our confidentiality laws; and  
7 facilitate the delivery of these services.

8           All too often, many of the people we serve,  
9 especially the pro se litigants, have multiple problems  
10 which impact upon family litigation. They require services  
11 from multiple providers which are oftentimes located in  
12 multiple places.

13           There should be not only a central place for  
14 intake and screening but for the delivery of services as  
15 well. If we are serious about overhauling the system and  
16 addressing adequately the problems which beset it, then we  
17 should make it easier rather than more difficult to get the  
18 services to those who need them.

19           Section 7211 addresses the testimony of minor  
20 children. I agree with the proposed legislation that the  
21 judge should decide whether a child should testify.  
22 Therefore, I think the phrase "as to the merits" is  
23 unnecessary and serves only as an invitation to debate why  
24 a child is being called to testify.

25           I would also suggest changing the last portion

1 of that section which states, quote, No minor child shall  
2 be subpoenaed to appear at a hearing, close quote. If this  
3 provision is intended to apply only to family litigation,  
4 it is not clear. It could be construed as applying across  
5 the board in any action.

6 Furthermore, an employer of a minor child may  
7 require a subpoena in order to excuse the child from work.  
8 Again, whether a minor should testify should be left to the  
9 discretion of the trial judge, taking into account factors  
10 such as age, maturity, type of testimony, whether the  
11 evidence can be obtained from another source, psychological  
12 impact on the child, et cetera.

13 I would suggest the provision be to the effect  
14 that no subpoena for a minor child may issue except upon  
15 the prior approval of a judge. Your proposals for case  
16 management are also excellent. We have not adopted them  
17 only because we have not had the staff.

18 We are working on it. With respect to case  
19 management, there may be some confusion between Sections  
20 7213 and 7214 as to when the judge is to make a track  
21 assignment. If a case management conference is to be held  
22 in all cases, which is required under Section 7214(a), then  
23 I would think the track assignment should be made  
24 immediately thereafter.

25 Also, there appears to be an inconsistency

1 between Section 7213(d), requiring the judge to make the  
2 track assignment, and Section 7220(b)(3), which states the  
3 case management team is to make the track assignment.  
4 Section 7227 requires the appointment of a representative  
5 for the child if there is an allegation of child abuse or  
6 neglect or domestic violence against one party by the  
7 other.

8           Frankly, I would like to see the creation of a  
9 permanent office of the child advocate staffed with  
10 fully-trained, independent personnel rather than rely on ad  
11 hoc appointments for guardians or counsel to the children.  
12 Then I would leave it up to the judge's discretion as to  
13 whether to appoint the office in for a child or allow the  
14 office to intervene on behalf of a child.

15           I am not convinced that every such case  
16 requires an appointment of a guardian, counsel, or special  
17 advocate for the child. There are, however, as I see it,  
18 some glaring problems with the proposals. First, they  
19 would strip the Supreme Court entirely of its rule making  
20 powers in family litigation and place them exclusively in  
21 the Legislature.

22           I have a philosophical problem and some  
23 practical concerns with that. The independence of the  
24 judiciary has been an important part of our system of  
25 government for over 200 years. If the Legislature can

1 establish the rules as to how the courts will be run, the  
2 courts will be an extension of the Legislature.

3 Will court rules then become matters of  
4 political debate and election sloganeering every two years?  
5 If so, will judges be able to join that debate? Further,  
6 will the Legislature, given its own dynamics and politics,  
7 be able to amend the rules on a timely basis?

8 Will the Legislature respond to the demands of  
9 the majority of the electorate or of a vocal minority or of  
10 some special interest group? Theoretically at least, the  
11 judiciary was not established to be a democratic body. If  
12 the Legislature becomes the exclusive rule making body for  
13 the courts, how will issues of implementation and  
14 clarification, now handled by Supreme Court rule and local  
15 rule, be handled? Will each judicial district have to come  
16 to the Legislature for them? I think the proposal creates  
17 fundamental problems.

18 Second, House Bill 1977 specifically excludes  
19 actions under the Protection From Abuse Act. Why? The PFA  
20 oftentimes deals with custody, exclusive possession of the  
21 marital home, and support. In many cases, it is the  
22 opening salvo and the first opportunity for leverage in  
23 family litigation.

24 Furthermore, under our existing law, it does  
25 not appear a master may hear a PFA. I am a strong

1 supporter of the PFA. I am a strong -- but I also  
2 recognize, as does every judge, many PFAs are frivolous,  
3 petty, and an abuse of the system.

4 Many are sought out of spite or to gain an  
5 upper hand in the divorce or custody action or out of  
6 convenience because the courthouse is there and readily  
7 accessible for dysfunctional but not abusive people. PFAs  
8 are inundating the system and have a corrosive effect on  
9 the collective resources and psyche of the judiciary.

10 To require Common Pleas judges hear all PFAs  
11 runs counter to the notion of good case management; that  
12 is, to evaluate cases on their own merits and assign such  
13 resources to them as will dispose of them fairly,  
14 efficiently, and expeditiously. We have law-trained  
15 masters hearing juvenile dependency and delinquency cases.  
16 If they had the time, they could easily handle most PFAs.

17 Similarly, Section 7221(a) seems to require a  
18 judge hear all aspects of custody. I think a law-trained  
19 master can hear cases involving partial custody, custody  
20 contempts, and many full custody cases. If you disagree,  
21 then Lehigh County will need one more judge to replace the  
22 masters who do that work now.

23 The same is true with support. If only judges  
24 and law-trained masters can determine support, as is  
25 proposed, then we will have to replace our eight

1 nonlaw-trained conference officers with lawyers or judges.  
2 Many support cases should not require that. Many are  
3 decided solely upon the wage certifications provided by  
4 employers and the support guidelines. A well-trained  
5 nonlawyer can handle those types of cases.

6           Third, does anyone have any concept as to how  
7 many more employees will be required to implement the  
8 programs in the proposed legislation? How much will it  
9 cost, and where will the money come from? There is no  
10 provision for an impact study, nor is there any real  
11 provision to pay for implementing the proposals.

12           The family justice account will help fund the  
13 cost of court-ordered mediation and custody evaluations,  
14 and that is great; but not for staff or facilities. I have  
15 always liked the idea of a family resource center staffed  
16 with someone sufficiently trained to answer intelligently  
17 procedural and substantive questions of family law and with  
18 a sufficient number of trained child care workers to ensure  
19 the safe care of the children entrusted to it.

20           Where will that money come from? Furthermore,  
21 what impact will these changes have on the rest of the  
22 court? If we simply divert existing resources to the  
23 family area, what levels of reduced services will we accept  
24 in the criminal, civil, and orphans court areas of the  
25 court? The legislation makes no provision for this either.

1           Finally, I think there is an insidious problem  
2 affecting family law; and that is the culture surrounding  
3 it. For whatever reason, family law does not enjoy the  
4 same cachet or respect as does the other areas of the law  
5 or work of the court. Perhaps that is why we are in such a  
6 predicament.

7           I think to some extent, implementation of the  
8 things we are talking about will help to professionalize  
9 the field and make it more desirable for good lawyers to  
10 practice in it and for good lawyers to leave their  
11 practices, become judges or masters, and want to preside  
12 over family cases.

13           Family litigation is uniquely difficult.  
14 Unlike other areas of the law in which we define justice  
15 for a past event, family litigation is played out in real  
16 time. The parties are in the middle of an ongoing dispute.  
17 They are oftentimes emotional because the dispute involves  
18 their children, their spouse, their home, and their wallet.

19           Not much else in our society engenders such  
20 passionate, sometimes irrational behavior. The dispute is  
21 tried to the judge sitting alone. Oftentimes, the judge  
22 must fashion a remedy where there is no real answer or good  
23 solution.

24           Most judges will tell you, as your colleague  
25 in the Senate, Senator Charles Lemmond, himself a former



1 Common Pleas judge, once told me, the hardest cases before  
2 the court are those involving the custody of young children  
3 where their parents are equally good or equally bad.

4 Many times, the judge is called upon to look a  
5 litigant squarely in the eye and take away the child, evict  
6 from the home, or enter an order of support which one party  
7 feels is too high and the other too low. Those persons  
8 entrusted with making difficult decisions so central to the  
9 quality of life in one's family should be from among the  
10 best of the lot.

11 An overhaul of the family court system should  
12 include ways to attract the best professionals to the  
13 system and work to keep them there. In short, I think the  
14 proposed legislation is a great start. I hope the good  
15 aspects of it, of which there are many, will be adopted in  
16 the same fashion we have rules of evidence and interest on  
17 lawyers' trust accounts.

18 And I hope the promise held out by these  
19 proposals will be supported sufficiently to make them  
20 realities. Thank you.

21 CHAIRPERSON COHEN: Thank you, Judge Reibman.  
22 I am overwhelmed by your presentation. It is rare that we  
23 have someone come to make a presentation and testify before  
24 us that has so thoroughly examined our proposals and given  
25 us step-by-step thoughts. So we certainly are very

1 appreciative.

2           And I think what's interesting is, as I had  
3 mentioned before the hearing started, that we've really  
4 been working on this project for the last six years. And  
5 we have taken testimony from, spoken on the telephone, had  
6 letters, personally met with literally at this point it's  
7 thousands of people.

8           And after each time that we talk to someone,  
9 we always say, Why are we having more hearings? We've  
10 heard everything. And then we have another hearing and  
11 find something new. And certainly, your presentation today  
12 has given us an enormous amount to think about and  
13 certainly to work on.

14           My one question to you is -- a comment and a  
15 question -- is that essentially why has it taken the court  
16 so long? People have been getting divorced forever. The  
17 administration of justice in Pennsylvania has been sorely  
18 lacking for decades at best, at the least.

19           The reason that we've embarked upon  
20 this -- and I have to tell you, when we started this  
21 project, it was our belief that we didn't need legislation  
22 and certainly did not need a constitutional amendment  
23 because you are correct when you mentioned the separation  
24 of powers.

25           We have done this before in various aspects.

1 In order for the Legislature indeed to change rules of  
2 court, if you will, or have an impact upon the court, it  
3 does require a constitutional amendment, which is exactly  
4 what House Bill 1976 has done.

5           When we started this project, our thought was  
6 we don't need any legislation at all, that the court could  
7 indeed remedy the situation itself. My experience has been  
8 since we've been out in the field, when we first started,  
9 many of the courts from the top down have pooh-poohed the  
10 idea and said not to worry.

11           And what I find since these bills have been  
12 introduced is now there's a flurry of activity on behalf of  
13 the court to reform itself and reform its own rules and  
14 rejustice where justice has been severely denied for years  
15 and years and years. So I respect what you've said.

16           And certainly, Judge Baer in Allegheny County  
17 started reforming his court long before we began. And it  
18 worked sufficiently and fairly to all litigants. Judge  
19 Baer says if everybody goes away, I'm happy. He thinks  
20 he's done a good job.

21           But my question is and my concern is, if -- is  
22 why? You've addressed the separation of powers. But if we  
23 back off, I really feel at this point, after working on  
24 this for six years, that the court is just going to go on  
25 its own merry way and we're going to have very unhappy

1 people in this Commonwealth.

2 JUDGE REIBMAN: I -- obviously, I can't speak  
3 for the Supreme Court of Pennsylvania. I'm not sure of the  
4 answer to the question, except to note that I think that  
5 it's natural and healthy for the two branches, the  
6 legislative branch and the judiciary branch, to have  
7 tension.

8 And I think that the Legislature should  
9 be -- and in this case I think is -- responsive to the  
10 demands of the public by coming forward with an overhaul of  
11 the family court system. I think there's also some merit  
12 in an independent judiciary that is somewhat insulated from  
13 the clamor of the day.

14 And I think it's that tension that I think  
15 we're seeing being played out on this issue. I think it  
16 was -- had it not been for the initiative of the  
17 Legislature on the areas of rules of evidence or an  
18 interest on lawyers' trust accounts, I'm not sure that we  
19 would have those in place by court rule.

20 And so I give the Legislature a great deal of  
21 credit. I'm not suggesting you back off. I just don't  
22 want to see -- in the end of the road, I wouldn't want to  
23 see you push this thing across the finish line with the  
24 proposal -- with the result that the Legislature makes the  
25 rules for the courts.

1           And I think that undermines the independence  
2 of the judiciary. I would hope that this is an incentive  
3 for the court to realize the interest of the public and of  
4 the Legislature in seeing meaningful reform be implemented.  
5 And I would hope that the court would respond to it.

6           I don't know the internal workings of the  
7 court, and I don't even know what resources the court has.  
8 I can imagine, however, that the Legislature is generally  
9 better suited to take these kinds of issues, to conduct  
10 public hearings, to develop a record, to establish a  
11 consensus through internal debate in the Legislature in  
12 addition to public hearings and then to create pressure on  
13 the court for meaningful reform.

14           And I would like to see the Legislature and  
15 the Supreme Court sit down together and work it out and  
16 implement many of the changes that you're proposing by  
17 court rule. And I would hope that we would all be happy at  
18 the end of that.

19           We would ultimately have an overhaul of the  
20 system, a much better system. But it would also be done  
21 maintaining the independence and integrity of the  
22 judiciary.

23           CHAIRPERSON COHEN: I think our goals are the  
24 same.

25           JUDGE REIBMAN: I think they are.

1                   CHAIRPERSON COHEN: And certainly, as an  
2 attorney, I'm very sensitive to the respect that we each  
3 have for the separation of powers and for the independence  
4 of each body. However, again, I must stress the thousands  
5 of people that we've spoken to and the insulated and  
6 insular position of the courts.

7                   And again, because you're right, we are  
8 responsive and responsible to the people in the  
9 Commonwealth. And it almost tickles us at this point that  
10 for so many years, the court has indeed not been  
11 responsive.

12                   But since these two bills have been  
13 introduced, all of a sudden, we're getting the same  
14 response from the judiciary and, as I said, from the  
15 Supreme Court to the Common Pleas level and everything in  
16 between. We are now getting this -- this response, Wait a  
17 minute, you're treading on our territory.

18                   And that's the reason for the constitutional  
19 amendment. You are correct. We are working with the  
20 judiciary. Our fear is if we work with the judiciary and  
21 the rules are changed and the judiciary does become  
22 responsive, at any point they can slide back if we're not  
23 breathing down their neck.

24                   My goal is to be sure that the people in this  
25 Commonwealth are not treated in a roughshod manner and have

1 a painful situation, a personal situation exacerbated by  
2 the court. And that's -- that's exactly what's been  
3 happening. So there is a give and take.

4 JUDGE REIBMAN: I would note -- there is. And  
5 I think some of the solution and some of the problem has  
6 been a lack of attention and a lack of resources in the  
7 area. And I tried to touch upon that in my remarks.

8 CHAIRPERSON COHEN: Yes.

9 JUDGE REIBMAN: And I -- I'm not sure that  
10 even holding out a lot of the promises that are contained  
11 in the proposed legislation. They still have to be backed.  
12 They're going to -- I don't know where the money is coming  
13 from. I don't know how this is going to be implemented.

14 At what cost? At what cost both in terms of  
15 real dollars and impact on other areas of the judiciary in  
16 terms of processing the work? And I think until those  
17 issues are addressed as well, my concern is that there's  
18 false hope. And I think there are very difficult decisions  
19 that have to be made.

20 And I would hope that it be made -- that they  
21 be made as a package. I'd also again reiterate my concern  
22 that we -- it may be that a centralized judiciary, which  
23 is, I guess, debated if not in the process of being  
24 implemented across the state, may be helpful.

25 Our own experience here in Lehigh County is

1 that we have -- speaking of tension -- we have sometimes a  
2 relationship of contention with the administration and  
3 county commissioners in terms of getting approval for  
4 additional slots, employees that we feel are necessary in  
5 order to do our work.

6 We've had an ongoing fight with the  
7 administration here in getting more people for domestic  
8 relations. We have a terrible backlog of people filing a  
9 complaint in Lehigh County. They wait four to five months  
10 before they get a conference before a domestic relations  
11 conference officer.

12 And we believe that has been in large part  
13 because the office has been inadequately funded and staffed  
14 for many years. We're playing catch-up now. There have  
15 been some external changes visited upon us like PACSES and  
16 other things, which ultimately will be good.

17 But we're going through -- we've been going  
18 through a very difficult transition. And part of that is  
19 that we haven't gotten the support from our  
20 popularly-elected officials here in the county. That's  
21 starting to change. But, you know, it's a very difficult  
22 problem.

23 If the state wants to take over the entire  
24 domestic relations operation and the entire family court  
25 system, that's fine. And maybe that's part of the



1 solution. But it will also have to be staffed adequately.  
2 We don't have the number of court administrators here to do  
3 the kind of differentiating case management and statistical  
4 gathering that would be terrific to have.

5 We should have it. A modern efficient court  
6 should have all the things that you've proposed in your  
7 legislation for a proper case management. We know that.  
8 We've had retreats since at least the last three years when  
9 I have been Administrative Judge of the Family Division.

10 We've had retreats. And we've come up  
11 with -- every proposal that you've come up with we've  
12 talked about, including a center near the courthouse that  
13 we can bring in not only government services but nonprofit  
14 services, try to reduce duplication of services, try to  
15 facilitate the delivery of services to people who need  
16 them.

17 Many of these folks that come here don't have  
18 automobiles. Many of them have language difficulties.  
19 They're trying to negotiate a difficult system. And it  
20 seems that we impose program after program on them and we  
21 give them a ticket and they have to punch their ticket all  
22 over Lehigh County.

23 And it's just not realistic to expect that  
24 they're going to get the kinds of services and also expect  
25 that they're going to get a job and hold a job while

1 they're going through all of these remedial-type of  
2 efforts. We got to do a better job in many ways.

3           Legislation doesn't address that. It holds  
4 out a recognition that that would be nice, but I don't know  
5 where we're going to get the money from Lehigh County in  
6 order to implement these things. And that's my  
7 frustration.

8           I think many of us who are either on your end  
9 receiving complaints and criticisms from the electorate,  
10 from my end who sit and preside over family court, I think  
11 we're all honest enough with each other to recognize that  
12 we have big problems. We're trying to deal with them.

13           We want to make it better. We've had a number  
14 of meetings where Representative Browne has been involved.  
15 I've offered to be the contact person for his office as  
16 well as all the legislators in this area that deal with  
17 Lehigh County judicial system in the area of family.

18           We know we have problems. But we just feel so  
19 constrained for lack of resources and also, I think, an  
20 overall -- overhaul of the family court system.

21           CHAIRPERSON COHEN: These are the comments  
22 that we wanted to hear. And certainly, I hope that we  
23 can continue to work with you because your suggestions  
24 are -- are quite valid. And we appreciate the input that  
25 you've had. And certainly, your testimony has had a great

1 impact upon us.

2 JUDGE REIBMAN: Thank you, Representative  
3 Cohen. I note that my colleague, my friend Representative  
4 Snyder is present. I'd like to introduce him only because  
5 we look with eager anticipation to his return to private  
6 practice to Lehigh County.

7 And I don't say that from a political point of  
8 view at all. He's a wonderful person, and it's going to be  
9 nice to have him around the courthouse on a more regular  
10 basis than coming around and conducting hearings and  
11 serving the constituents.

12 CHAIRPERSON COHEN: And again, we have to be  
13 on opposite sides because I -- for everyone, I want to  
14 introduce the Majority Whip of the House of  
15 Representatives, Representative Don Snyder. We are very  
16 sorry to see him go. And we'll miss him dreadfully.

17 But I know he will always -- it sounds like a  
18 eulogy. This is terrible -- always have an impact upon the  
19 community, a positive impact. Please join us up here.

20 Representative Browne, you had a question or a  
21 comment?

22 REPRESENTATIVE BROWNE: Yes. Thank you, Madam  
23 Chairman. Thank you, Judge, for all your hard work in this  
24 area. As you had mentioned, you've always been very open  
25 to concerns from my constituents regarding their contact

1 with your court.

2           And one thing you had mentioned is regardless  
3 of the hard work you do and the change you try to make -- a  
4 lot of times we see this with a lot of areas -- there's  
5 legislative pillars from Harrisburg or Washington that you  
6 have to deal with. And I'm hopeful and encouraged that  
7 these type of recommendations from Representative Cohen  
8 will alleviate some of those concerns for you.

9           Just -- I just had some specific questions on  
10 two areas of the legislation. One was the family resource  
11 center. A lot of constituents have come to me in their  
12 contact with the court, go into the court without any legal  
13 representation. And it's primarily because of financial  
14 resources.

15           This provision, along with another provision  
16 in the bill, has to do with volunteerism by members of the  
17 bar. Do you feel that that will be something that will be  
18 an encouragement and well-received by members of the bar in  
19 Lehigh County?

20           Will the family resource center encourage  
21 people to take on cases by themselves in terms of their  
22 contact with the court, or will it bring more people  
23 into -- just more intelligent people into the system in  
24 terms of their dealings with the court? Just your general  
25 feelings.

1           JUDGE REIBMAN: I have some concern about the  
2 success of getting significant numbers of lawyers to  
3 volunteer in this area. We do not have that history or  
4 culture in Lehigh County. There are some notable  
5 exceptions of individuals who do undertake pro bono work in  
6 this area.

7           But it's been difficult to get lawyers to  
8 represent pro se litigants. You know, I suppose a flip  
9 response would be that -- fund legal services. Legal  
10 services used to provide free legal advice in domestic  
11 matters, in family matters before the -- before the staff  
12 was devastated by funding cuts.

13           And now, frankly, I hardly ever see a legal  
14 services lawyer in my courtroom in any aspect of family.  
15 And I think the bar has a -- it does have an ethical  
16 obligation to perform pro bono work. But having said that,  
17 I'm not so sure that the bar has an obligation to take upon  
18 itself all of the problems of our society in representing  
19 people who cannot afford to be represented by attorneys.

20           Frankly, the needs are greater than the number  
21 of lawyers who are ready, willing and able to perform pro  
22 bono work. And I guess what that would require, if I could  
23 amend my comments, would be that you're talking about an  
24 overhaul of the system. And if you want to make it  
25 affective, go back and look at legal services.

1                   **REPRESENTATIVE BROWNE:** The family resource  
2 center, I guess, does have some value there because I do  
3 get people who call my office with specific legal questions  
4 regarding family law. So they'd be able to be more  
5 prepared to face their challenges when they go into the  
6 system.

7                   **JUDGE REIBMAN:** I shudder at the prospect of  
8 having somebody there answering substantive questions,  
9 questions of substantive law. I notice that the  
10 legislation gives them some protection with malpractice and  
11 lawsuits. But we all know who are involved in the law that  
12 sometimes we get different advice from different lawyers.

13                   And to have a staff from the county, an agent  
14 of the judiciary, if you will, giving substantive legal  
15 advice creates some potential problems, I think. But, you  
16 know, it's probably better than the system we have now.

17                   **REPRESENTATIVE BROWNE:** And just your comments  
18 on the continuing education piece of that, of the proposal.

19                   **JUDGE REIBMAN:** Well, at first, my backbone  
20 stiffened when I -- when I learned that the Legislature was  
21 going to impose the continuing legal education requirements  
22 on the judges. Philosophically, I have some problems with  
23 that as well because I think it gets the Legislature into  
24 content. And I think that's a problem.

25                   However, given the way the legislation is

1 drafted -- was it House Bill 1977? -- I think the  
2 provisions are pretty decent, relatively inoffensive in  
3 terms of how they're structured for continuing education  
4 for the judges.

5           As you may know, the Conference of State Trial  
6 Judges, I think, is on record as supporting mandatory  
7 continuing education for judges. I go regularly to our  
8 conference meetings. We have wonderful sessions. I would  
9 invite you to attend if it's not too presumptuous of me on  
10 behalf of the Conference to invite you, very substantive,  
11 always have family law programs included in our meetings,  
12 well-attended and well-done.

13           I have no problem with mandatory education.  
14 And in fact, I think it ironic, frankly, that the lawyers  
15 have it and the judges don't. Nonetheless, we don't have  
16 it. But I think the provision -- but I think the  
17 provisions that are in the legislation are fair and  
18 reasonable.

19           I just, again, don't like the idea of the  
20 Legislature imposing them on the judges. And that goes  
21 back to the independence of the judiciary argument.

22           REPRESENTATIVE BROWNE: Thank you, Judge.  
23 Thank you, Madam Chairman.

24           JUDGE REIBMAN: Thank you, Madam Chairman.

25           CHAIRPERSON COHEN: Thank you, Judge Reibman.

1 We appreciate that. And we certainly will be in touch with  
2 you if we do need your input.

3 JUDGE REIBMAN: I'd be happy to help.

4 CHAIRPERSON COHEN: Thank you so much. The  
5 next person to appear before us is Carole Brown, an  
6 Associate Professor of English at Moravian College. Dr.  
7 Brown, thank you for being present today. And you may  
8 proceed any time at all.

9 DR. BROWN: Thank you. The legislation under  
10 consideration addresses some of my keenest concerns:  
11 Reducing the feminization of poverty, setting the standard  
12 of civility in all relationships, honoring and caring for  
13 children at risk whose caretakers do not meet the standard  
14 as articulated by Judith Grudenbaum (Phonetic).

15 Children are inherently entitled to unearned  
16 care. This entitlement is due to the universal biological  
17 and social conditions of an infant's vulnerability.  
18 Although I cannot understand all the material in Bills 1976  
19 and -77, since I'm not familiar with legal discourse, it is  
20 actually easy to see the shape of its meaning for the  
21 vulnerable children in our midst. They are part of my  
22 heart.

23 So I use my time this morning to affirm what  
24 the Task Force has accomplished. From my perspective, you  
25 have taken into account fresh research on child



1 development. You have honored the value of education for  
2 everyone from requiring judges to be trained to providing  
3 easy-to-understand information for the marginalized.

4 Let me explain my position with an analogy.  
5 First, some background. Your bill, 1977, has this quality  
6 that's similar to that which we seek to create and are  
7 merging Children's Advocacy Center in Lehigh County. Now,  
8 I believe there are four centers that have met the  
9 stringent requirements as set nationally for them.

10 And I believe they are Lawrence, Philadelphia,  
11 Bucks, and Delaware. And there are many counties such as  
12 Lehigh that are in the process of establishing an advocacy  
13 center. A CAC or alliance is a child-friendly site that  
14 provides multi-disciplinary assessment for each alleged  
15 case of child maltreatment or neglect.

16 Community support has been there for years.  
17 The Junior League has been phenomenal supporting this  
18 effort. A representative from the League has served on  
19 both the task force and is now serving on the resource  
20 committee. We are currently looking to rent a site within  
21 four blocks of the courthouse, and then we plan to purchase  
22 a site in a few years.

23 Now, here's my analogy. As I read Karen  
24 Dalton's summaries and the bills themselves, I had a  
25 visceral sense that's really hard to put into words. But

1 it was something like, Oh, this makes sense. Yes, this  
2 feels familiar. Why? And I sort of had to work on that.

3 Your proposed legislation and the advocacy  
4 center are, by intention, client-friendly. Your bill  
5 proposes a case management team similar to the case  
6 conference in the CAC, and we would call it linear case  
7 management. The first one was January 6th in this  
8 building.

9 And the chair of that was Barbara Stauffer,  
10 who's in the room now. This is to streamline the process  
11 and to allow those professionals involved to share  
12 information in a respectfully collaborative way. As  
13 mentioned earlier, your bill honors education for all from  
14 the judges down.

15 Somewhat similarly, part of the CAC's mission  
16 is community education. The experience of this "Oh, yes"  
17 feeling also relates to the same almost tangible humane  
18 feeling I associate with the second project initiative that  
19 part of the Harrisburg system -- I don't know which  
20 part -- approved, a pilot demonstration based on child  
21 havens that's established in Seattle.

22 This program serves at-risk children from one  
23 month to five years. The system has identified and  
24 provides them with free therapeutic child care five days a  
25 week, including transportation. Here, the young ones will

1 be treated as if they are indeed inherently entitled to  
2 unearned care.

3           And they simply are given, as a video says,  
4 one simple kindness after another. Best of all, it works.  
5 There's a 12-year longitudinal study showing that this  
6 works. Children who have experienced child haven are less  
7 violent. So they wouldn't be in the court system as much.

8           And they're -- they have more social skills.  
9 They do better in school. It's everything we'd want for  
10 them. Laura Sheenan, the Director of Seattle's child  
11 haven, told me that the only state she knows that has  
12 developed a similar system is South Carolina.

13           Veronica Inman in Greenville, South Carolina  
14 reported to me much success. So here's something going on  
15 in our state, and I don't think many people realize it.  
16 It's very exciting. And this is a bi-county initiative.  
17 This is Lehigh and Northampton.

18           We hope by May 2000 to have our pilot  
19 established with about 10 very young children. Now,  
20 unfortunately, child haven is somewhat of a national  
21 secret. But I want you to know that Harrisburg provided us  
22 with \$100,000.

23           So here's my point. Here's my analogy: My  
24 cognitive understanding of and the complex, many-layered  
25 emotion elicited by your legislation, by our pilot child

1 haven and by our developing advocacy center give me great  
2 faith that we in Pennsylvania will be providing better care  
3 for our most vulnerable citizens who are entitled to  
4 unearned care.

5 As a survivor turned activist of abuse, I am  
6 grateful to the Task Force for what you've done. I  
7 cancelled my classes to be here today. My students thank  
8 you for asking me to testify.

9 CHAIRPERSON COHEN: Well, as I said earlier,  
10 we think that we've done everything until someone comes  
11 before us and gives us something new. Dr. Brown, that was  
12 moving and vital testimony. And we certainly appreciate  
13 it. Does anyone have any questions?

14 REPRESENTATIVE SNYDER: Was that funding under  
15 the children's trust fund?

16 DR. BROWN: No, I don't believe it was. This  
17 was part of the needs-based budget. We submitted this  
18 proposal three times, and the third year it was approved.  
19 But I don't think it was from the trust fund. Barbara, am  
20 I right? The Department of Public Welfare I believe  
21 Barbara said.

22 CHAIRPERSON COHEN: Thank you, Dr. Brown. The  
23 next person to make a presentation to us is David Tilove,  
24 the Executive Director of the Lehigh Valley Legal Services.  
25 Welcome, sir. You may proceed at any point.

1 MR. TILOVE: Thank you. I want to thank you  
2 for extending an invitation to me to testify at this  
3 hearing on a set of proposals, which would, if enacted,  
4 make an historic change in the practice of family law in  
5 Pennsylvania.

6 In the time I have, I will confine myself to  
7 comments on those aspects of House Bill 1977 which have  
8 significant impact on unrepresented parties and, in  
9 particular, on low income parties. My perspective has been  
10 shaped by my professional background.

11 I began practicing in 19 -- practicing law in  
12 1970 as a staff attorney with the Bucks County Legal Aid  
13 Society and have, for most of the last 30 years, been  
14 engaged in public service practice in Bucks County and,  
15 more recently, in the Lehigh Valley.

16 Just a year after my legal career began, the  
17 United States Supreme Court decided the case of Boddie v.  
18 Connecticut, holding due process of law prohibits a state  
19 from denying, solely because of inability to pay court  
20 costs and fees, access to its courts' indigents who, in  
21 good faith, seek judicial dissolution of their marriage.

22 The natural follow-up to that decision would,  
23 to my mind, have been to secure on the same grounds the  
24 right to counsel since the Pennsylvania divorce law and  
25 process was too arcane for most laymen whether or not they

1 have the filing fee. That case never materialized.

2 Judge Learned Hand observed: "It is the  
3 daily; it is the small; it is the cumulative injuries of  
4 ordinary people that we are here to protect. If we are to  
5 keep our democracy, there must be one commandment: Thou  
6 shalt not ration justice."

7 Someone else remarked that lawyers are the  
8 toll-takers on the road to justice. Pennsylvania has a  
9 fragmented family law process. Parts of it can be  
10 navigated by unrepresented parties. Other aspects  
11 effectively cannot with either -- without either counsel or  
12 adequate legal information and support.

13 Is counsel available? Often not. In 1998-99,  
14 Pennsylvania legal services programs handled 115,208 cases  
15 for low income clients. Of those, about 42 percent were  
16 family law cases. Family law has always generated the  
17 greatest demand on legal services programs, and legal  
18 services attorneys are in short supply.

19 In the northeast of Pennsylvania, we have 22  
20 attorneys to attend to the civil legal needs of about  
21 260,000 clients, a ratio of one attorney to 11,719 persons.  
22 And those are persons with a gross monthly income of \$1,740  
23 or less for a family of four.

24 The ratio for the population at large is one  
25 attorney for 591 persons. Those 48,000-odd family cases

1 represent a fraction of the demand. Many applicants are  
2 turned away. We have found ways to stretch resources by  
3 offering advice and guidance when we think that will be  
4 effective and sufficient; by teaching people how to  
5 represent themselves through advice, workshops, written  
6 materials, videos and coaching; by referring clients to the  
7 private bar through organized pro bono programs; and by  
8 targeting staff resources to those in the most critical  
9 need.

10           And when the resources have been fully  
11 stretched, we turn people away while we look for ways to  
12 stretch the resources further. Lehigh Valley Legal  
13 Services accepts virtually no divorce cases. Our direct  
14 representation -- our direct representation in child  
15 custody cases is limited to certain high priority  
16 situations.

17           Before we opened the door to child support  
18 cases about 18 months ago, we routinely turned callers  
19 away. This is typical for legal services programs in the  
20 state. It means there are large numbers of people who will  
21 be unrepresented in family court.

22           It's highly significant that your bill  
23 acknowledges this, shoulders the responsibility, and  
24 addresses the problem in a very positive manner. The  
25 family resource center is the centerpiece. Lehigh County's

1 approach to child custody matters offers an excellent model  
2 for building a family law resource center.

3           The approach assumes that some parties will be  
4 unrepresented. The court takes responsibility for treating  
5 them fairly. It's open and available to unrepresented  
6 parties who can get guidance on the process and forms for  
7 filing a complaint or asking for modification of an order.

8           A procedures manual is under development. The  
9 operation of the custody master's office is welcoming to  
10 self-litigators. Lehigh Valley Legal Services conducts  
11 child custody workshops every month to explain the law and  
12 legal process with a follow-up two weeks later for those  
13 who choose to continue to assist them in completing court  
14 forms and preparing their cases.

15           Twenty-six clients are scheduled for the  
16 session this coming Tuesday. We use a custody video  
17 produced by Susquehanna Legal Services created for use in  
18 Northumberland County as part of the workshop. If it's  
19 feasible for the resource centers to use videos, they can  
20 be very effective in taking the fear of the unknown out of  
21 the process; and that enables people to be more effective  
22 as their own advocate.

23           The Lehigh custody office regularly refers low  
24 income parties to our workshop because we can provide  
25 individual attention and advice that's beyond their charge.



1 They also refer those parties who find themselves in a  
2 proceeding which, to the master's eye, they apparently  
3 cannot manage on their own.

4 We can provide direct representation either  
5 through staff or pro bono counsel. It's been an excellent  
6 collaboration, and it works for the parties. This  
7 experience is far from uniform across the region. And  
8 while there are other courts which are equally receptive to  
9 self-litigants, many are not.

10 Our program, Lehigh Valley Legal Services, is  
11 in the process of merging with three others in the region.  
12 I have taken responsibility for implementing a help line  
13 for clients across 20 counties. Frankly, this wonderful  
14 diversity, the patchwork of systems, is a little daunting.

15 Your proposal for effective statewide  
16 leadership is welcome. The needs for self-litigant support  
17 which I have described exist within the current system.  
18 How might they change if House Bill 1977 becomes law? On  
19 brief review, there appear to be a few specific points  
20 which may be expected to pose challenges for  
21 self-litigators.

22 Those that caught my eye were completion of  
23 the history section of the family information center,  
24 Section 7212; advocacy for assignment of the case to a  
25 particular track, 7213; and finally, briefs upon which a

1 tentative decision can be based, 7218.

2 More generally, though, however, I suggest  
3 that by consolidating proceedings by de-fragmenting, there  
4 will be a natural tendency to make it more difficult to  
5 navigate the process. At this point, some parts of the  
6 process are easier to understand than others.

7 The child support process, for example, can be  
8 managed by most parties in most cases without counsel,  
9 assuming that the parties are given an opportunity to learn  
10 the process. Child custody, as the Lehigh experience  
11 indicates, can often be managed successfully.

12 Divorce, however, and even a no-fault divorce  
13 without property issues, can be problematic for a  
14 self-litigant. I say this as one who has taught pro se  
15 divorce classes, written a self-help manual, and devised  
16 and supervised a technology-based divorce clinic.

17 And I'm aware of successful guided models in  
18 Lycoming and Dauphin Counties. There are procedural traps  
19 under the divorce process which, once sprung, are  
20 disengaged only slowly and painfully. My point is that as  
21 these fragmented processes are consolidated, the task of  
22 litigating a case may grow more difficult.

23 If so, your challenge will be to ensure that  
24 the process can in fact be managed by most unrepresented  
25 litigants with fairly routine legal issues. And the family

1 resource center plays a key role. My remarks have thus far  
2 been applicable to self-litigants irrespective of their  
3 means.

4           There are two sections that are of particular  
5 value to low income parties: The family justice account  
6 and support for volunteer attorneys. The family justice  
7 account addresses a real need. While there is a general  
8 right to waive court costs for indigent parties, that right  
9 has not in practice prevented cases from being stopped  
10 abruptly and prematurely when a party cannot afford to pay  
11 for an ordered evaluation or for appointment of the master.

12           Support for the work of volunteers, providing  
13 space to meet with clients, and bringing the court together  
14 with bar associations to develop policies and procedures to  
15 encourage attorneys to join volunteer programs recognizes  
16 that volunteers will play a key role in an effective pro se  
17 system.

18           Self-litigation works best if it's supported  
19 and the support continues as the case develops; that is, if  
20 instruction or information is given not only before a case  
21 begins with the party left to venture on their own but with  
22 the opportunity for support along the way.

23           And there will be times when an attorney's  
24 direct representation will have to replace self-litigation  
25 or when self-litigation is problematic from the start. So

1 lawyers will be needed, and the job can't be done with  
2 legal services attorneys alone.

3           Court policies can affect the willingness of  
4 attorneys to volunteer. For example, recognition of  
5 limited entry of appearance or priority at the call of the  
6 list have been effective in some courts at some times. A  
7 dialogue between the bar and the court can bear fruit.

8           The resource center is not expressly  
9 established as an ombudsman, but it may enter into that  
10 role in a sense that it will bear responsibility for  
11 explaining the course procedures in understandable terms.  
12 It will learn immediately and repeatedly where that is  
13 successful and where it is not.

14           It's a natural point of feedback on the  
15 court's success in treating all parties fairly and can be  
16 very valuable in that role. Publication of an annual  
17 report, including the number of self-litigants and services  
18 provided, keeps the public informed.

19           You are proposing substantial changes for the  
20 benefit of families whose lives are impacted by the family  
21 court. I have one cautionary note based upon my experience  
22 with child support cases where I have counseled about 600  
23 clients in the last year and a half.

24           The domestic relations system has changed  
25 dramatically in the last two years. The intent of that

1 change was salutary to increase the collection of support  
2 payments and to make the process for establishing and  
3 enforcing support uniform in the state.

4           While it has generally had that effect, it's  
5 done so in a way that has generally not been friendly to  
6 families. I mean no disrespect to the staff who appear to  
7 me to be of good will and good intent, but who are working  
8 within a system which is not accountable to its users.

9           If it were a business having to rely on the  
10 goodwill of its customer, it would now be bankrupt. I have  
11 noted that it is a process which, with sufficient  
12 information, a party can navigate; but information is  
13 generally not to be had.

14           I suggest simply that we learn from the  
15 successes and failures of that change as this reform is  
16 planned and implemented. The strong support for  
17 self-litigants is a very promising side. I thank you for  
18 your time and attention. And I'd be glad to answer your  
19 questions.

20           CHAIRPERSON COHEN: Thank you, Mr. Tilove. I  
21 am most impressed with your representation of the people  
22 which, of course, in the same respect is our job. And I  
23 think you've summed up our last six years' worth of work by  
24 mentioning Justice Hand by saying, "Thou shalt not ration  
25 justice." And that's what our position is here.

1           And I think that this is certainly one area  
2 where we all agree, the Legislature and the courts, so that  
3 we are in sink in many aspects of this. I have no  
4 questions. I think your testimony is very complete.  
5 Anyone up here have any questions or comments?

6           (No response.)

7           CHAIRPERSON COHEN: We thank you. And we hope  
8 you'll be available for us if questions on our part do  
9 arise.

10          MR. TILOVE: Thank you very much.

11          CHAIRPERSON COHEN: Thank you so much. The  
12 next person to appear before us is Mary Eidelman, who is a  
13 Master in Divorce with the Court of Common Pleas of Lehigh  
14 County. While you're getting started, thank you, Jane  
15 Baker. Thank you so much. And thanks for hosting this  
16 today. Any time you're ready.

17          MS. EIDELMAN: Good morning. I apologize for  
18 not being more aware of your procedure. I did prepare  
19 written testimony that I hope will be disseminated to you.

20          CHAIRPERSON COHEN: Thank you. Counsel Dalton  
21 will provide that to us. Thank you.

22          MS. EIDELMAN: Thank you for the opportunity  
23 to present my remarks to you and members of the House  
24 Judiciary Committee regarding the proposed House Bills 1976  
25 and 1977 containing the Task Force's proposals for family

1 court reform in Pennsylvania.

2 As you have stated, I am currently the  
3 standing Master in Divorce in Lehigh County, a position I  
4 have held since October of 1995. This is a full-time,  
5 county-paid position for which I was appointed by the  
6 judges of this court.

7 As such, I hear all contested actions or  
8 disputes with respect to divorce and matters of equitable  
9 distribution of marital property, alimony, counsel fees,  
10 costs and expenses. I do not hear any matters associated  
11 with custody or support. Those are handled by the custody  
12 hearing officer and by the domestic relations hearing  
13 officers.

14 For several years prior to accepting this  
15 position, I was engaged in private practice with a heavy  
16 concentration in domestic cases. Accordingly, I've had the  
17 opportunity to experience litigating domestic relations  
18 cases as well as now implementing their ultimate  
19 resolution.

20 When I began the practice of law in 1983 in  
21 Lehigh County, domestic relations litigation was handled in  
22 a fragmented manner, as it was in many other counties and  
23 as it still exists. Support matters are generally -- or  
24 not generally -- exclusively by domestic relations hearing  
25 officers with the right of full hearing before the court;

1 and custody matters are directly by the court.

2           However, within a short period of time,  
3 particularly after the passage of the amendments to the  
4 Divorce Code of 1980, the volume of domestic matters  
5 increased tremendously. With the increased volume of cases  
6 came the introduction of more varied and complex issues  
7 regarding division of marital property and divorce-related  
8 matters.

9           More varied, intricate, and subtle issues of  
10 first impression became common debates between litigants,  
11 thereby necessitating increased court intervention for  
12 interpretation of the new law. The increased incidence of  
13 divorce caused by these changes in the law as well as  
14 normal expected population growth necessarily increased the  
15 volume of custody and support matters.

16           Before the tremendous increase in volume of  
17 these cases, the fragmented system of litigating domestic  
18 relations matters operated somewhat efficiently. During  
19 the mid-1980s, it was common to have a support or custody  
20 conference within two weeks or so of filing an action.

21           Somewhat more of a delay existed in resolving  
22 property issues because those were handled by appointed  
23 masters. However, sometimes that delay was simply caused  
24 by the litigants or the case itself. With the increased  
25 incidence of divorce and the influx of what may previously



1 have been stay-at-home mothers into the work force, custody  
2 actions required an increased level of sophistication for a  
3 determination of the best interests of the child.

4           This resulted in more costly procedures for  
5 home studies and psychological evaluations, all of which  
6 was borne by the litigants. The volume of support matters  
7 caused by divorce and separation of unmarried individuals  
8 with families as well, coupled with the progression to  
9 statewide enforcement of support, has now virtually  
10 crippled the domestic relations section.

11           Since the advent of the mandatory PACSES  
12 system, it is not unheard of to take several months to get  
13 to even an initial support conference. All of these  
14 progressive changes in domestic relations matters  
15 necessarily created more cost and delay in reaching final  
16 resolution.

17           They necessarily created a tremendous increase  
18 in the volume of domestic matters being heard by the court  
19 and the attendant delay in having those matters heard by a  
20 judge. But none of these changes created more burden upon  
21 the court's time than the astronomical rise in protection  
22 from abuse actions which the court has been unable to  
23 delegate to masters or other qualified determinators.

24           For all of these reasons and many more, the  
25 fragmented system of disposing of domestic matters has now

1 become virtually unworkable. It has been unworkable for  
2 several years. I cannot agree more with the declaration of  
3 policy and legislative intent expressed in your House  
4 Bill -- or Bills, rather.

5           For several years, I have heard rumors of  
6 implementing reform to the family court system with the  
7 goal of a unified family court system not only in the  
8 individual counties of this Commonwealth but on a statewide  
9 basis as well.

10           I have attempted to become involved in the  
11 decision-making process for such reform on a statewide  
12 level and have anxiously awaited decisive news of such  
13 reform. Therefore, this written proposal for the  
14 implementation of family court reform is wholeheartedly  
15 welcomed. I applaud the Legislature's efforts in  
16 developing the written proposals we have before us.

17           As a working member of the existing unworkable  
18 system, I wish to comment on some specific provisions of  
19 the proposed changes in procedure currently contained in  
20 House Bill 1977. These comments are by no means exhaustive  
21 of the complicated matters to be considered in this type of  
22 reform.

23           They are also not meant as a criticism of the  
24 obviously extraordinary efforts spent in creating this  
25 bill. These comments are only meant to enlighten and

1 assist in formulating reform that will hopefully ensure a  
2 workable system in the future.

3           Subsection 1 of Section 7203 most  
4 appropriately addresses the intent of assuring the present  
5 and long-term safety of children and victims of domestic  
6 violence. Yet Subsection 1 of Section 7204 specifically  
7 excludes from family litigation protection from abuse  
8 matters.

9           My belief is that we are long past an  
10 exclusion of protection from abuse actions from domestic  
11 relations litigation. More often than not, the expediency  
12 of relief afforded by the initial PFA order is the first  
13 avenue of leverage that litigants pursue in a divorce  
14 action.

15           A party who is seeking to sever the marriage  
16 generally has no desire to continue to reside with his or  
17 her spouse. A PFA order entered upon the allegations of  
18 one party without the opportunity of the other to respond  
19 most appropriately affords immediate relief.

20           However, many times, this only serves to  
21 alienate the interests of the parties further by placing  
22 the recipient of an eviction from their residence in the  
23 most defensive position possible. It also serves to  
24 deflate very early on any hope that the parties can work  
25 together and compromise on what may be more serious issues

1 affecting their future livelihood and that of their  
2 children.

3           Once the alienation has occurred and the  
4 matter of abuse is handled by the court in a singular  
5 fashion, it makes it more difficult to reach the goals set  
6 forth in the reform procedures. I fully recognize the  
7 desire and the need of abused victims to have immediate  
8 redress before the court.

9           However, many PFAs are frivolous and are  
10 brought for the sole desire of separation and attack. The  
11 judges are then overburdened with hearing these cases,  
12 taking away their time from the other matters that House  
13 Bill 1977 would like them to address.

14           There simply is not enough time or judge power  
15 to continue to hear a volume of PFAs such as this while  
16 implementing the procedures called for under this bill. My  
17 belief is that there are methods of protection that can be  
18 afforded to victims of domestic violence short of having a  
19 hearing before the court.

20           If the PFA action is consolidated with the  
21 remainder of claims of the family litigation, it can be  
22 addressed more appropriately. An initial order can still  
23 be obtained in the current fashion for the immediate  
24 relief; but the permanent order then entered upon  
25 recommendation of a master or other appointed individual

1 can address other temporary property, support and  
2 custody-related matters.

3           It is often vital for a determinator of fact  
4 in domestic relations matters to gauge the tenor of the  
5 parties at a proceeding so initial as a PFA. This affords  
6 that determinator -- determinator -- excuse me -- added  
7 insight into the true disputes of the parties, while being  
8 able to provide other relief as well at an earlier time in  
9 the action.

10           It can serve to bring the parties to a forum  
11 of interaction so as to address other concerns rather than  
12 alienate them solely because a PFA has been filed. To  
13 continue to require that all PFA matters be heard  
14 exclusively by a judge, while what may be the more serious  
15 and far-reaching issues to be adequately addressed by  
16 appointed masters, is to ignore the reality of current  
17 domestic relations matters.

18           I suggest that permanent PFA orders be entered  
19 upon recommendation of a master or other appointed  
20 qualified individual who can address the other issues as  
21 well on a temporary basis. The procedures that are set  
22 forth under Section 7220 can proceed as proposed.

23           By this method, the parties may be forced to  
24 confront each other on not just one limited and highly  
25 emotional issue but in a forum that may work to diffuse

1 their energies for more meaningful discussions. If  
2 communication cannot be established, at least the master or  
3 appointed person who will be hearing the other related  
4 matters at a future time can recommend some other immediate  
5 relief for the parties for their added protection.

6           Additionally, this will significantly free up  
7 the court's time to concentrate on expediting an overall  
8 resolution of the entire action. The goal of resolving all  
9 aspects of cases within six months of filing as contained  
10 in Subsection 5 of 7203 is unrealistic in many instances.

11           In order to decide related matters, such as  
12 property division, the master must have jurisdiction over  
13 the divorce action itself. This jurisdiction cannot be  
14 conferred for decision-making before grounds for the entry  
15 of a divorce decree are established.

16           If the parties are consenting to the divorce,  
17 this presents no problem. However, in many cases, one  
18 party is not willing to consent within six months of filing  
19 for various reasons: They simply may not want the divorce;  
20 they seek to punish the filing party by withholding their  
21 consent; they need more than six months to adjust to the  
22 reality of the divorce; they cannot adequately assess the  
23 bounds of the marital estate and related issues, such as  
24 their own future income potential within so short a period  
25 of time; or for the income-dependent spouse, they simply

1 choose to delay the inevitable while being provided with a  
2 stream of income through support.

3           Before the procedures as set forth in this  
4 bill are implemented, more time is needed for a county such  
5 as ours to assess what services will be needed, the  
6 required facilities, and the necessary personnel. Because  
7 this bill was somewhat of a surprise, at least to myself,  
8 no adequate studies have been conducted, to my knowledge,  
9 as to what is needed to comply with the mandates of this  
10 bill, particularly with regard to personnel and physical  
11 needs.

12           I suggest that before the bill is considered  
13 for approval, that counties be afforded an opportunity to  
14 assess these necessities and respond more appropriately as  
15 to whether or not compliance is possible under the current  
16 provisions.

17           Section 7212, requiring -- excuse  
18 me -- requiring the filing of the family information  
19 statement would certainly assist the judge and case  
20 management team. However, I have great concern with the  
21 Subsection 8 requiring information regarding abuse,  
22 neglect, and particularly involvement with the juvenile  
23 justice system to be contained in a filing of record.

24           These matters are extremely confidential.  
25 There are strict provisions under the existing law for

1 nondisclosure of such information. This family statement,  
2 when filed, is a matter of record to which any member of  
3 the public may have access. Such information can certainly  
4 be brought forward in a confidential setting, such as the  
5 case management conference, without violating the law  
6 against disclosure.

7           House Bill 1977, as currently drafted,  
8 contains two somewhat distinct sections dealing with  
9 bifurcation of divorce actions. The standard for  
10 bifurcation under Section 3323 has been established under  
11 case law and long-standing.

12           However, the standard under proposed Section  
13 7216 varies to a certain extent so that interpretation of  
14 this, if implemented, may lead to increased litigation or  
15 confusion as to what the standard for bifurcation -- as to  
16 what standard for bifurcation should be applied.

17           I cannot stress to you strongly enough from my  
18 own experience that bifurcation is an extreme remedy that  
19 must be carefully considered. The most tragic and  
20 protracted actions that I personally have handled have been  
21 the ones that have been bifurcated. So this must be  
22 clearly delineated.

23           Section 7222 providing for mediation applies  
24 only to custody actions. On many occasions, I have been  
25 approached by custody mediators for direction in areas of



1 property and support matters which the participating  
2 parties in mediation have requested be addressed.

3           In providing a procedure for consolidating the  
4 resolution of issues, this section runs contrary by  
5 promoting further fragmentation of litigation which  
6 mediation on all issues could address. The establishment  
7 of the family justice account under Section 7226 allows  
8 relief for parties of poverty or financial hardship.

9           In my view, at least under the current system,  
10 this is somewhat discriminatory. By allowing for the  
11 payment of such costs and expenses incident particularly in  
12 highly disputed custody actions, poor or financially  
13 distressed persons are being afforded greater rights than  
14 other litigants.

15           The issues needing attention by performing  
16 costly evaluations that may necessitate expert testimony at  
17 trial are the same for all persons involved in these  
18 actions. Likewise, although somewhat more limited, the  
19 issues to be decided in property distribution or for  
20 consideration of alimony may require the parties to incur  
21 similar costs.

22           It appears fundamentally unfair for persons in  
23 only one category to have such expenses paid by the state  
24 while others must shoulder them individually. I suggest  
25 that the family justice account provide for the payment of

1 the basic expenses for all persons, such as custody  
2 evaluations, home studies, and psychological evaluations.

3           The court could appoint a body of such persons  
4 providing these services on a routine basis who can then  
5 ensure more uniformity in their recommendations. This  
6 would provide added assurance to the court that the  
7 recommendations from these professionals are more  
8 consistent for all persons similarly situated.

9           The provisions of Section 7228 for  
10 dissemination of substantive family law to litigants,  
11 whether they are represented by an attorney or not, causes  
12 some concern. Explanation of substantive law is legal  
13 advice. There are varying interpretations of existing law  
14 that can be reached, depending upon the circumstances.

15           Many of the decisions reached in domestic  
16 cases are on a case-by-case basis. And previous  
17 decisions under similar circumstances are not  
18 applicable -- applicable by the addition of, at times, one  
19 crucial fact. It can be more misleading than not to  
20 provide substantive law through a family resource center.

21           Moreover, this section does not mandate that  
22 any particularly qualified individual provide such  
23 information; although, it is entirely appropriate that the  
24 law, statutes, and rules of procedure be provided to any  
25 interested person.

1           This is currently provided in the law  
2 libraries in the counties. To require further  
3 dissemination of substantive law to any litigants involved  
4 in domestic relations actions is treading into a dangerous  
5 area.

6           Because these House Bills were provided to me  
7 only a short while ago, my review of them and their  
8 potential application is limited. I have attempted to  
9 highlight the areas of immediate attention, but I am also  
10 sure that various other issues will arise in what has come  
11 to be the voluminous and complex area of domestic relations  
12 litigation.

13           It is unlikely that such volume will decline  
14 in the near future or that the complexity of issues to be  
15 resolved will be lessened. Hopefully my comments will be  
16 considered and prove helpful should revisions or further  
17 changes to the current draft bills be considered.

18           CHAIRPERSON COHEN: Thank you very much. I  
19 think you've certainly given us food for thought. One of  
20 the advantages of holding these public hearings is that we  
21 get to meet and have dialogue with people who represent a  
22 viewpoint that is in direct dichotomy with where we're  
23 going and what we're doing and our viewpoints -- or I  
24 should say mine, since it's my bill.

25           And we could probably debate every paragraph

1 of your statement, which I think is indeed very healthy if  
2 we're to devise and adopt intelligent laws because that's  
3 our job. So I would certainly hope that you would be  
4 available for future conversations so that we could indeed  
5 debate and discuss some of the points that you've raised in  
6 your presentation.

7           We take pride in authorship. But it's always  
8 a healthy situation for us to hear from people whose views  
9 are not in sync with ours. So I would hope that in the  
10 future, you would be available for some -- some dialogue.

11           MS. EIDELMAN: I would be most happy to be  
12 available for dialogue and discussion. I think these are  
13 issues that we could discuss all day. These are just  
14 enormous matters to be resolved. And please don't  
15 interpret my comments as being opposed to your -- your  
16 proposals and your concerns.

17           I have long felt that family court reform is  
18 desperately needed. I just think because of our respective  
19 positions that the concerns that, say, people in a position  
20 such as mine have need to be brought out to people who are  
21 implementing legislation or causing reform to happen to be  
22 able to address what happens on, say, this level.

23           And I certainly don't want this interpreted as  
24 a criticism of your efforts. I think it's wonderful that  
25 somebody's responding to this. So I would be glad to

1 participate in any discussion or -- or any type of  
2 procedures that -- that you would be considering.

3           CHAIRPERSON COHEN: Fine. As you know, we've  
4 begun working on the unified court system. And one of the  
5 reasons that indeed our proposed legislation does mention  
6 the entire mastership program is because we have found,  
7 again, listening to the people who have been in the system,  
8 that that's really one of the inadequacies, if you will, of  
9 the entire system and that's where much of the fault is  
10 directed.

11           So that we -- we would certainly hope that  
12 this is an area. And I think some of the matters that  
13 you've mentioned, because they have been addressed by so  
14 much of the testimony that we've heard in the past several  
15 years, I think it's certainly something that can be  
16 addressed.

17           I know Representative Browne has some  
18 questions or comments.

19           REPRESENTATIVE BROWNE: Just real briefly. I  
20 too have an interest in talking to you more detailed in the  
21 future regarding some of your concerns since your work  
22 specifically affects constituents I represent in Lehigh  
23 County. In the interest of time, I won't go through all my  
24 concerns or questions.

25           But one area I've been working on that you had

1 mentioned is the area of domestic violence. And it's been  
2 an area that the Attorney General's worked on, a lot of  
3 different members of the Judiciary Committee have concerns  
4 about. And you had mentioned the issue of frivolous  
5 filings for PFAs.

6           And I'm not sure if your suggestions target  
7 that issue and are things that can be implemented that  
8 would discourage people from doing that when they are  
9 frivolous. One thing that I would -- I'm very interested  
10 in cases where that ties up the court.

11           There have been actions in other cases, other  
12 types of cases where we're trying to discourage frivolous  
13 filings in prison litigation and other civil actions. And  
14 I am curious about ways that in -- in times when something  
15 is frivolous of a PFA action, what can be done to  
16 discourage that?

17           MS. EIDELMAN: I've given this a lot of  
18 thought. And I don't deal with it directly any longer. I  
19 get most of my information from people actively litigating  
20 it and some feedback from the court. I -- in initially  
21 discouraging a frivolous action, I don't know how much can  
22 be done.

23           That's why my suggestions were to allow for  
24 the same implementation of the immediate temporary order  
25 because to take the risk of saying that an action is

1 frivolous when it really isn't can be disastrous. That  
2 would afford everybody in that situation the immediate  
3 relief that they need.

4 My suggestion is for then the permanent order  
5 to be directed to a procedure other than being heard by the  
6 court. And this comes from my experience as a master. In  
7 bringing parties together and having them face each other  
8 with a neutral person there, sometimes the -- the emotion  
9 of the situation can be dispensed a little bit.

10 You can do some investigation into whether  
11 this actually was a valid PFA. And when I say valid, I  
12 don't mean that it's totally frivolous. I think people in  
13 divorce situations, they are, of course, in a very  
14 heightened emotional state. Things happen. They say  
15 things to each other. Things do get threatening.

16 But whether it's the type of action for which  
17 a PFA was designed, it may not be. And getting them to  
18 a -- a conference-type of procedure as opposed to having a  
19 hearing before the court, which is more formal, more  
20 structured, more antagonistic, I think that may work better  
21 for the parties.

22 And I've had some conversations with  
23 practicing members of the bar about this and limitedly with  
24 the judges. By getting this at a conference level, like I  
25 stated in the comments, perhaps the other matters that are

1 existing between the parties can be addressed as well.

2           If there's an eviction, Well, what's going to  
3 happen with the house? Who's going to pay the mortgage?  
4 How's that going to be taken care of? Can you address some  
5 immediate support situations under a temporary order to  
6 provide these people with a little more protection than  
7 just evicting somebody from the house?

8           I just -- I just see that it can be handled  
9 better than it has been. And I agree with your  
10 perspective.

11           REPRESENTATIVE BROWNE: I appreciate your  
12 comments and look forward to working with you further.

13           MS. EIDELMAN: I look forward to that as well.  
14 Thank you.

15           REPRESENTATIVE BROWNE: Thank you, Madam  
16 Chairman.

17           CHAIRPERSON COHEN: Thank you, Ms. Eidelman.  
18 We appreciate your being here.

19           MS. EIDELMAN: Thank you.

20           CHAIRPERSON COHEN: The next person to make a  
21 presentation to us is Veronique Valliere from Confront. I  
22 understand that Ms. Valliere is someone who counsels  
23 perpetrators, victims, and families. So Dr. Valliere, we  
24 welcome you. And you may proceed at any time. Thank you.

25           DR. VALLIERE: Good morning. Thank you for



1 inviting me here. I'm a psychologist. And I come to this  
2 from a psychological angle. And I understand and defer to  
3 all of the valid legal criticisms that have made -- that  
4 have been made by the judges and Ms. Eidelman.

5 But my perspective is for the advocacy of the  
6 children and protection of the children. I really  
7 wholeheartedly support the collaborative mission of these  
8 bills to expedite and enhance the efficacy of dealing with  
9 these family matters.

10 I work with family violence in a variety of  
11 contacts, in divorce matters, marital counseling,  
12 dependency hearings with abuse. I work with perpetrators,  
13 victims, witnesses of domestic violence, sexual assault,  
14 child physical abuse.

15 And there are many things in this bill that I  
16 think will help my job and help my mission, which is to  
17 increase the advocacy for protection of children. Children  
18 in any matter are the most vulnerable parties. And their  
19 helplessness, their powerlessness, and their loyalties to  
20 their parents I see constantly manipulated and exploited by  
21 the parents and misunderstood by the system.

22 It's necessary to increase this kind of  
23 advocacy as well as increase the understanding of trauma on  
24 children and family violence and family systems on  
25 children. We rely on children a lot to protect themselves,

1 to be able to verbalize what's happening in their home  
2 despite the consequences to them, despite the recognition  
3 of trauma and the job of the child to love and protect the  
4 parents no matter what.

5           So right now, I believe that the court system  
6 and the family court system really is an abysmal model of  
7 how to provide for children a healthy means to understand  
8 what collaboration is, cooperation, communication. The way  
9 the family court system is set up replicates, in my  
10 opinion, some of the dynamics of the abuse that the child,  
11 by the time they get -- their families get to this point,  
12 have already witnessed, taking sides, throwing threats, the  
13 person with the most money and the most power and the most  
14 domination wins.

15           And that is the ultimate dynamic of abuse,  
16 whether it's sexual abuse, physical abuse, domestic  
17 violence. And children, whether they're victims or  
18 witnesses of this type of abuse, I believe see it  
19 replicated over and over again in the systems that are  
20 supposed to help them and protect them.

21           And so we ask families to provide environments  
22 for children that we can't provide as objective systems.  
23 And it worries me a lot. Basically, often I've seen the  
24 family court system provide a validated forum for support  
25 for the perpetrator, support for the kind of adversarial

1 warring that the children witness in their own home.

2           We have to do something about that. Divorce  
3 and child custody, they don't typically occur in the  
4 framework of cooperation and collaboration, honesty. They  
5 occur in the same framework that abuse does. The person  
6 who's loudest, who can afford the most, who tells the best  
7 lies, who hides the best, that's the person who continues  
8 to confuse and control the situation.

9           There are many facets of this bill that I  
10 believe will alter the functioning of the court. Now, how  
11 these facets get worked out and, you know, giving respect  
12 to some of the criticisms of the practicalities and  
13 resources that exist, I believe that there are many things  
14 that I've outlined here that are very important to ensure  
15 that families get managed the best way possible and  
16 children get protected in the court system.

17           It's a difficult balance to balance the rights  
18 of the parents, the realities of abuse, and how abuse goes  
19 on in families -- they're pretty disgusting realities  
20 sometimes -- and the protection of children. First of all,  
21 the timeliness is crucial.

22           Families come to the court in times of crisis.  
23 And often, the first movements that are made, whether it be  
24 PFA orders or a custody battle or filing for divorce, are  
25 made in the time of crisis. If the court has some means to

1 intervene in that time of crisis -- in psychology, we call  
2 these family boundaries. The family boundaries or the way  
3 the system is is most open to outside intervention and  
4 investigation.

5           New police intervention protocols in a  
6 domestic violence incident talk about counseling and  
7 interviewing children right at the time of crisis,  
8 interviewing the partners because statements made at the  
9 time of crisis will no longer be available two weeks down  
10 the road when the crisis is over.

11           And what we see psychologically and, you know,  
12 in the family culture is that when the crisis abates, the  
13 culture closes again; and the family regains the  
14 homeostasis. The bruises heal, the children get bribed or  
15 manipulated or swayed into feelings of safety, loyalties  
16 get drawn.

17           And the timeliness is very important not just  
18 because it's a better time to intervene and evaluate but  
19 because in general, you know, children think it's eons  
20 until Christmas when it's Thanksgiving. So for children to  
21 go through this for months and months and years and years,  
22 they don't get it. They can't get it developmentally.

23           Along with that is timeliness is really  
24 crucial in terms of healing. Children go through  
25 development very different than adult. A year in a child's

1 life at a critical time can influence their development  
2 through their lifetime, where a year in our life seems to  
3 go by relatively quickly anymore.

4           The team approach I think is also very  
5 critical. One of the dynamics in abuse and in family  
6 dysfunction is that there's a lot of manipulation. People  
7 are drawn to sides. And the more people involved in  
8 the -- in the resolution process, the more power that  
9 people have to manipulate, change stories, protect their  
10 image.

11           It is very important for a team to develop and  
12 find their own consistent fund of knowledge, understand,  
13 work together, collaborate, trust each other. And all  
14 those things that fragment a team fragment families. And  
15 so when consistency and integrity and solidarity in an  
16 approach can be communicated to families and children, it  
17 models -- first of all, it models a healthy way to resolve  
18 problems.

19           But it also allows the team to see how this  
20 family unfolds in a history and how people, especially very  
21 abusive people, can maintain an image in a certain  
22 particular context that breaks apart when you stay with  
23 that person or that family over time.

24           Thirdly, education. As an expert, I find -- I  
25 think that part of my task in giving opinions is to educate

1 the system about abuse and violence. And there's much  
2 miseducation, biases, stereotypes, and just plain  
3 misunderstanding about the process of abuse, disclosure,  
4 child development, how perpetrators operate.

5           And education is really critical. Some of the  
6 things that look like common sense or the ways we evaluate  
7 people day-to-day are just not applicable when it comes to  
8 evaluating perpetrators of abuse or victims of abuse. And  
9 abuse itself creates paradoxes in human behavior that don't  
10 guide us the way -- and don't guide our judgments the way  
11 they need to.

12           And very often, that education mitigates those  
13 biases and stereotypes. I think that while we can't hold  
14 judges and masters and people in the court responsible for  
15 being experts on abuse and family dysfunction, we can  
16 educate them enough to evaluate the opinions that are  
17 offered more wisely, to ask the right questions and to make  
18 more proactive orders in terms of custody and evaluation,  
19 home studies.

20           Advocacy for children is the fourth point.  
21 Often, it is only when children are victims themselves that  
22 they get advocates or in cases that happen to have  
23 guardians appointed. We need to understand that every  
24 child, whether they're abused or not, an abusive family has  
25 witnessed and then even a secondary victim of the abuse

1 that goes on.

2           Often, we focus on only the victims of the  
3 violence. And the children or siblings -- whether the  
4 child or the parent was a victim of the abuse, the children  
5 or siblings are left out from the kind of advocacy that  
6 they need. And often, the children who are unabused become  
7 bigger players in -- or bigger soldiers in the war here.

8           A guardian can ensure that children are not  
9 put in the position to make choices for their own safety.  
10 We ask children to be -- tell us, Do you want to see your  
11 Daddy anymore? Well, all children say yes, even if they  
12 are being hit, even if they're being raped. It doesn't  
13 matter to children.

14           To many children, the abuse, even if it is in  
15 their development the most tragic thing that can be  
16 happening in their day-to-day experience, children have a  
17 way of compartmentalizing good daddies and bad daddies,  
18 good mommies and bad mommies so that they're able to say  
19 that they love and they're able to attach to parents who  
20 are very detrimental to them.

21           And when we ask them in child custodies, Do  
22 you want to never see your dad or mom again, they don't say  
23 no. And educated guardians can help -- can help the child  
24 and protect the child from their own loyalties and  
25 understand the process of trauma bonding that goes on

1 between a child and an abusive parent so that we don't ask  
2 the children to protect themselves and we don't ask them to  
3 compromise their emotions in a public place if they can't;  
4 that the guardian will still advocate for their protection  
5 even when they can't advocate for themselves.

6           The focus on long-term protection from  
7 violence, very often the court is shortsighted and does  
8 short-term interventions without understanding the  
9 long-term needs. Children are placed back into homes when  
10 crisis is abate, when PFAs are dropped.

11           Violence is seen as a short-term crisis  
12 when it's really, in very dysfunctional families, a  
13 long-term pattern of abuse. A focus on long-term  
14 perfection -- protection from violence will help the court  
15 understand that very different things need to happen in  
16 evaluations of systems.

17           As a psychologist, I was not trained in family  
18 violence. I made that my specialty and continue to learn  
19 and be humiliated with my ignorance of how abuse happens.  
20 But one thing I understand is that what I have been taught  
21 in how to assess people, their personalities, the best  
22 interests of the child has never taught me about how to  
23 assess risk, perpetrators, so that the court needs to  
24 understand that with a focus on protection from violence,  
25 general psychology, general child custody doesn't work.



1                   Perpetrators present in a psychological  
2 profile as normal. We don't know. We can't give them an  
3 MMPI and find out if they're going to be violent. And the  
4 court can focus on providing appropriate risk assessments  
5 for domestic violence, using appropriate experts to  
6 evaluate abuse, sexual assault, trauma. That is a very  
7 specialized thing that we're not trained in.

8                   A focus on long-term protection of violence  
9 will help the court support long-term intervention,  
10 long-term family support and treatment and understand that  
11 abuse doesn't stop because someone makes a promise or  
12 apologizes or feels guilty. Abuse, when it occurs in a  
13 family, this kind of dysfunction is much more complex and  
14 long-standing.

15                   Resources for the family, just quickly.  
16 Typically, what I've seen is in very dysfunctional  
17 families, the oppressor has the money, the power, the  
18 friendships, the social supports to gain what they need to  
19 fight in the court system.

20                   The person who needs the most support does not  
21 have that. I've worked with women who can't even get a  
22 checkbook or a credit card or a driver's license, yet she's  
23 taken into the court system and has to advocate for  
24 herself. And the biggest dog wins sometimes, the meanest  
25 lawyer, the craftiest, the person with the most resources.

1 We can't support that in a family.

2           Finally, the focus on collaboration and  
3 resolution. Again, I reiterate that this provides a very  
4 appropriate role model for children when they're seeing the  
5 people who are supposed to stand up act in ways that they  
6 hear they're not supposed to act but they see their own  
7 parents acting.

8           Often, what the court does and the systems  
9 involved is provide a role model for the children on if  
10 they're experiencing things wrong in their family, they can  
11 see that other people will hold up the principals of what's  
12 right.

13           I really appreciate that I'm able to be here.  
14 And I do know that this is a very complicated issue with  
15 limited resources, but the spirit is here. And the  
16 recognition that children need to be protected is  
17 important. I just hope we provide a system that doesn't  
18 allow the different sides to cloud the issues for the best  
19 interests of the child. Thank you.

20           CHAIRPERSON COHEN: Thank you, Dr. Valliere.  
21 Thank you very much for your testimony. It is indeed  
22 meaningful and touching to us. And one of the primary  
23 reasons that we are here and engaged in this legislative  
24 process is because the end result of a very painful  
25 situation among adults is that the children suffer most.

1           And one of our major obligations is to protect  
2 the citizens of the Commonwealth who cannot protect  
3 themselves. So we really appreciate your input.  
4 Representative Browne, I believe, has a question or  
5 comment.

6           REPRESENTATIVE BROWNE: Thank you. Thank you,  
7 Madam Chairman. Thank you for your testimony. On the  
8 issue of timeliness --

9           DR. VALLIERE: Yes.

10          REPRESENTATIVE BROWNE: -- the prior testifier  
11 had said that the six months as mandated in the bill  
12 regarding resolving cases in family court was too onerous.  
13 What is your feelings on that?

14          DR. VALLIERE: In terms of a full resolution,  
15 it may be. But sometimes the important thing is to start  
16 and start immediately. And if -- if there's some  
17 complicated issue going on in terms of resolution, like,  
18 you know, people aren't cooperating, that's -- from my  
19 point of view when I'm ordered to do a child custody,  
20 sometimes it takes weeks to get people to cooperate.

21          And that's not acceptable. So I don't know if  
22 it would ever take me six months to come to a resolution.  
23 But maybe if resolution can be thought of as by six months  
24 there should be a certain track that this family's on for a  
25 resolution, the treatments are in place, are recommended,

1 the orders are made, things are in process.

2           And the intervention that -- immediate  
3 intervention needs to be done quickly. Home studies that  
4 occur a year after the parents are -- they're meaningless.  
5 Sometimes the trauma's capped over or the secrets get  
6 buried again.

7           So I can understand that six months is a very  
8 short time to get a whole lot of things done. But  
9 something needs to be set in stone by six months, I think.

10           REPRESENTATIVE BROWNE: Thank you very much.

11           CHAIRPERSON COHEN: Counsel Dalton, I believe,  
12 has a question.

13           MS. DALTON: Yes. And before we talk, may I  
14 just call you Nicki because you're actually a friend of  
15 mine?

16           DR. VALLIERE: Yes.

17           MS. DALTON: And it's great to see you here.  
18 I just want to address something that was raised by  
19 Representative Browne and also raised by Master Eidelman.  
20 When we talk about six months, we're talking about a goal.  
21 It doesn't say you must have everything resolved within six  
22 months. It's a goal of the legislation.

23           And that number was not taken arbitrarily. A  
24 lot of the components of this legislation were taken from  
25 the largest family court in the nation, New Jersey, where

1 the system actually works. The other parts of the  
2 legislation were taken from other states' legislation  
3 around the -- around the country.

4 Some of them that come to mind are Hawaii,  
5 Maryland, a couple pilot projects in I believe Delaware and  
6 Kentucky. I wrote this a while ago. So it's hard for me  
7 to remember all the states. But in any case, a lot of  
8 these ideas came from those states where these -- where  
9 these components actually work.

10 So we've seen them work around the country.  
11 So the idea here is to establish a track and team approach.  
12 So we have a team lead by a judge, one team, one judge per  
13 family. And what happens is the family comes in. There's  
14 a lot of information given up front in this family  
15 information system to the court.

16 So the court knows ahead of time income,  
17 whether there's been any history of family violence,  
18 insurance information, a lot of stuff that needs to  
19 be -- that needs to happen so that -- so that the case can  
20 move along smoothly. It's assigned to a track based upon  
21 the complexity of the case.

22 If it's very simple, it goes on the simplified  
23 track; and we get it done with. If it involves issues of  
24 child custody, it goes on the expedited track because where  
25 there are kids involved, there's no time to lose. We get

1 it done. When it's going to be protracted because of  
2 issues of -- of evidence or complex discovery, it goes on a  
3 track that deals with that sort of thing so the team can  
4 manage the case aggressively from start to finish.

5           The idea also is to have continuous trials.  
6 You had mentioned to me about oftentimes you start a  
7 case -- a trial in one day in January and the next time you  
8 get together, it's in March. And then after that, the case  
9 doesn't -- doesn't come back to court again until April and  
10 maybe June. And it goes on and on and on.

11           We've heard masters across the state say that  
12 that's a bad thing. We also make allowances for something  
13 called tentative decisions so that the judges can make  
14 decisions based upon the filings already made, eliminating  
15 needless motions practice.

16           So that's -- that's what we're talking about.  
17 It may take longer than six months, but that's -- that's  
18 the idea. Now, if I could just make a comment based upon  
19 what you said. I am delighted that we get a perspective  
20 from someone who actually treats kids that have been  
21 harmed, that we get a perspective from someone that treats  
22 perpetrators and families of victims and families of  
23 perpetrators.

24           The whole idea behind this bill incorporates,  
25 I think, some methodology from the psychological field.

1 And that's the concept of therapeutic justice. Michael  
2 Town of Hawaii, who's their preeminent family court  
3 justice, came up with that term.

4 And it's our attempt, Representative Cohen's  
5 attempt and the members of the Task Force's attempt to  
6 incorporate this concept of healing into the court  
7 procedure. So that's what we're trying to do. And I am  
8 just delighted that you are able to bring this -- this  
9 testimony to us today.

10 DR. VALLIERE: Thank you.

11 CHAIRPERSON COHEN: Dr. Valliere, again, thank  
12 you so very much for this very significant testimony.

13 DR. VALLIERE: Thank you.

14 CHAIRPERSON COHEN: The next person to appear  
15 before us is Harold Funt, who is the President of the Bar  
16 Association of Lehigh County. Welcome, Mr. Funt. Thank  
17 you for being here. And you may begin at any time.

18 MR. FUNT: Thank you. Members of the Task  
19 Force on Domestic Relations of the House Judiciary  
20 Committee, first I want to thank you for giving me the  
21 opportunity to testify today concerning House Bill 1976 and  
22 House Bill 1977, the Task Force's proposed legislation to  
23 reform the Pennsylvania State Family Court System.

24 I testify not only as the President of the Bar  
25 Association of Lehigh County but also as a Pennsylvania

1 family law practitioner for more than 20 years. I view  
2 this legislation with very mixed emotions. First and  
3 foremost, I strongly endorse many of the major reforms  
4 proposed in this legislation.

5           However, many of the crucial reforms suggested  
6 by this legislation should come from the rule making  
7 authority of the Pennsylvania Supreme Court and not the  
8 Legislature. Insofar as I interpret the legislation to  
9 empower the Legislature with exclusive rule making  
10 authority over Pennsylvania family court practice, I  
11 believe it is fatally flawed.

12           I do, however, believe and hope that this  
13 legislation serves as a wake-up call to the Pennsylvania  
14 Supreme Court because our family court procedure is in dire  
15 need of reform. The single most important reform addressed  
16 by this legislation concerns the idea of assigning a judge,  
17 together with a case management team, to follow a case  
18 through the court system.

19           The implementation of this procedure in the  
20 Pennsylvania family court system, while not necessarily a  
21 panacea, will help more than any other reform I can think  
22 of to minimize the inconsistencies, abuse, neglect and  
23 delay which too often plague family court litigation.

24           A threshold issue which this legislation does  
25 not address is, Where do we get the money to implement this



1 necessary reform? I believe, for example, that Lehigh  
2 County has in fact implemented some of the reforms  
3 mentioned in this legislation.

4           Our family court has a mandatory mediation  
5 program in custody matters and mandatory co-parenting  
6 classes for divorce or custody litigants where there are  
7 minor children. At the same time, Lehigh County has too  
8 few judges who have the time to devote themselves to family  
9 law cases, only one divorce master and two custody hearing  
10 officers.

11           There is simply no way the unified court  
12 reform envisioned by this legislation could be implemented  
13 at the present resource level. If we're going to be  
14 serious about family court reform, we need to understand  
15 and be willing to allocate the required dollars to  
16 implement a user-friendly family court system.

17           The proposed legislation imposes upon each  
18 judicial district the requirement to provide courtrooms and  
19 employees in sufficient number to implement the envisioned  
20 family court adjudication system. I do not know exactly  
21 how many judges and family law masters would be required in  
22 Lehigh County to implement the proposed family court  
23 system, but I cannot imagine its implementation without at  
24 least two more judges and two more family law masters.

25           These additional judges and masters will

1 require the allocation of additional space, support staff,  
2 furniture and equipment to do their jobs. Every judicial  
3 district with which I am familiar would need at least to  
4 double or triple resources to implement the reforms called  
5 for in this legislation. Without a statewide infusion of  
6 money, these well-intentioned reforms will remain a pipe  
7 dream.

8                   Please strive to make this legislation  
9 workable. Please involve the Pennsylvania Supreme Court.  
10 And in that respect, I would think the active support of  
11 the local and Pennsylvania Bar Associations should be  
12 helpful.

13                   Finally, protection from abuse actions should  
14 be folded into any meaningful reform of the family court  
15 system and I believe should be incorporated into this  
16 proposed legislation. I thank you for the opportunity.

17                   CHAIRPERSON COHEN: Thank you, Mr. Funt. I  
18 really do appreciate your being here. We've been -- I wish  
19 you were here earlier. At the last hearing, I did a 15- or  
20 20-minute monologue on why we have proposed this  
21 legislation and really the abominable position of the court  
22 system. So I won't bore everybody with it.

23                   I will only summarize by saying to you that  
24 we've been working on this issue for about six years. When  
25 we first started, we felt that there was no need for

1 legislation, that the court could handle this on its own.

2 And indeed, I still believe that.

3           However, we have 12 million people in this  
4 Commonwealth, all of whom have in some way, shape or form  
5 been touched by the domestic relations abominations in this  
6 Commonwealth, either themselves or relatives, friends, et  
7 cetera.

8           What I find very interesting is that since  
9 this legislation's been introduced and we have been working  
10 with the entire court system from the Supreme Court on down  
11 begging for reform, nothing's happened until we introduced  
12 this legislation.

13           And all of a sudden, across the Commonwealth,  
14 we now have courts working and working and working. The  
15 only system that was in place actually before we started  
16 was Judge Baer in Allegheny County. What we have  
17 determined -- and I think you heard Counsel Dalton  
18 addressing the prior witness that we have been studying  
19 this for six years not only here in the Commonwealth but  
20 across the nation.

21           And we've been working with folks from other  
22 states and indeed Canada, et cetera, to devise the best  
23 system for what I think, since I've lived here for 59  
24 years, for the best Commonwealth and the best state in the  
25 Union. The situation is deplorable.

1           We are working. And we respect and understand  
2 that in order to implement the system, it's got to be  
3 funded. We have begun implementing the unified court  
4 system. And as an attorney and member of the Judiciary  
5 Committee and I'm also a member of the Appropriations  
6 Committee, and we will be conducting hearings and have the  
7 court make a presentation to us.

8           We understand this procedure has to be funded  
9 if it's to work. And we fully respect that. So that it is  
10 our goal as representatives of 12 million people in this  
11 Commonwealth to make sure that they don't suffer any more  
12 than they're suffering on a personal basis; that they don't  
13 come to the government and find that as bad as their  
14 domestic situation was, the courts have exacerbated it and  
15 made it even worse and made their suffering prolonged and  
16 costly, et cetera. And of course, the children suffer more  
17 than anybody.

18           So I think you've hit the nail on the head.  
19 It does require funding. It does require working with the  
20 court system. And again, I find it extraordinary that all  
21 of a sudden we find 67 counties beginning to implement all  
22 of these reforms suddenly since these bills have been  
23 introduced.

24           So we've given a kick to the system. But we  
25 want to make sure that it's written in stone, that the

1 court can't implement any kinds of reforms and then  
2 backtrack if we backtrack from the legislation. It's been  
3 done before. We have no intention of violating it in any  
4 way, shape or form, any kind of respect that we have for  
5 the separation of powers.

6           But what we want is justice for the citizens  
7 of this Commonwealth, and it should be in law. We have no  
8 intention to take over the domestic relations duties and  
9 obligations constitutionally imposed upon our judiciary.  
10 However, through constitutional amendments, we have made  
11 certain restrictions, if you will, and mandates upon the  
12 courts as we've done with so many other articles written in  
13 stone.

14           As you know, the First Amendment to the United  
15 States Constitution, freedom of speech, the courts and the  
16 legislatures have indeed imposed restrictions upon that.  
17 It's not a clear blatant mandate, the first, second, any of  
18 the constitutional amendments.

19           And so through House Bill 1976, we will impose  
20 a constitutional amendment. And that goes to the people.  
21 And the people have to speak up and say, Have we been  
22 treated fairly by the courts or haven't we? And I bet you  
23 dollars to donuts, House Bill 1976, when it's put on the  
24 ballot, the people indeed will speak up and say, Yes, we  
25 want court reform.

1           So we want to address your comments. And  
2 hopefully, we'll be able to fund these procedures and make  
3 sure that the law says that the people of this Commonwealth  
4 going through a painful, painful situation will be treated  
5 fairly; justice will not be denied; and it will be  
6 expeditious and cost-effective. And that's what we hope  
7 for.

8           MR. FUNT: And I join you totally with that in  
9 that hope. As an attorney emphasizing family law practice,  
10 I can tell you the number of people who come to me for  
11 help. And I've always felt that the family court  
12 system -- I mean, I don't think there's another part of the  
13 system which touches so many of the people as the family  
14 court system.

15           That's how most people are involved with our  
16 legal system. And they have so little idea of how  
17 difficult it is to get the judicial process geared up to  
18 help them. There is this feeling that if I have a  
19 problem -- and rightfully so -- I've got to go to the  
20 courts to deal with it because that's -- that's where the  
21 power lies to do it.

22           So therefore, when I go in, there's going to  
23 be somebody there in a timely manner and in a meaningful  
24 manner to address my concern. And it becomes the plight of  
25 the attorney often to try to explain the problems that

1 person is going to encounter in getting their problems  
2 resolved promptly, fairly, fully through the court system.

3           So as a practitioner within that system, I  
4 have a deep frustration working within it. And I am sorry  
5 for so many of the clients, the individuals who are harmed  
6 by the system and particularly the children who are injured  
7 the most through the court involvement.

8           And at the same time, I would say that the  
9 people, the judges and the masters and the custody masters  
10 that we do have I think struggle mightily as best they can  
11 under the system as it now exists. And that's why I think  
12 it is so important that if we're going to have this reform  
13 and it really is going to be there and make a difference,  
14 that it be funded to the level that it needs to be.

15           And that's why I emphasize that. And I thank  
16 you for bringing this issue to the forefront and being the  
17 catalyst to get something going.

18           CHAIRPERSON COHEN: Don't leave. I think,  
19 Representative Browne, do you have a --

20           REPRESENTATIVE BROWNE: Just very briefly.  
21 Thank you, Madam Chairman. Thank you, Attorney Funt, for  
22 your participation today. I'm just curious about your  
23 opinions -- excuse me -- on the family resource center  
24 and the volunteerism provisions in the bill with regards to  
25 your leadership in the bar association.

1           MR. FUNT: I think that in terms of the family  
2 resource center, I, first of all, am a -- believe that we  
3 should make our systems user-friendly, especially the  
4 family law system, family court system. So to the degree  
5 that a resource -- I -- I accept and understand the  
6 proposal and support the proposals.

7           The family resource center I think is  
8 necessary to help people understand what the system can or  
9 cannot do for them. I also enjoy the -- I don't want to  
10 use the word enjoy -- but I appreciated the inclusion of a  
11 day-care center, for example, within the family resource  
12 center because it may be what is a simple overlooked point.

13           What do you do with your kids when you're  
14 going into court to testify? I mean, you know, we see  
15 relatives coming in. The kids shouldn't be in the  
16 courtroom. They should be out of the courtroom. Where are  
17 they going to be? Who's going to watch them?

18           And it creates an incredible amount of  
19 additional stress upon what is already a stressful  
20 situation. So I think it's well thought out. And I do  
21 think there would be volunteer attorneys giving their time,  
22 as I think attorneys doing pro bono work in all different  
23 areas, for the purposes of the family resource center.

24           So I think there would be general support  
25 among the bar for those ideas.



1                   **REPRESENTATIVE BROWNE:** Thank you very much.

2 Thank you, Madam Chairman.

3                   **CHAIRPERSON COHEN:** Again, I have to keep  
4 mentioning Judge Baer in Allegheny County because that's  
5 exactly the procedure that he has implemented. Our goal  
6 is, when we say one family/one judge/one team, that you're  
7 in court once, you tell your story once.

8                   We have found -- and you in the practice  
9 know -- that you tell your story. And then you have to go  
10 back and repeat it. And particularly, the children are  
11 dragged back to tell their story to another stranger over  
12 and over and over again.

13                   **MR. FUNT:** Absolutely.

14                   **CHAIRPERSON COHEN:** Interestingly, in having  
15 our discussions with attorneys all over the state, domestic  
16 relations counsel and the support that we've gotten from  
17 them, they understand. And I think it was a surprise to  
18 Counsel Dalton and I that by expediting this whole  
19 procedure, it certainly will cut down on your fees and your  
20 time.

21                   And yet the bar association and members of the  
22 domestic relations bar have been so supportive of the  
23 procedure. So we certainly appreciate that.

24                   **MR. FUNT:** There's no joy among the vast  
25 majority of family lawyers to obtain fees because of the

1 delays and frustrations that our clients feel from the  
2 court system. We get no pleasure out of that. And  
3 clients, you know -- and it's a difficult position  
4 sometimes as an attorney.

5           And with experience, I've gotten very careful  
6 to explain to clients what to expect because I don't think  
7 anybody going into the court system has any idea the first  
8 time they walk into a -- a de novo support hearing -- which  
9 we call happy court because nobody comes away happy -- that  
10 there are 60 or 70 cases on the list and these cases are  
11 tried in front of, you know, 40 or 50 or 60 or 70 people.

12           They're observing these people's personal  
13 problems. And it is entirely just -- just a horrific  
14 situation that I would love to see addressed and changed.  
15 We, as family law practitioners, often feel like the  
16 stepchildren, quote/unquote, of the families of the court  
17 system.

18           This case can't be heard because we've got a  
19 criminal court case that has to be heard. And we have 180  
20 days to hear that case. So we're going to put yours aside.  
21 And some judges just frankly do not like to get involved  
22 with the emotions and the difficulties of dealing with  
23 family court litigation.

24           So it's tough. I wrote a letter about three  
25 or four years ago to Judge Reibman asking for, you know, to

1 the -- for the implementation of the unified court system,  
2 one judge/one case. And he supports it. But it's not here  
3 because we don't have the resources to implement it.

4           So I truly support what you're trying to do.  
5 And I appreciate your bringing this problem to the  
6 forefront because it really -- the idea that somebody can  
7 go through the court system seeking help and come out more  
8 greatly harmed because of what the system has done to them  
9 is appalling. I thank you.

10           CHAIRPERSON COHEN: Thank you so very much.  
11 The next folks to appear before us, we have Reese Lessig,  
12 Master of Social Work, and Carol Haupt. Just Reese. Okay.  
13 They are from the Forensic Consulting Associates. Welcome.

14           MR. LESSIG: Good morning.

15           CHAIRPERSON COHEN: Any time you want.

16           MR. LESSIG: Good morning, Chairman Cohen,  
17 members of the Committee and Task Force. Thank you for the  
18 opportunity to be here today to provide testimony on House  
19 Bills 1976 and 1977. My area of expertise is in the field  
20 of physical and sexual assault, specifically the evaluation  
21 and treatment of perpetrators and victims of these crimes.

22           In my work, I advocate for victims, many of  
23 whom are children. Most of these children have been  
24 through various court procedures, including family court.  
25 Although I place myself in a position to help them, they

1 are the ones who have been my most influential teachers.

2 I want to provide you with an understanding of  
3 the process from their perspective. In reviewing the  
4 proposed legislation, I learned something interesting about  
5 myself; that is, when I want to criticize something, I seem  
6 to have difficulty condensing everything that I have to  
7 say.

8 However, when I like something, I seem to have  
9 difficulty finding things to say. Hence, my comments are  
10 going to be brief. With regard to the streamlining of the  
11 family court system, I can see nothing but benefit. Most  
12 adults who involve themselves in family court proceedings  
13 have an inaccurate concept of the time and effort it takes  
14 before there is resolution.

15 Children who are involved in these proceedings  
16 have practically no idea of time. They are concerned with  
17 the events of the day, not things that will take several  
18 months. They also have no idea of the kinds of things that  
19 cause their parents to separate. They are confused or  
20 afraid or angry or guilty.

21 The longer these feelings fester without  
22 resolution the more difficult the resolution of these  
23 feelings becomes. The idea of a one team/one judge/one  
24 family approach should be helpful in this regard. In my  
25 work, as in many professions, we have fancy words for

1 simple concepts.

2 A phenomenon we frequently see in family  
3 litigation is what we would call splitting. Splitting is  
4 when a person attempts to get what they want by causing two  
5 other persons to engage in conflict. Incidentally, family  
6 therapists call that triangulation. Take one, you pit one  
7 against the other, and you get your own way, if you need  
8 more fancy words from a social worker.

9 We learn this as children when we say, If my  
10 mom won't give me my allowance early because she knows I  
11 didn't earn it, I'll ask my dad for it. As adults, we  
12 sometimes hire attorneys to engage in splitting for us.  
13 For example, if I have to pay more than I think I should on  
14 child support, I will be more aggressive in obtaining  
15 custody.

16 Since these matters are currently held before  
17 different judges or masters, they could easily not see the  
18 connection between my actions. I stand a better chance of  
19 success and am more likely to do it this way. A single  
20 team could go far in eliminating splitting in the court  
21 system.

22 For the children involved, this will lessen  
23 the confusion and anxiety associated with this behavior.  
24 And it will protect them from prolonged or unnecessary  
25 litigation. And to depart from my written comments for

1 just a minute, while I was sitting there, I thought of a  
2 reasonably heinous example, an experience I had with family  
3 court.

4 A father sexually abused his daughter. She  
5 was a young child. The Office of Child and Youth were  
6 involved, and they asked him to leave the house  
7 voluntarily, which he did, and enter treatment, which he  
8 did. They asked him to have no contact with the victim,  
9 his daughter.

10 He complied with that for a period of time.  
11 There was no criminal prosecution because the victim was  
12 too young to testify. And at some point, the perpetrator  
13 decides he wants visitation. So he schedules a custody  
14 action.

15 The person treating him not allowed to testify  
16 about his risk to this child. The person treating the  
17 child not allowed to testify about the child's experience  
18 of this. Children and Youth not involved. And he's  
19 granted visitation of his daughter.

20 With the one judge/one family system, that  
21 would never happen. And the court could be much more  
22 effective in protecting children. So back to my comments.  
23 In my specific area, that of abuse, the proposals for  
24 judicial education and appointment of a guardian ad litem  
25 are greatly appreciated.

1           In looking at judicial education, we often see  
2 psychological evaluations ordered for suspected offenders.  
3 While we are still developing accurate assessment tools,  
4 one thing we do know is that a traditional psychological  
5 evaluation is nearly useless in providing the court with  
6 meaningful information regarding the risk an individual  
7 poses to harm children.

8           Most convicted sex offenders will appear  
9 normal on traditional measures of psychopathology. More  
10 skilled offenders will be able to give several different  
11 psychological profiles, all of which are valid. There are  
12 better methods and tools available to give the court the  
13 information it needs regarding the risk of children being  
14 harmed by a particular individual. Education can put this  
15 information at the court's disposal.

16           The appointment of a guardian ad litem for  
17 those children involved in cases where there is alleged or  
18 established abuse is crucial to their protection and to  
19 minimize the damage that will occur. In these types of  
20 cases when one parent is accused of abuse, the other parent  
21 is usually outraged.

22           However, the child is usually confused and  
23 feeling somewhat responsible for the abuse, the outrage, or  
24 both. Children do not have the intellectual or emotional  
25 ability to process these things. They're in desperate need

1 of advocacy that is independent from the conflict.

2 Another area that is frequently overlooked is  
3 domestic violence. This has been demonstrated in the  
4 literature to have extremely adverse effects on the  
5 children who witness it, yet they are not often viewed as  
6 being victimized by it.

7 When you have a child come to your office and  
8 say, I'd rather have him hit me than hit my mom, you get a  
9 sense of the helplessness and entrapment that a child in  
10 this situation feels. A guardian can represent these  
11 interests when no one else can.

12 Most of the children I have worked with feel  
13 caught in the middle between parents whom are warring with  
14 each other. Each parent has competing interests, and each  
15 parent may feel that they are acting in the child's best  
16 interest. For the child, it's incomprehensible that a  
17 mother who loves them and a father who loves them want two  
18 different things for them and that each believes their way  
19 is best. They, the children, crave two things:  
20 Cohesiveness and an end to the confusion.

21 Finally, my experiences in dealing with  
22 children who have been abused have taught me that although  
23 they are resilient beings, they are also damaged by  
24 maltreatment. They have told me that the most difficult  
25 part of their recovery has been the emotional healing.



1           It seems as though the physical pain abates  
2 long before the emotional pain does. They have also taught  
3 me that they essentially live with confusion and  
4 helplessness. They understand court as a process where  
5 other people decide what will happen to them without  
6 knowing what it is like to be them.

7           They want consistency, clarity, and speedy  
8 resolution. They want to know what is happening and how it  
9 will affect them. The aspects of this proposed legislation  
10 seem to go a long way toward protecting the children  
11 involved in the family court process. Thank you for your  
12 consideration of my comments.

13           CHAIRPERSON COHEN: Thank you, Mr. Lessig.  
14 While I'm listening to you and reading your remarks, I  
15 suddenly felt overwhelmed. We've been, as I keep saying,  
16 working on this for at least six years. And we have held  
17 public hearings all over the Commonwealth.

18           We have heard from judges, attorneys, victims,  
19 and professionals who deal with the psychological effects  
20 of domestic violence. And we've heard from many people,  
21 you, and we've heard Dr. Valliere and we've heard from  
22 several people today.

23           What is suddenly feeling as an enormous  
24 weight upon me is that after hearing from so many  
25 counselors -- and I don't know what your volume is on an

1 annual basis, how many people you hear from; but obviously,  
2 it's a lot.

3 MR. LESSIG: In total, adults and children,  
4 hundreds divided up perpetrators and victims. Sure.

5 CHAIRPERSON COHEN: And if you multiply the  
6 numbers that you deal with merely by the numbers that the  
7 people that we've heard from deal with, it's into the  
8 thousands and thousands and thousands.

9 MR. LESSIG: Oh, yeah.

10 CHAIRPERSON COHEN: And so what is  
11 overwhelming to me is the volume and the number of people  
12 suffering because two people don't get along. And again,  
13 as legislators, that's our job. That's another one of our  
14 jobs, to make sure that our unprotected folks, our kids,  
15 our children, that we do what we can by way of legislation  
16 to help them to become productive and, quote, normal happy  
17 people.

18 So I think you've again honed in on something  
19 that we have to do to provide healing for an unprotected  
20 group of our citizens. And I thank you. I think Counsel  
21 Dalton has some questions or comments.

22 MS. DALTON: Thank you. I also want to thank  
23 you for coming today and giving us the benefit of your  
24 experience. We talked before about the impact of family  
25 breakup on kids and what court is like, what the court

1 procedures are like.

2 I mentioned Michael Town before, the judge  
3 from Hawaii who coined the term "therapeutic justice." He  
4 also talked about something called juragenic process. And  
5 he takes that term juragenic -- and I don't know the --

6 MR. LESSIG: I hope you'll explain it to me.

7 MS. DALTON: I'm going to explain it the best  
8 I can. There's a similar term in the medical field, which  
9 escapes me right now because I'm getting up in years. But  
10 the whole idea is that in medicine, when there's a bad  
11 outcome, when somebody dies when they're not supposed to,  
12 there's a conference afterward among the medical staff.

13 And they go over what happened, and they try  
14 to make sure it doesn't happen again. So he's used that  
15 term juragenic for the same concept, that court processes  
16 in family court, when they're not -- when they're not  
17 organized properly --

18 MR. LESSIG: Oh, iatrogenic. Yeah.

19 MS. DALTON: Yeah. To cut down on needless  
20 and repetitious court events, fragmented court events,  
21 court officers and court employees who are not sensitive to  
22 what the folks are going through. The effect is juragenic.  
23 It hurts.

24 And so he has proposed -- and we don't have it  
25 here. But in Hawaii, they have implemented many of

1 these -- these reforms that we're going to ask the people  
2 to implement in the constitutional amendment. And he's  
3 also gone so far as to ask for a conference afterwards when  
4 the child dies because the custody order is improperly  
5 entered and a kid goes back to a parent that's abusive,  
6 that the folks get together in the court and say, How did  
7 this ever happen?

8           But just to put that on the side, I just have  
9 a question about the GALs. You mentioned that in  
10 implementing legislation to the constitutional amendment,  
11 where there is an allegation of abuse or there's evidence  
12 of abuse against any member in the family, either a  
13 guardian ad litem or a CASA, court-appointed special  
14 advocate, be appointed for the child.

15           Do you -- how do you think that that CASA or  
16 GAL will be received by the child? And how do you think  
17 that that CASA or GAL will be received by the parent where  
18 there's an allegation of abuse?

19           MR. LESSIG: I don't know. I don't know. I  
20 don't know. I can see it go in a lot of different ways.  
21 It's too hard to guess on. Sorry.

22           MS. DALTON: Okay. Well, thanks for being  
23 truthful.

24           MR. LESSIG: Sure. Yeah. I just -- yeah. I  
25 don't know. I mean, you know, when I deal with these

1 cases, everybody has their own perspective. Some people  
2 mind certain interventions more than other ones. And a  
3 generalized guess, I don't have that kind of knowledge. I  
4 just don't know. Sorry.

5 CHAIRPERSON COHEN: Thank you very much.

6 MR. LESSIG: You're welcome.

7 CHAIRPERSON COHEN: We appreciate it. Thank  
8 you. The next and last person to make a presentation to  
9 us, Patricia Dervish, Assistant District Attorney, Special  
10 Offenses Division, the DA's Office here in Lehigh County,  
11 and also former counsel for Lehigh County Children and  
12 Youth.

13 Ms. Dervish, thank you. Thank you. And you  
14 may proceed.

15 MS. DERVISH: Thank you. I'm not sure what  
16 that means, being the last one. I hope that I can add  
17 something. But quite frankly, I am -- I know Mr. Lessig  
18 and -- but I can assure Your Honors that I did not have a  
19 conversation with him before that.

20 But many of the things I say echo his because  
21 we worked in similar fields for a long time.

22 CHAIRPERSON COHEN: That's good to know, by  
23 the way, because we've had some testimony this morning  
24 that's been diametrically opposed to what we're doing. So  
25 we saved the best for last.

1 MS. DERVISH: Oh, okay. That's very  
2 interesting.

3 CHAIRPERSON COHEN: It's always nice to get a  
4 hug at the end. That's fine.

5 MS. DERVISH: That's quite interesting. As  
6 you have noted, I am Patricia Dervish, Assistant District  
7 Attorney. And I am assigned to the Special Offenses  
8 Division. And I did represent Lehigh County Office of  
9 Children and Youth Services for seven years before that.

10 In another incarnation, I was also a social  
11 worker and worked in direct services with families,  
12 particularly violent families, and taught social work for a  
13 number of years. So I bring all of those perspectives. I  
14 can't comment upon the specifics of the mechanics of the  
15 family law adjudication system for obvious reasons.

16 I'm not a family law practitioner. However, I  
17 commend the legislators and the legislation in attempting  
18 to set up this case tracking. It appears to be the one  
19 judge/one family concept. And I think it's quite  
20 commendable.

21 The reason I would add my voice to the chorus  
22 that find that to be a commendable piece of the legislation  
23 is this: At the same time that a family can be going  
24 through the family law court, it could also be facing a  
25 protection from abuse court at the same time a petition is

1 being decided. And that within the county is decided in  
2 another courtroom.

3           There could also be a dependency petition in  
4 the juvenile court being heard where issues of abuse and/or  
5 neglect are being considered. That could be another  
6 division. In fact, it could also be being heard in the  
7 criminal court at the same time. That's another division.

8           And even if the same judge -- even if this  
9 county does not go to a -- or if this piece of legislation  
10 is not implemented in such a way that it's one judge for  
11 all of those matters, the family court judge with this  
12 legislation would, I think -- it would be incumbent upon  
13 that judge to know, to know what's happening in all of  
14 those courts and to weigh the decisions that that judge is  
15 making, the family court judge is making on the other court  
16 determinations that could be going on at the same time.

17           It is obviously often very confusing for  
18 families. It's also confusing for judges when they go up  
19 on their screens and they pop up on the computer and they  
20 see, Gee, this is also being heard in all these other  
21 divisions at the same time. I wonder what those judges are  
22 deciding?

23           I commend the legislation for including the  
24 appointment of a representative for the child. Often, in  
25 the war between parents, the child's voice is mute, not

1 heard, not loud enough to get through. I think the  
2 guardian ad litem can ensure that the best interests of the  
3 child is not just a hollow promise but a first  
4 consideration by the presiding judge.

5           And I absolutely commend the mandatory  
6 requirement of appointment of a guardian ad litem if  
7 there's a history or allegation of child abuse or neglect.  
8 I think that's absolutely critical. Practiced wisdom as  
9 well as research has indicated to us that there are often  
10 allegations of child abuse during a contested divorce.

11           And often, the allegations are unfounded. But  
12 all of us would hate to see a situation in which a child is  
13 being injured either physically or sexually. But because  
14 it's within the context of a divorce, it is viewed with  
15 suspicion; and the child is left unprotected.

16           In fact, as my remarks indicate, divorce  
17 itself is a very stressful time. And because stress is  
18 often one of the factors that contribute to abuse, kids  
19 can -- kids can get injured during this time. And further,  
20 because sexual abuse is often the allegation during this  
21 time, this is the time when the offender has access to the  
22 child alone and unsupervised for probably the first time.

23           And there is access and ability, opportunity  
24 then to abuse the child. I think that the guardian ad  
25 litem, if appointed in this situation, would bring these



1 issues into focus in the family court proceeding. I  
2 commend the legislation in appointing the guardian ad litem  
3 in cases of allegations of domestic violence between one  
4 party and the other.

5 I think our new research is indicating that  
6 the child who witnesses the abuses is as affective -- or  
7 affected, if not -- the impact not being quite as  
8 strong -- as affected by witnessing the abuse as  
9 experiencing the abuse himself.

10 And there are long range consequences to this,  
11 one of them being, I think, that a child often feels  
12 silenced in these situations, wants to protect, wants to  
13 protect the abuser, wants to protect the victim. The  
14 victim may be putting pressure on the child to keep silent,  
15 to placate the situation not to have any adverse effect  
16 upon the ongoing divorce proceeding. And the guardian ad  
17 litem may serve as a voice of reason in the courtroom.

18 Now, as to the mandatory training  
19 requirements, I have been most fortunate in practicing law  
20 in Lehigh County. And we have a very, very knowledgable  
21 bench. And I believe that our bench is knowledgable about  
22 the issues I consider most important.

23 And therefore, when I read the requirement for  
24 mandatory training, it rang a bit too loudly in my ears.  
25 But I have seen cases decided on this firm knowledge base.

1 And because I have, I do think it's critical for any judge,  
2 master or mediator to understand child development,  
3 impacted decisions upon the child at his or her stage of  
4 development, to know that children are mistreated.

5 I think there are some judges across the  
6 Commonwealth -- when I go and talk around the Commonwealth,  
7 I hear there are judges who just don't believe it happens.  
8 And I think that they have to know that children, either  
9 through intent or through indifference, are maltreated by  
10 their parents.

11 I think we need to understand that the impact  
12 of child abuse is not just upon the child's body but upon  
13 the child's very being, has detrimental effects on  
14 self-esteem, ability to perform well in school, the  
15 totality of his development.

16 I would also add that there are long-term  
17 consequences for children living in abusive households,  
18 either if they are witnessing abuse or if they're  
19 experiencing abuse. And the long-term consequences are not  
20 only to the child but to the society.

21 I think we lose the benefit of that child's  
22 potential and what that child was going to contribute to  
23 the society. I think that we see children, when they grow  
24 up, are over-represented in the criminal justice system and  
25 the mental health system and in the welfare system.

1 I think that it's important for anyone hearing  
2 a case that has anything to do with the child to understand  
3 that children are our obligation and our joy but never our  
4 chattel and that they have to be protected and society has  
5 a duty to protect them from situations that are abusive or  
6 neglectful.

7 I think it's important for our judges to  
8 understand -- and I too have to constantly remind  
9 myself -- that violence is cyclical; that it isn't always  
10 a violent situation; that it moves in the cyclical  
11 patterns; and therefore, a victim may unintentionally put  
12 herself and her children back in harm's way because the  
13 cycle of violence isn't at the dangerous time at that  
14 point. It's in the placating time.

15 And finally, I think among other things, it's  
16 important that we all recognize that violence escalates  
17 without appropriate interventions. I think the legislation  
18 sets forth absolute opportunities for those appropriate  
19 interventions.

20 Finally, as an advocate for children, I'm  
21 impressed that the legislation highlights the impact of  
22 divorce upon children. It really highlights that  
23 throughout and attempts to address that through a variety  
24 of its provisions, particularly the seminar for kids with  
25 separating parents.

1 I would urge only that all decisions be made  
2 with the view through the eyes of the child. When property  
3 is divided, when a family home is sold, when vacation and  
4 visitation schedules are arranged, it's critical that we  
5 consider those through the eyes of the child.

6 And it may not augur for a different decision,  
7 but it may fine-tune the decision that's made. And I  
8 finally end by saying we never anticipated 25 years ago  
9 that we would have the epidemic of divorce that we have  
10 now. But it's imperative that we recognize the potential  
11 consequences not only to the family but to the future of  
12 the Commonwealth in the country.

13 And before I end, I do have an answer to your  
14 question that you asked Mr. Lessig.

15 MS. DALTON: Okay.

16 MS. DERVISH: And if I may?

17 MS. DALTON: Sure.

18 MS. DERVISH: And it's only because I had a  
19 moment to think about it. And if Mr. Lessig had a moment  
20 to think about it, he too would have that. And if I may  
21 then answer?

22 CHAIRPERSON COHEN: Please, by all means.

23 MS. DERVISH: Thank you. I have a particular  
24 belief that it needs to be a guardian ad litem who is an  
25 attorney that represents the child because in this

1 situation, these are very difficult. And I think it would  
2 be very easy for someone who is uninitiated in the court  
3 system to be maneuvered and manipulated by the parties.

4 And I think it's important for a person who's  
5 familiar with the adversary system to be representing the  
6 child just as the parents have a person who is skilled and  
7 knowledgable about the adversary system representing the  
8 child. That does not mean I don't think a court-appointed  
9 person, advocate cannot serve the child in other ways.

10 But I do believe that the guardian ad litem  
11 has that -- has the skill or potentially has the skill to  
12 be able to negotiate that system. So that would be my  
13 answer to your question, Counsel.

14 MS. DALTON: Thank you.

15 CHAIRPERSON COHEN: Thank you. We certainly  
16 appreciate your testimony and coming from in the trenches  
17 and knowing where it happens. We've mentioned a lot  
18 today -- I just have two comments in general. We've  
19 mentioned a lot today about PFAs and actually the abuse of  
20 PFAs and why we should take a look at that and incorporate  
21 that whole PFA system into our process and our procedure.

22 Because you are an ADA, I just wanted you to  
23 know that something that we're doing in Montgomery County,  
24 which I represent, in mid-November I started a cell phone  
25 drive to collect old cell phones which I turned over to

1 Bell-Atlantic Mobile to have them erase any programming  
2 that was on the cell phone and reprogram them for a push of  
3 a button to call 911.

4 We distributed those to women shelters so that  
5 women obviously could seek help at any time. But what we  
6 then discovered is that perhaps one in 100 women seek  
7 shelter, but they will go to a women's center. What we're  
8 now going to do is start the collection all over again.

9 And by the way, in a month, I collected 2000  
10 phones.

11 MS. DERVISH: Amazing.

12 CHAIRPERSON COHEN: People just have them  
13 lying around their homes. What we'll be doing now is  
14 working with the district attorney's office. And when  
15 women walk out of a courtroom with a PFA in one hand,  
16 they'll walk out with a cell phone in another that with a  
17 push of a button will dial 911 and seek police or medical  
18 help.

19 MS. DERVISH: Great.

20 CHAIRPERSON COHEN: So it's something for the  
21 district attorneys to know. The other that -- suddenly, I  
22 keep having these epiphanies at each one of our  
23 hearings -- that has suddenly hit me today, that although  
24 we've stressed that the purpose of this legislation is to  
25 make a painful situation unpainful when the litigants come

1 into the court system because we in the court system  
2 exacerbate a terrible situation, it is not our purpose to  
3 make divorce easy so that when a couple has an argument,  
4 they'll now say, Well, in the old days, it wasn't worth it  
5 to get divorced because it was too cumbersome, too long,  
6 too expensive, too painful, et cetera, et cetera. Gee, now  
7 it's so quick, it's so easy.

8           If we had an argument yesterday, by next  
9 Thursday we can be divorced. That's not the purpose of  
10 this legislation. And I have to make it clear to everyone.  
11 Our aim is to take away the pain in terms of time, dollars,  
12 psychological, emotional outrage and, of course, obviously  
13 to clean up the court system.

14           So it may have the effect of people thinking,  
15 What the heck, I might as well get married because I can  
16 get a quick divorce. That's not our goal. And in fact, in  
17 many of the hearings -- and I think it was our first  
18 hearing when we dealt with the -- the specific provision of  
19 no-fault divorce, we had some clergymen and counselors  
20 testify.

21           And they said the focus should not be on the  
22 divorce aspect but, rather, how do we as legislators make  
23 the entry into the institution of marriage more meaningful,  
24 not necessarily more difficult, but make people understand  
25 the -- the responsibilities and significance of getting

1 married.

2           And then maybe we wouldn't have to deal with  
3 the tail end of when it doesn't -- it doesn't work.

4           MS. DERVISH: Nothing I read in the  
5 legislation suggested to me that it was going to make it  
6 easier. What it suggested to me was a recognition of how  
7 difficult and complicated it is and that there are many  
8 people who are being affected by it.

9           And that's how I read it. I didn't see it as  
10 making anything easier in terms of entry into the divorce  
11 statistics. So it didn't strike me that way.

12           CHAIRPERSON COHEN: Again, Ms. Dervish, thank  
13 you so much.

14           MS. DERVISH: Thank you.

15           CHAIRPERSON COHEN: If there's anyone here  
16 that wants -- that did not get the opportunity to testify,  
17 our record is always open for letters, phone calls,  
18 meetings, et cetera. It is obviously vital that we hear  
19 from everyone so that we can adopt legislation that is  
20 intelligent and compassionate.

21           Again, thank you all. Mike, thank you.  
22 Representative Browne, thank you for hosting this meeting.  
23 And obviously, to Jane Baker, who has been in and out of  
24 the hearing, for welcoming us here. And Counsel Dalton,  
25 thank you so much. We will conclude this hearing.



1 Thank you.

2

(Whereupon, at 11:34 a.m., the hearing  
adjourned.)

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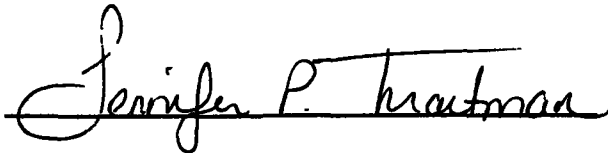
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3 taken by me during the hearing of the within cause and that  
4 this is a true and correct transcript of the same.

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