

HOUSE OF REPRESENTATIVES
COMMONWEALTH OF PENNSYLVANIA

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House Bill 316
Common-Law Marriage

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House Judiciary Committee
Task Force on Family Law

Hearing Room No. 1
Ground Floor, North Office Building
Harrisburg, Pennsylvania

Tuesday, July 10, 2001 - 11:00 a.m.

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BEFORE:

Honorable Kate Harper, Majority Chairperson
Honorable Chris Wogan
Honorable Harold James
Honorable Kathy Manderino
Honorable Joseph Petrarca
Honorable LeAnna Washington

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T2001-095 ORIGINAL

ALSO PRESENT:

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Majority Executive Director

Judy Sedesse
Majority Administrative Assistant

Mike Rish
Minority Executive Director

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1 CHAIRPERSON HARPER: All right. I'd like to
2 call the hearing of the Subcommittee of Judiciary to order.
3 We have a very small complement of committee members here
4 today. We go for quality, not quantity. And I'm the only
5 one here.

6 But I want to assure all of our witnesses that
7 your comments and your written testimony will be shared
8 with the rest of the Judiciary Committee. It being the
9 middle of July, people are back in their districts and not
10 readily available for hearings in Harrisburg.

11 Before we start, I would just like to state
12 that the subject of today's hearing is House Bill 316,
13 which is a proposal to abolish the concept of common-law
14 marriage in the Commonwealth. Pennsylvania does recognize
15 common-law marriage.

16 It's probably not a very common occurrence.
17 But it does -- it is part of the law as it exists now. And
18 House Bill 316 proposes that the only marriage that would
19 be recognized in the Commonwealth would be a regular
20 marriage under the statute, Domestic Relations Law.

21 We have a number of witnesses today. And
22 there are agendas, copies of the written testimony. To the
23 extent it exists over there on the table, please help
24 yourselves. We want to assure all our witnesses that we
25 are taking a transcript.

1 We will be sharing the transcript, any written
2 remarks that you submit and anything else that you'd like
3 us to share with the members of the committee, with the
4 members of the Judiciary Committee and particularly those
5 members who are most interested in family law.

6 Before we start, I would like to have my staff
7 people up here introduce themselves. My name is Kate
8 Harper. I'm a State Representative from Montgomery County.
9 I happen to be a lawyer, do some domestic relations work in
10 my private practice.

11 In addition, I represent the 61st District,
12 which is basically Plymouth Meeting to Montgomery Township.
13 So if that gives everyone a point of reference. I'd also
14 like the two staff people to introduce themselves.

15 MS. DALTON: Karen Dalton, Counsel to the
16 Committee.

17 MR. RISH: Mike Rish, Democratic staff,
18 Representative Blaum's staff.

19 CHAIRPERSON HARPER: All right then. I'd like
20 to welcome Professor Robert E. Rains from the Dickinson
21 School of Law, who is our first witness. Professor Rains,
22 you have the floor.

23 PROFESSOR RAINS: Thank you, Representative
24 Harper. I appreciate the invitation to testify. I
25 appreciate the invitation to testify. I want to begin by

1 saying that I don't speak here officially for the Dickinson
2 School of Law or the Pennsylvania State University.

3 I do have two capacities that are relevant in
4 my work at the Dickinson School of Law. I teach family
5 law. But in addition, I am one of the supervisors of our
6 Family Law Clinic in which I and other supervisors,
7 including Terri Henning who's with us this morning,
8 supervise law students representing indigent clients in a
9 legal services-type practice focused on family law.

10 And I have had the opportunity to review some
11 of the other written testimony from folk who also likewise
12 represent indigent clients. I'll get to where I diverge
13 from them in a short while.

14 I do have some reservations with regard to the
15 abolition of common-law marriage in Pennsylvania. But I
16 think that on balance, if properly implemented, House Bill
17 316 would do more good than it would do harm. As I think
18 the committee is well aware, Pennsylvania is among a
19 dwindling number of states that continue to recognize
20 common-law marriage.

21 My readings indicate either 10 or 11
22 jurisdictions remain in the United States that continue to
23 recognize common-law marriage. To my knowledge, no states
24 have adopted common-law marriage in the last 100 years.
25 And several states -- and I provided a list in my written

1 remarks -- have abolished common-law marriage.

2 Pennsylvania allows common-law marriage. But
3 the courts have repeatedly indicated that it is disfavored,
4 it is viewed as a, quote, fruitful source of perjury and
5 fraud. If you read the historical text, there is some
6 argument as to the sources and original rationale for
7 common-law marriage.

8 Common-law marriage appears to have been
9 adopted from England. But in fact, England abolished
10 common-law marriage sometime around 1753. So England has
11 not recognized common-law marriage for a very long time.

12 We allowed common-law marriage at a time when
13 people lived in isolated homesteads and farms where we
14 didn't have modern transportation, where counties were very
15 much larger than they are today, where it might be a very
16 significant problem for people to travel to their county
17 seat to register a marriage or obtain a marriage license,
18 at a time when people might have to wait for a very long
19 time before a visiting minister came to their area to
20 perform a marriage ceremony.

21 And the fact is that then, as now, it was
22 known that sometimes people had a, quote, need, unquote, to
23 get married. And therefore, the doctrine of common-law
24 marriage allowed two people to enter into a lawfully
25 recognized marriage when there was a need or a desire to do

1 so.

2 Today, of course, one hops into one's car or
3 borrows a car from a friend to travel to the county seat,
4 obtain a marriage license. There's a short waiting period.
5 We've abolished the need for blood tests. There is a whole
6 list of people who can perform wedding ceremonies.

7 And of course, Pennsylvania continues to have
8 the so-called Quaker wedding ceremony that does not require
9 a minister to officiate. So the difficulties that existed
10 100 or 200 years ago for a couple to get married simply are
11 not, in my mind, practical difficulties today.

12 What I think is the practical difficulty is
13 the urban and rural legend that if you're a practicing
14 attorney, no doubt you have heard from many clients that if
15 people live together for 7 years, they are married. And of
16 course, as you know also as a practicing attorney, that
17 myth has nothing to do with the law in Pennsylvania on what
18 constitutes a common-law marriage.

19 So in fact, in many ways, the clients that I
20 see in my clinical work, who are primarily indigent women,
21 have the worst of both worlds in my view. Because we
22 recognize common-law marriage and they correctly know that
23 there is such a thing as common-law marriage, they often
24 believe they are married simply because they have lived
25 with somebody for 7 years.

1 And yet when we go to assert a claim on their
2 behalf, whether it's a claim for spousal support or for
3 governmental benefits of some sort, we quickly learn that
4 they did not take the steps; they did not exchange present
5 tense vows which would allow them to have a recognized
6 common-law marriage in Pennsylvania.

7 So we have a real divergence between the
8 public's perception or at least many, many people in the
9 public as to what is required to be common-law marriage and
10 what the law requires. The result for our clients is that
11 they don't take the rather easy but necessary steps to be
12 ceremonially married to have the protections that they
13 should have because they think they already have those
14 protections.

15 I'm of course aware of the very few reported
16 cases. I'm aware because I've reviewed the testimony of
17 the folks who are coming later who have provided written
18 testimony in advance. I'm well aware that there are cases
19 where people, primarily dependent women in a relationship,
20 are able to assert that, and succeed in asserting that they
21 have a common-law marriage.

22 But I submit that for every one of those
23 dependent people, I'll say dependent women, who is able to
24 successfully persuade a finder of fact in law that they did
25 have a common-law marriage, there are probably hundreds, if

1 not more, who will never be able to do so.

2 I think if you review the reported decisions
3 in Pennsylvania, the courts are increasingly hostile to
4 common-law marriage. Several judges have called for its
5 outright abolition. And so as a practical matter -- and in
6 *Staudenmayer*, the Supreme Court again limited the ability
7 to prove common-law marriage.

8 It's not the first time. They also did so in
9 the *Stouffard* (Phonetic) case involving the Deadman's Rule.
10 It's going to be increasingly difficult to prove a
11 common-law marriage. And yet many of our clients continue
12 to insist in the belief, persist in the belief that they
13 have a common-law marriage.

14 So what is to be done? One possibility that I
15 have suggested in my written testimony would be to, as it
16 were, throw in the towel and conform the law of common-law
17 marriage to the public perception of common-law marriage.

18 If a significant portion of the general public
19 believes that cohabiting for 7 years creates a common-law
20 marriage, then perhaps it's time for the General Assembly
21 to consider adding that as a basis for a finding of
22 common-law marriage or a finding of marriage, if you will,
23 to the existing law, judge-made law on common-law marriage.

24 The alternative is your bill, which I note is
25 only perspective and would not affect the rights of people

1 who are in a common-law marriage as found later as of the
2 date that the bill becomes effective. But if this is going
3 to be done, I believe there is a serious need for a public
4 education campaign because there is a strong myth out
5 there.

6 And I don't know what it takes to get rid of
7 that myth. I note that Dale Shughart, Junior, who also
8 practices law in my county, makes reference to -- and has
9 provided written testimony this morning and I believe will
10 be testifying later -- has made reference to the Partners
11 Program, in which I also participate, in which the county
12 bar association goes into local high schools by invitation
13 to try to teach upper level high school students some basic
14 law of marriage and divorce.

15 I think that's a good start. But if we simply
16 abolish common-law marriage without getting the word out to
17 the community and particularly to the poorer members of our
18 community and the less educated members of our community,
19 then I fear that the act would be a disservice.

20 But what we need to do is somehow bring the
21 law into conformity with the public perception because
22 right now, there are many, many people out there in
23 Pennsylvania who think they're married, who think they have
24 and will have the protection of being married; but they
25 aren't. And that's very unfortunate.

1 In the almost two decades that I have been a
2 supervisor in our Family Law Clinic -- and I don't want to
3 think how many hundreds or thousands of clients' cases I've
4 supervised during that time -- literally, we haven't had
5 one case in which someone has come to us asserting a
6 common-law marriage that we thought was strong enough even
7 to file in court. And that's sad.

8 These people thought they had the protection,
9 and they didn't. In balance, I favor the bill if we could
10 have and really have a strong public education campaign.
11 Thank you.

12 CHAIRPERSON HARPER: Thank you, Professor.
13 Since you mentioned the urban or rural myth of we lived
14 together 7 years, we must have a common-law marriage, which
15 I had also heard as a practicing attorney but never heard
16 in law school --

17 PROFESSOR RAINS: We don't teach that in law
18 school.

19 CHAIRPERSON HARPER: Yeah. I was wondering if
20 you could, for the people who are, you know, watching this,
21 could you explain what you think a successful case of
22 common-law marriage would have to prove because you said
23 you had never seen one in all your years in the clinic.

24 PROFESSOR RAINS: The case law in Pennsylvania
25 says that in order to have a valid common-law marriage, you

1 have to have two adults of opposite sex who are of age, who
2 do not have an impediment to marriage such as one of them
3 still being married to somebody else or being brother and
4 sister, who exchange words that must be in the present
5 tense to each other indicating a present intention to be
6 married. That is the basic requirement.

7 Now, obviously, there may be difficulties of
8 proof in many instances as to whether that has happened.
9 And those difficulties may be even greater when one of the
10 parties has died, and so we can't obtain the testimony as
11 to what that person may have said.

12 Because of that, there is an alternative where
13 one of the parties has died where if there is strong proof
14 of holding out a reputation of marriage and constant
15 cohabitation with a broad reputation throughout the
16 community, if a party can meet that high burden, then the
17 court will find by implication that there were, there was
18 an exchange of the present tense words.

19 There's no magic formula for the words.
20 There's no precise I take the, I take the. But it must be
21 in the present tense. It can't be in the future. It can't
22 be, Oh, some day, let's get married or, you know, I plan to
23 marry you when such and such happens.

24 And there must not be an impediment to the
25 marriage. It can't be that one of the parties is still

1 married to somebody else. They can't be brother and
2 sister. And they must be adults. They must be of opposite
3 sex.

4 CHAIRPERSON HARPER: Thank you, Professor. Do
5 you have any idea of how often you see a claim of
6 common-law marriage at the clinic that you supervise?

7 PROFESSOR RAINS: I can't give you numbers.
8 We do not have a high volume clinic like the kind of work
9 that you're going to hear about from some of the later
10 speakers today. But I would say once every couple of
11 months in the clinic, we have somebody who believes that
12 they are in a common-law marriage. And it's a very
13 difficult situation.

14 Or perhaps the other person in that
15 partnership is asserting rights to a common-law marriage.
16 And then we have sometimes even the greater myth where
17 someone says, Oh, yes, we were common-law married; but I am
18 now common-law divorcing you.

19 I don't know if you've heard that one. But
20 there is no such thing as a common-law divorce. So that
21 won't work.

22 CHAIRPERSON HARPER: Thanks. I'd like to
23 recognize that we have Representative Petrarca here from
24 Allegheny County. And I don't know if Representative
25 Petrarca has any questions of this witness or comments that

1 you want to make at this time?

2 REPRESENTATIVE PETRARCA: No questions, but
3 Westmoreland County.

4 CHAIRPERSON HARPER: Oh, I'm sorry. My
5 mistake. Westmoreland. Okay. Thank you very much,
6 Professor.

7 PROFESSOR RAINS: Thank you.

8 CHAIRPERSON HARPER: And if there's no other
9 questions, we'll move on to our next witness. I should
10 mention that Terri Henning, who is a staff attorney at the
11 Family Law Clinic at Dickinson, was here also this morning.
12 She let Professor Rains speak for them.

13 We have Catherine Carr, Executive Director of
14 Community Legal Services and the Philadelphia Bar
15 Association, this morning. Welcome.

16 MS. CARR: Good morning. And thank you for
17 inviting me. Yes, I'm here today both -- I am the
18 Executive Director at Community Legal Services, the legal
19 services, civil legal services program for poor people in
20 Philadelphia.

21 But I'm also here today representing the
22 Philadelphia Bar Association, which has taken a stand in
23 opposition to House Bill 316. And I will note that there
24 is a very strong sense among the public interest bar in
25 Philadelphia, which was affirmed by the bar association as

1 a whole, about the detrimental impact that House Bill 316
2 would have on some of the poorest and most vulnerable
3 people in Pennsylvania.

4 I think as Professor Rains alluded to, the
5 people who will be most impacted by this bill are generally
6 the least sophisticated, the poorest, the least educated
7 residents of Pennsylvania. And I think there's a big
8 question about whether we are going to accomplish something
9 which is constructive in Pennsylvania by the passage of
10 this bill.

11 I speak really from practice. I've been at
12 Community Legal Services for 17 years, originally as a
13 public benefits attorney helping people who were having
14 problems with Social Security Benefits, Veterans Benefits,
15 welfare benefits, food stamps, a variety of kinds of
16 practice.

17 But our office also does a lot of housing
18 issues, mortgage foreclosure issues, helps elderly people.
19 We have an elderly law unit. So there's a variety of
20 contexts in which we see the common-law marriage issue.
21 Employment issues, pension issues, all of these are places
22 where attorneys in my office are very upset about the
23 possibility of the abolition of common-law marriage.

24 We see people over and over again walking into
25 our office. To answer your question, Madam Chair, I think

1 that that is probably, it's a handful of times a year. But
2 it's enough that it makes a difference. And I would say
3 over my 11 years of practice as a lawyer, I probably
4 handled 6 or 8 cases that involved common-law marriage.

5 And unlike Professor Rains, I will say that we
6 have been very successful in getting people benefits and
7 generally elderly women who lived together with a man
8 calling themselves husband and wife for decades often but
9 who do not go through a formal marriage license procedure
10 and end up at the end of their life with the man having
11 died suddenly or even not suddenly and never really having
12 thought through what the significance of them, their not
13 having a marriage license was.

14 It's not people presenting, as Professor Rains
15 suggested, people walking in and saying, you know, I always
16 thought I was protected by common-law marriage. The truth
17 is usually they haven't really thought it through. They
18 just lived together with this man.

19 There's a case that I mention in my written
20 testimony here, the case of *Coslett v. Bowman*, which was a
21 longshoreman who had lived with his wife, lived with the
22 woman who claimed to be his wife, put it that way, his
23 common-law wife for about 30 years.

24 But 17 years before he died, they talked
25 specifically about getting married. And he said, We don't

1 need to have a formal marriage. He said -- they quote him.
2 He says, "You is my wife, and I'm your husband. So that's
3 it. We're husband and wife."

4 And for 17 years, she goes around, they go
5 around as Mr. and Mrs. Simpson. They have a child. They
6 live together. He works. He's in a fatal accident at work
7 and goes to claim Federal Longshoremen's Benefits. And
8 thanks to Pennsylvania's common-law, this elderly widow was
9 able to collect those benefits.

10 And there are instances over and over again of
11 not state money but federal dollars, federal benefits for
12 elderly people or -- usually, I think we're talking
13 about elderly women in my experience at Community Legal
14 Services -- over and over again of people who are able to
15 claim federal benefits because Pennsylvania's common-law
16 marriage recognizes them as married.

17 There are a number of instances. The Social
18 Security Survivors Benefits Law, those regulations look to
19 state law. So if a woman walks in and says my husband
20 died, we were never legally married, I'd like to get his
21 Social Security Retirement Benefits -- people keep talking
22 about what other states have done.

23 In those other states, that woman is going to
24 be turned down for Social Security Benefits. In
25 Pennsylvania, she may be able to establish that she's

1 entitled. Veterans Benefits, again, a federal benefit.
2 And I'm not familiar with longshoremen's benefits, but that
3 was one of the cases.

4 And I think just from a fiscal perspective in
5 Pennsylvania, where are these women going to go if they
6 don't get these federal benefits? They're probably going
7 to end up on the state dole, on general assistance, which
8 would be the source of funding, the source of safety net
9 for women who are widowed and not entitled to these federal
10 benefits.

11 Pensions are really the same thing. If you
12 can establish that you're the common-law wife, under
13 federal pension law, you can collect a pension from a
14 husband who has died but without that formal license.
15 You're going to cut those women out of pensions.

16 We often see women and men sometimes living in
17 a house that they own. Sometimes they won't have a
18 marriage license, but the house will be owned as tenants by
19 the entireties as if they were married because they
20 consider themselves married.

21 Sometimes it's just in the husband's name. If
22 the husband leaves or if the husband dies, there is a legal
23 handle there to establish a common-law marriage and get
24 that woman rights in the foreclosure and bankruptcy process
25 to protect the house that she's living in with her

1 children.

2 And what you're going to do if you wipe out
3 common-law marriage is that those women and their kids
4 aren't going to have that ability to say, Wait. I was
5 married to him. This is my house, too. Let me go through
6 a bankruptcy procedure and see if I can avoid this
7 foreclosure and keep this house over my family's head.

8 Same thing when he dies. The man dies.
9 There's no marriage license, but they've been living
10 together as husband and wife. He owns the house. Are we
11 going to let that family get that house? Often, what
12 happens is the family will end up living in the house.

13 They don't go through the formal transfer of
14 title. But then maybe years later, they need to get
15 repairs done on that house. They need a title to that
16 house in order to get an equity loan, home equity loan to
17 get some repairs made.

18 If you can establish a common-law marriage,
19 you can then get the inheritance. You can work through the
20 legal system to get the family to inherit the house to get
21 the loan they need to keep the roof over their heads.

22 So there are a variety of ways in our legal
23 services practice which common-law marriage really makes a
24 big difference. I had an immigration lawyer who works with
25 HIAS, which is a group which does legal assistance in

1 immigration matters.

2 We talked about a couple that had lived
3 together. And someone said it's quite romantic. The
4 immigrant didn't want to get married to the US citizen with
5 a license because they said they'd think they were just
6 getting married to get a green card. He didn't want to do
7 that.

8 But then he was facing deportation
9 proceedings, got into trouble with the IRS. They were able
10 to establish a common-law marriage in Pennsylvania, which
11 kept that marriage together, kept, it kept him in the
12 country with a green card.

13 COBRA, which is health care rights, again,
14 those rights follow with a marriage. So again, that's a
15 situation where we have sometimes been able to establish
16 someone's rights through common-law marriage.

17 We understand the impulse to abolish
18 common-law marriage. It makes things simpler. And I read
19 Justice Nigro's dissent in, I think it's Staudenmayer, the
20 case that sort of says Pennsylvania's behind the times.
21 Let's just get rid of common-law marriage.

22 But I think in the name -- the name of
23 simplification is unrealistic. These, these relationships,
24 family relationships are real. They are complicated. Life
25 isn't simple. And we see the kind of aftermath of trouble

1 from families living without marriage licenses.

2 If we all could believe that you passed this
3 bill and made new law and then all of these families would
4 go out and get a marriage license, I think we would all
5 have no question. It's the thing to do. Let's go get the
6 law passed, and then we won't have this trouble.

7 But I will tell you from the people I see,
8 these are not people who are then going to say, Oh, I read
9 in the newspaper there's no more common-law marriage. I'm
10 going to go get a license. It's just not going to happen.
11 It's not the way their lives, lives work.

12 They are in a relationship for whatever
13 reason. They're not thinking about it. They've lived this
14 way for years. And I don't think that the existence or
15 nonexistence of a common, common-law in the official books
16 is going to really change their practice.

17 So instead, what you're going to have is
18 you're going to continue to have couples who are living
19 this way. But you're going to have the fallout from when
20 one of them dies or when one of them leaves and the house
21 is foreclosed upon.

22 So common-law marriage in our practice has
23 been very useful in protecting, protecting people in
24 trouble, in leveraging federal dollars. I think there are
25 a lot of reasons to keep it. I heard Professor Rains

1 suggest -- and this is something I didn't put in my
2 testimony but I think that maybe may make some sense as a
3 way to proceed, that perhaps it makes sense to think about
4 some sort of codification of what is a common-law marriage.

5 Actually, the Supplemental Security Income,
6 SSI regulations of the Social Security Administration, do
7 just that. Whereas the Social Security Survivors Benefits
8 are based on state law, SSI, which is sort of the Social
9 Security program for poor people, the SSI regulations
10 look to specifically -- and I don't have them in front of
11 me -- but they look to the couple's history and some
12 criteria to determine whether or not they're sort of
13 considered an SSI common-law couple in order to inherit
14 under SSI or to get Survivors Benefits under the SSI.

15 And it might be that something like that would
16 make sense, which would be to investigate a codification of
17 under what criteria someone would be considered common-law
18 married. That would clarify some of the confusion but
19 would still end up protecting people who end up in the
20 situation where they aren't, don't have a marriage license
21 but need the protections of being married.

22 So that's our position today, which I just
23 want to say is, I think is based on very real experience
24 and a very real group of people who will end up harmed if
25 this bill were passed into law.

1 CHAIRPERSON HARPER: Thank you very much, Ms.
2 Carr. I want to recognize that in attendance with us this
3 morning we have Representative Washington; Representative
4 Manderino; and Representative James, who has another
5 commitment but who has told me that he'll be submitting
6 written remarks opposing House Bill 316 for the record.
7 Thank you, Representative James. I appreciate that.

8 We would like to give the Representatives the
9 opportunity to question our witness. And I'll lead off, if
10 you don't mind. Since I know you were here for Professor
11 Rains's testimony, I'm wondering what your reaction was to
12 his idea that the, the myth of common-law marriage, falsely
13 giving people a sense of security when in fact they can't
14 legally establish a common-law marriage might be hurting
15 vulnerable people who would be better off being told, Look.
16 There's no such thing. Go get married. What do you think
17 about that?

18 MS. CARR: I don't -- as I said, I don't think
19 that people really rely strongly on a sense of I'm going to
20 be fine because I have a common-law marriage. I think part
21 of the reason that there's, there's a sense that this needs
22 to be cleaned up is because people talk about, He's my
23 common-law husband they'll say. You know, he's my
24 common-law husband.

25 So -- and really under law, you're either

1 married or you're not. If you're common-law married, then
2 you're theoretically just as married as somebody with a
3 license. But there's a sense in the public that, All
4 right. Well, I'm not completely really married. I'm
5 common-law married.

6 And that actually gets -- when you're doing
7 these cases, that gets confusing because if the question is
8 there's a present intent to be married, does a present
9 intent to be common-law married, is that the same thing as
10 a present intent to be legally married? So there is that
11 confusion.

12 But I guess my point is that I don't think
13 people are relying on their sort of mythological sense of
14 what common-law marriage is to think that they're getting
15 all of these benefits. Pretty much they're living this way
16 because they haven't sat down and thought about all the
17 consequences.

18 Or if they have, they haven't taken the steps.
19 They don't know -- they haven't taken the steps to go talk
20 to a lawyer, say, about what am I losing if I'm not legally
21 married. I've had staff in my office where we sat down and
22 said, You know, you're living with that man for 15 years
23 now. You've got a kid. Let me tell you some of the risks
24 you're taking.

25 But most of the clients who walk into our

1 office haven't gone through that kind of analysis. They're
2 just living a common-law married life. And I guess -- I
3 don't think there's any indication that that's going to
4 change if we change the law.

5 Instead, what's going to happen is that people
6 who have benefitted in terms of getting protections of
7 being married will lose those benefits. I don't think
8 we're going to see people changing their behavior. I think
9 what we may see is more palimony lawsuits and things like
10 that.

11 We're going to start seeing claims based on
12 just relationships. No -- if Pennsylvania no longer
13 recognizes common-law, then I'm going to have to try to
14 find, figure out some other kind of contract to get a
15 benefit from.

16 But I just -- I don't think people's behaviors
17 are changed one way or the other based on the mythology.

18 CHAIRPERSON HARPER: So you would disagree
19 that even if we did an extensive public education campaign
20 that said, Look, there is no common-law marriage and we
21 made sure that that word was out there in the same way that
22 the common-law marriage myth is out there, that that would
23 not be enough to help these folks that you are concerned
24 about?

25 MS. CARR: Right. And I think -- I agree with

1 you. I think the difference in what I'm saying my
2 experience is and Professor Rains' experience is that I
3 don't see people walking in saying I'm common-law married;
4 and therefore, I think I'm going to get all these benefits.

5 Generally, they come in and say, Oh, I need
6 some help. I'm in dire straights. My husband just died
7 after 20 years. And, you know, we were never legally
8 married. And so then it's my job to say, Well you know
9 what? You may be common-law married. And in that case, we
10 can get you some benefits.

11 But Professor Rains described something
12 different, which is somebody walking in and saying, Oh, I
13 think I have all these protections. I'm common-law
14 married. That's not my experience.

15 CHAIRPERSON HARPER: Okay. I'd like to ask
16 the other Representatives whether they have questions. Why
17 don't we start -- we'll go to my right. Representative
18 Petrarca from Westmoreland County.

19 REPRESENTATIVE PETRARCA: Thank you. Very
20 good. Very good. Thank you. Thank you for being here.
21 Quick question. Justice Nigro said particularly in the
22 testimony that if we would abolish common-law marriage, it
23 would make things simpler. Simpler for whom, the courts or
24 what? What was he getting at in that testimony? And are
25 there any benefits?

1 MS. CARR: It's simpler in a number of ways.
2 The woman walks into my office or maybe one of your offices
3 as a constituent and says, I just, my husband just died.
4 We were never legally married. I want to know if I can get
5 anything in his name. It's very simple. The answer is no.

6 I mean, that makes it simple. And yes, it
7 makes it simple for the courts, you know. There's no more
8 disputes. It is a difficult standard. That's the other
9 thing I think. There already exists a real disincentive to
10 rely on common-law marriage because as Professor Rains
11 said, it's somewhat difficult to prove.

12 You get into all these factual questions.
13 Every court decision says there's a presumption against
14 common-law marriage, you know. There's all this old stuff
15 about if it began as a meretricious relationship, which,
16 you know, we hardly use that word anymore.

17 So it's not, it's not a simple thing. And I
18 don't -- that's why I guess I don't think people are
19 relying on it terribly. But the simplification, yes, it
20 would be simpler for the courts. I guess it would be
21 simpler for my office. We'd say, Oh, you never had a
22 marriage license? Get out of here. There's nothing we can
23 do for you. It simplifies things.

24 REPRESENTATIVE PETRARCA: And in a relatively
25 few cases, I guess.

1 MS. CARR: It's not a huge number of cases,
2 but it's --

3 REPRESENTATIVE PETRARCA: So it's not putting
4 a huge drain on the court system or their resources?

5 MS. CARR: No. I think when -- you know, I
6 was looking for common-law marriage decisions; and there
7 was nothing in the appeals court since the Justice Nigro in
8 '98. It's not like they're doing several of these every
9 year.

10 REPRESENTATIVE PETRARCA: Okay. Thank you.

11 CHAIRPERSON HARPER: Thank you,
12 Representative. Representative Manderino.

13 REPRESENTATIVE MANDERINO: Thank you. I'll
14 pass at this time. Thanks.

15 CHAIRPERSON HARPER: All right. Then I think
16 our staff attorney, Karen Dalton, has a question.

17 MS. DALTON: Ms. Carr, when you have those,
18 those folks before you and you say you may have a
19 common-law marriage, can you tell me what you ask them and
20 how they would satisfy those elements?

21 MS. CARR: Well, you ask them, first of all,
22 Did you consider yourselves husband and wife? And if they
23 say yes, then you move from there into, did you ever say
24 okay, was there a moment when you said you were married? I
25 think that's the thing that's a little confusing about

1 Pennsylvania law right now is that it almost envisions sort
2 of a moment.

3 And in the case I read when the, the quote in
4 the, I think it's a district court, US district court
5 decision, but where the man says, Hey, from right now, from
6 now on, you're my wife, I'm your husband, sometimes people
7 will tell you a story like that.

8 Usually, they'll say, Well, you know, after
9 we've lived together, after we had our kid, then we just
10 decided we were husband and wife. And if they can say that
11 we decided we were husband and wife, we always considered
12 ourselves husband and wife, then, then we can take it from
13 there and make a claim.

14 I mean, often, we are just making these claims
15 with an agency. I mean, I write a letter to the Social
16 Security Administration and say Mrs. Smith is applying for
17 Social Security Benefits on her deceased husband's account.
18 Here is the story of how they lived together and what they
19 called each other.

20 If I can get a deed that has them as tenants
21 by the entireties, if I get any records that they're Mr.
22 and Mrs. Smith, we collect that kind of obvious stuff.
23 Certainly, if you can find a birth certificate from the
24 children where the kids have the father's name and they've
25 got both, ideally it says Jane Smith and Bob Smith, we

1 collect those kinds of obvious evidence, sometimes
2 statements from neighbors, people who knew them, family.
3 They always were considered husband and wife.

4 So we collect that kind of evidence, send that
5 off to the Social Security Administration and say she's
6 applying as the wife. This established a common-law
7 marriage. Here is the standard of Pennsylvania law.
8 Please give her the benefits.

9 Sometimes the first level agency person will
10 say, Fine. She's entitled to Survivors Benefits.
11 Sometimes we have to go to a hearing before an
12 administrative law judge where that will be the issue.
13 Were they common-law married under Pennsylvania law?

14 And those would be decided at that agency
15 stage, though. So that's not involving the Pennsylvania
16 court system. But there -- many of these agencies will be
17 looking at, at what is Pennsylvania law, which we set out
18 for them. And then we set out the indicia to show that
19 they were acting as husband and wife.

20 You love it when they sat on a mountain top,
21 you know, outside of their barn and said, From this moment
22 on, we will be husband and wife. But that doesn't happen
23 that often.

24 MS. DALTON: So it sounds like what you're
25 saying is oftentimes this will not involve a court; it will

1 be an administrative proceeding; and that you're not
2 getting hung up on the words of present intent?

3 MS. CARR: That's right. We -- the present
4 intent becomes sort of their daily living present intent
5 rather than a moment of present intent. And yes, it can be
6 done. It's often done at the agency level.

7 MS. DALTON: Thank you.

8 CHAIRPERSON HARPER: Thank you very much. I'd
9 also like to notice that Representative Wogan is here. And
10 I don't know if you have any questions yet, Chris?

11 REPRESENTATIVE WOGAN: No, I don't, Mr.
12 Chairperson.

13 CHAIRPERSON HARPER: Madam Chairman I think is
14 what you're supposed to say, something like that. We're
15 all new at this. Thank you very much for your testimony.
16 I appreciate your coming out.

17 MS. CARR: Thank you for having me.

18 CHAIRPERSON HARPER: Now, we do have a little
19 change in our printed agenda. And we're going to have
20 Aurora Vasquez come up. She's a staff attorney. Hello,
21 Aurora. How are you? She is the staff attorney with the
22 Pennsylvania Farm Worker Project of Philadelphia Legal
23 Assistance.

24 And we do appreciate your coming to testify
25 this morning. We do appreciate that if you have any

1 written comments, we will be sharing them with the rest of
2 the committee and also your oral testimony as well. So go
3 ahead.

4 MS. VASQUEZ: Thank you. Let me begin by
5 thanking you for the opportunity to offer my testimony this
6 morning. My name is Aurora Vasquez. And I'm a staff
7 attorney with the Pennsylvania Farm Worker Project of
8 Philadelphia Legal Assistance.

9 We at the Farm Worker Project offer legal
10 representation to eligible migrant and seasonal farm
11 workers throughout the Commonwealth. As a result, we at
12 the Farm Worker Project have had occasion to touch on a
13 variety of different issues or different concerns with this
14 population throughout the Commonwealth.

15 And when I received my invitation to offer my
16 testimony here this morning, I thought long and hard about
17 how to best utilize this opportunity on behalf of the Farm
18 Worker Project and the clients that we serve throughout the
19 Commonwealth.

20 And originally, I had thought that it would be
21 a good idea for me to touch on a variety of issues
22 generally where common-law marriage may impact our clients
23 much like Ms. Carr had referred to with things like
24 Survivors Benefits through the Social Security
25 Administration.

1 But then it occurred to me that, that it might
2 be more effective if I narrowed the field, so to speak, and
3 concentrated not only on the farm worker population in
4 general throughout the Commonwealth but on a more specific
5 subsection of that farm worker population that we at the
6 Farm Worker Project think common-law marriage or the
7 abolishing of common-law marriage may have a great effect
8 upon. And that would be the mushroom harvest workers of
9 the Commonwealth.

10 As a little background on them, the majority
11 of the mushroom harvest workers are currently living in
12 Chester County, Chester County, the Kennett Square,
13 Toughkenamon, Avondale area. Primarily Kennett Square has
14 proven itself to be -- well, they commonly refer to
15 themselves as the mushroom capital of the world.

16 The mushroom industry in that area is booming.
17 It's, it's doing quite well. Their average crop, the value
18 of their average crop in the mushroom industry has been
19 going up over the past couple of years. And as a result,
20 the mushroom industry is creating a very strong mushroom
21 harvest worker base in that area.

22 And we at the Farm Worker Project work
23 extensively with that community. And part of what we do in
24 assisting them, in offering them assistance in the variety
25 of issues that may come up is we help them address tax

1 concerns. And I think people often don't think common-law
2 marriage, hmm, taxes.

3 It's not one of the first things that comes to
4 mind. And I will admit it wasn't one of the first things
5 that came to mind for the project when we began addressing
6 tax concerns. But in addressing the tax issues, which were
7 many and were great for these individuals, we realized,
8 very quickly realized a couple of things.

9 One of the first things we realized is that
10 this taxpayer base -- which right now, mushroom harvest
11 workers are estimated at approximately 5,000 in a
12 particular part of Pennsylvania alone. We realized that
13 although the mushroom industry in itself is creating a crop
14 that is valued in the multimillions of dollars, the
15 mushroom harvest workers themselves are members of what we
16 would refer to as the working poor because we discovered
17 through our tax assistance in the year 2000 that the
18 average yearly salary of a mushroom harvest worker is
19 approximately \$11,000.

20 And so obviously, they aren't making a lot of
21 money. And as a result, taxes, tax refunds become a really
22 important issue and concern for this tax base because every
23 penny matters to them. And so when we begin to focus on
24 that and we put our focus at the Farm Worker Project on
25 ensuring that the mushroom harvest workers were educated as

1 to the federal tax system in this country -- and many of
2 them are not -- we discovered that a lot of, they had a lot
3 of misconceptions and were not receiving the total amount
4 of, in tax refunds and things of that nature that they
5 could.

6 What we discovered in doing, in working with
7 this population was that the majority of the people that we
8 are seeing coming through our tax season when we're present
9 in Kennett Square, the majority of them are coming through
10 as married filing joint individuals.

11 And we discovered in a conversation with the
12 IRS during the last filing season that they would in fact
13 honor somebody who was asserting a common-law marriage in
14 the state of Pennsylvania because the state itself
15 recognizes a common-law marriage as a valid marriage.

16 And this is very important to us because being
17 able to assert married filing joint status on a tax return
18 becomes very important for these individuals because the
19 difference between filing as a single individual and filing
20 as a married individual for a poor person can be very
21 dramatic.

22 Last year alone, the difference between filing
23 as a married individual and filing as a single individual
24 was a difference of \$2,950. The monetary value attached to
25 filing as a married individual last year alone was \$7,350.

1 While the monetary value -- and when I say monetary value,
2 I'm referring to what comes up as a standard deduction on
3 your standard 1040 IRS tax form.

4 The monetary value for a single individual was
5 \$7,350. And those figures are very intriguing because the
6 standard deduction alone for being able to file married
7 filing jointly is very close to the annual salary of a
8 mushroom harvest worker, which in the 2000 season was
9 approximately \$11,000.

10 And as a result, as I said before, because
11 they need every last penny they can get, their refund at
12 the end of the year becomes very, very important to them.
13 And what we're seeing in the mushroom harvest population is
14 we're seeing a, a growing number of people coming into that
15 population.

16 We don't anticipate that the population is
17 going to disappear or lessen any time soon. As a matter of
18 fact, we anticipate that it may be quite the opposite in
19 that the population will continue to grow because the
20 mushroom industry itself is growing and is proving itself
21 to be a very successful industry for this Commonwealth.

22 And as a result, what we are beginning to see
23 is a change in the dynamics and the relationships that
24 we're seeing in this population, meaning -- I guess I
25 should back up a little and say that the majority of these

1 mushroom harvest workers are of Mexican descent.

2 And the older ones of these individuals who
3 are working in the mushroom industry have very traditional
4 cultural norms and values still very much tied to their
5 Mexican culture. And part of that is that a lot of them
6 have married Mexican nationalities. And for many of them,
7 whether their wives are here or in Mexico, they were
8 originally married in Mexico.

9 But what we're seeing now is that a lot of
10 these people have been working in this industry for many,
11 many years; and their grown children are now working in
12 this industry. And their grown children's relationships
13 are beginning to change, meaning that they are no longer
14 marrying women or men who are back in Mexico still; that
15 they are now beginning to start relationships with people
16 who are already here in this country, be they American-born
17 or be they immigrants themselves.

18 And as a result, they are entering into
19 relationships; and they are having children and starting
20 families. And they are living as a family unit without
21 going through a formal ceremony, a wedding maybe perhaps as
22 their parents did back in Mexico without obtaining a
23 license of any form.

24 And as a result, it is these, it is the
25 changing population of the mushroom harvest workers who we

1 at the Farm Worker Project believe are going to be able to
2 benefit from a common-law marriage in the future. There
3 are some who are already in fact in that position and, as a
4 result, were able to maximize their refunds at the end of
5 the year.

6 And I don't think we can take very lightly the
7 importance of these tax refunds for them at the end of the
8 year even though the connection between a common-law
9 marriage, a mushroom harvest worker, and taxes is likely
10 not the first thing that comes to mind when we think about
11 common-law marriages because to them, I can assure you, to
12 them, the connection between being able to assert a
13 common-law marriage and being able to put married filing
14 joint status on their tax return and, as a result,
15 receiving a refund at the end of the year makes all the
16 difference to them.

17 It's a very real connection for them because
18 the reality is, is when you're making \$11,000,
19 approximately \$11,000 a year, every penny counts. And to
20 these individuals, that's precisely, that's precisely what
21 they're facing.

22 And again, as Ms. Carr said, we aren't seeing
23 people come to us saying, Hi. By the way, I have a
24 common-law marriage. And as a result, I want a big fat
25 refund at the end of the year. That's not what's

1 happening.

2 What we're seeing are poor individuals who
3 have worked hard all year, who have made very little money,
4 who have paid their taxes accordingly much like the rest of
5 us have in every paycheck and at the end of the year want
6 to assure that they are doing everything correctly.

7 And so they're coming to us. And it is our
8 job, it is my job as an attorney to assure that I analyze
9 their situation as best I can and that I, I do the best I
10 can and offer them the best advice when I analyze their
11 situation.

12 And I think it would be entirely unfair at
13 this point for the Commonwealth to walk away from these
14 individuals when, when viewing what the Internal Revenue
15 Service itself has been doing over the years with respect
16 to adjusting their numbers and the monetary values that
17 come with, with the respective status. The benefit for
18 working, the working poor of married filing joint status
19 has been increasing over the years.

20 And it would just seem outrightly unfair at
21 this point when they are, when the working poor, including
22 mushroom harvest workers, are in the position to benefit
23 from a married status, that the Commonwealth would consider
24 taking that away from them.

25 And as a result, because we have this concern

1 for this particular population -- we have concerns for
2 other populations. But I present this particular concern
3 to you with this particular group of Pennsylvania residents
4 to you this morning because it's very salient for them.

5 It's a very concrete example of what we've
6 seen coming through very lately. And because these are
7 concerns and because we think it's important to maintain
8 the potential benefit for them of being able to assert a
9 common-law marriage in the future, the Farm Worker Project
10 is, definitely has to speak strongly in opposition to House
11 Bill 316.

12 CHAIRPERSON HARPER: Thank you very much, Ms.
13 Vasquez, for very interesting testimony. I'm going to give
14 the members of the subcommittee a chance to ask questions.
15 And I'd like to start with one that I hope doesn't sound
16 provocative because I don't mean it this way.

17 Your testimony was interesting, and it was an
18 aspect that I had not considered myself. But unlike the
19 widow who comes in after the husband has died, you're
20 actually dealing with people who are still around to make
21 changes.

22 MS. VASQUEZ: Correct.

23 CHAIRPERSON HARPER: So my question is, Why
24 wouldn't you just say to these folks, Run on down to the
25 courthouse and get a license? Why wouldn't that be the

1 solution to the problem?

2 MS. VASQUEZ: Well, believe me, we've
3 suggested that for the sake of simplicity and just making
4 things easier for them. But the reality for these
5 individuals is that many of them do not speak a lot of
6 English. In the area that they're in, it's very difficult
7 for them to waltz over to any establishment and find
8 somebody that they can communicate with. That's one of the
9 drawbacks of that.

10 Another and probably even more salient concern
11 for them is that the reality is, is that they, most of them
12 work 7 days a week. And most of them do not have the
13 luxury of requesting time off. Most -- they don't get paid
14 holidays. They work a great deal.

15 And I'm not trying to -- believe me when I say
16 I'm not trying to make things sound harsher than what they
17 are. That is their reality. So a lot of things that we
18 take for granted, we as members of the nonmushroom harvest
19 workers, that we think, you know, you can just do this, you
20 can just go, you can just go 10 minutes, 5 minutes, an
21 hour, whatever it is that we take for granted that it would
22 be a quick thing for them is, becomes an absolute hardship
23 because it means time away from work.

24 It means risking an employer/employee
25 relationship just by asking the question, Can I have some

1 time off? And for a lot of them, they, they just cannot
2 afford to take that risk. And they would rather save up
3 their chances at getting a day off or their chances at
4 getting some time away for a sick child in the future or
5 for an emergency back in Mexico or for any other type of
6 emergency than to obtain a piece of paper that tells them
7 in a language they can't read what it is that they know is
8 going on in their very own homes.

9 CHAIRPERSON HARPER: Thank you. I'm going to,
10 I guess, start at my right. Representative Wogan. Don't
11 forget to use your mike.

12 REPRESENTATIVE WOGAN: Thank you, Madam
13 Chairwoman. Ms. Vasquez, in your work, have you actually
14 had to deal with the issue of common-law marriage for some
15 farm workers?

16 MS. VASQUEZ: We at the Farm Worker Project,
17 during the tax season, run a tax clinic. And as a result,
18 through this tax clinic, we see a lot of the mushroom
19 harvest workers coming in. I myself, in the time that we
20 ran the tax clinic, speaking for myself, had but one
21 occasion to do a common-law marriage analysis.

22 I can't speak for the rest of the volunteers
23 who were there or the other attorneys who were preparing
24 the tax returns that were coming through there. But
25 speaking for myself, I only did it once. But I honestly

1 believe that there were other people who came through in
2 that situation.

3 I've had occasion to speak to people outside,
4 farm workers outside of our tax clinic and in dealing with
5 other issues where a conversation as to their marital
6 status came up. And as a side note to myself, I was able
7 to deduce that they, in my opinion, they would be able to
8 assert a valid common-law marriage.

9 But to answer your question specifically with
10 respect to any analysis that I did, I did not do an
11 overwhelming amount at the tax clinic last season.

12 REPRESENTATIVE WOGAN: So am I understanding
13 you yourself handled one case?

14 MS. VASQUEZ: I did.

15 REPRESENTATIVE WOGAN: Okay. Can you remember
16 in that one case, how long was it that the couple lived
17 together as husband and wife?

18 MS. VASQUEZ: I don't recall how long it had
19 been that they lived together. And I think part of the
20 reason why I don't recall that is because time, years that
21 you've been together isn't a measure of what constitutes a
22 valid common-law marriage in this Commonwealth but --

23 REPRESENTATIVE WOGAN: But they need to stay
24 together -- and that's precisely my point -- even if it's
25 for one minute; isn't that correct? So I think most

1 Pennsylvanians have the idea that you can have a common-law
2 marriage in Pennsylvania when people are living together
3 for years and years.

4 But it is true that you can prove common-law
5 marriage if the couple intends to stay together for five
6 minutes, correct?

7 MS. VASQUEZ: I would imagine, assuming that
8 they have fulfilled the other requirements which would be
9 the present tense --

10 REPRESENTATIVE WOGAN: But you don't really
11 remember how long this couple stayed together?

12 MS. VASQUEZ: No, but I -- they had been
13 together for a while. They had children in common. So it
14 wasn't like they had met yesterday. They were a family
15 unit.

16 REPRESENTATIVE WOGAN: Okay. Thank you.

17 CHAIRPERSON HARPER: Thank you, Representative
18 Wogan. If nobody else has any questions, thank you very
19 much, Ms. Vasquez, for coming out.

20 MS. VASQUEZ: Thank you.

21 CHAIRPERSON HARPER: I appreciate your
22 testimony. We will share your thoughts and your written
23 testimony with the other members of the committee. And we
24 are right on time for Mr. Dale Shughart, Esquire from
25 Cumberland County, who has arrived to give testimony.

1 Thank you. Welcome.

2 And if you have written remarks -- yes, we do
3 have written remarks from you. Thank you so much.

4 MR. SHUGHART: Thank you very much for the
5 opportunity to address you. I was contacted on this matter
6 last week. And I think that the reason my name arose was
7 I've been part of a program in Cumberland County and many
8 counties in the state called the Partners Program where the
9 Pennsylvania Bar Association uses a program started by the
10 American Bar Association to teach family law matters to
11 high school students.

12 For the last four years, I've been teaching
13 high school students courses on marriage, divorce, and
14 various family law issues. The very first year I did this,
15 the teacher said these children or these kids, these
16 teenagers are very interested in common-law marriage.
17 Could you address that?

18 And back many years ago when I was a law
19 clerk, I had done some research for judges on opinions on
20 common-law marriage. So I had a basic knowledge. But I
21 dusted off my law books. And I talked to my father, who
22 was a retired judge at that time. And I started teaching
23 these, these teenagers.

24 Now, the first thing that struck me was that I
25 would ask the class what a common-law marriage was; and I

1 would get five or six that would volunteer. I never had
2 anybody say, Oh, the people exchanged vows. They just
3 didn't have a license. I never heard that.

4 What I would hear is you've lived together for
5 so long or you'd just make a decision. The misconception
6 is great. The biggest problem, in my opinion, with
7 common-law marriage is that the average people who might be
8 intending to create one have no idea of the nuances of the
9 law.

10 And if you look at the cases, it's, most of
11 the cases where there is testimony, the marriage ends up
12 being held not to have been constituted because words in
13 present tense were not exchanged. So the biggest problem
14 with common-law marriages, in my opinion, has to do with
15 the fact that the legal technicalities are so great, that
16 to try to enter one without a lawyer might get you into
17 trouble later on.

18 Whereas under the marriage code, if you get a
19 marriage license, you can have a private ceremony, sign it,
20 and have two witnesses sign it, and you're married. You
21 don't need a church or a minister or a district justice or
22 anything. So the current requirements for a marriage under
23 the code are very minimal.

24 Now, I concluded my written remarks. But I'll
25 address at this point with -- my primary concern with just

1 abolishing common-law marriage under the present marriage
2 license statute is that people, as the last speaker just
3 indicated, who have difficulties getting to the courthouse
4 may, under the present law, not be able to obtain a
5 marriage license and, therefore, not be able to be legally
6 married.

7 I ended my written remarks with a true story
8 that just goes back a couple years in my practice where
9 people had lived together for many years, were married in a
10 nursing home. And the gentleman could not have gone to the
11 courthouse to get a marriage license.

12 The clerk of the orphan's court -- well, what
13 happened was he proposed to her one day. I knew he was
14 going to. She called me the next morning. I called the
15 clerk of the orphan's court. The clerk went out to the
16 nursing home. They did the license, came back.

17 I hand carried it up to one of our judges, who
18 was the motions judge that day. He signed the waiver of
19 the 3-day waiting period. And I got another judge, who is
20 a friend of mine, to go out that afternoon and marry them.
21 So they were able to do the whole process in one day.

22 He was not expected to live long. He died a
23 few days later, a few weeks later actually. But my primary
24 concern is that you need a process sort of like the voter
25 registration where people who are not able to get to the

1 courthouse for whatever reason are going to be able to
2 secure marriage licenses.

3 I'm sorry I didn't hear Professor Rains'
4 remarks. I would have liked to have known where he stood
5 on this. I did hear the last two speakers. And part of my
6 written remarks indicate the importance of common-law
7 marriage back in the '30s and the '40s when we first had
8 government benefits and many people couldn't prove their
9 marriage, whether they were married in a church service or
10 whatever, were able to process very easily
11 administratively. And these aren't the cases.

12 I think if I were in a position where someone,
13 a couple came in to me and thought that they were married
14 but really hadn't exchanged vows in the present tense, I
15 might be inclined to just have them do a ceremony there
16 with me, re-exchange them, put it in writing, have a couple
17 witnesses, and then have some written documentation of it.

18 A lot of times in the old cases, because of
19 the Deadman's Act with one spouse deceased, the other
20 spouse couldn't testify; and then you don't get hung up on
21 the words. You just prove that they lived together as
22 husband and wife in the same household under the same name;
23 the children have the same name. And you don't get into
24 whether the precise nuances of exchanging vows occurred.

25 My basic conclusion after thinking about

1 this -- and it's contrary to -- normally, I'm opposed to
2 legislation. But in this case, I think that the potential
3 harm of the misunderstanding of common-law marriages and
4 people may be thinking they're married when they haven't
5 met the specific requirements and the possibilities of
6 fraud are greater than the harm to be saved.

7 And I think that's what -- and I quote it in
8 my remarks. And I'll read it because it gets quoted in
9 almost every case on common-law marriage. President Judge
10 Keller of the Pennsylvania Supreme, Superior Court wrote
11 back in 1940, "The law of Pennsylvania recognizes
12 common-law marriages. But they are a fruitful source of
13 perjury and fraud. And in consequence, they are to be
14 tolerated, not encouraged."

15 And that, that language is quoted again and
16 again in modern cases. I've been practicing law long
17 enough to have been practicing back before the Divorce Code
18 of 1980 when the only way you could get divorced in
19 Pennsylvania, unless you had a desertion, was by
20 indignities.

21 And invariably, people would come in and
22 they'd say that they wanted to be divorced. And you'd ask
23 what their grounds were, and they didn't have any. You'd
24 end up saying, Look, in order to get divorced, the person
25 has to do something bad to you like this; and you explain

1 what all the grounds are. And then they leave.

2 Later on, if they're smart enough, if they
3 want to be divorced, they go to some other lawyer; and they
4 make all this up and get divorced. My concern over the
5 common-law marriage is that somebody comes in and you can
6 make suggestions to them as to what they need and they just
7 go down the street to somebody else and say what they need
8 to say.

9 So possibly, one of the suggestions I heard
10 earlier about codifying the law might be helpful. But if
11 in fact some method of obtaining a license fairly easily
12 through, without actually having to go to the courthouse
13 was capable, it would not be that difficult, even for the
14 people working with the farm workers, to enable people to
15 get married by a private service with a license. And then
16 the state record would be there.

17 And then the potential harm of them possibly
18 getting advice that they were married and possibly having
19 the Internal Revenue Service accept it but later on having
20 the courts of Pennsylvania strike it down because the
21 nuances of a present tense exchange of a marriage contract
22 was not met. And that's the gist of my remarks. Thank
23 you.

24 CHAIRPERSON HARPER: Thank you very much. I'm
25 going to ask the members of the committee whether they have

1 questions. I'll start at the right again.

2 REPRESENTATIVE WOGAN: I have no questions for
3 Mr. Shughart. Thank you.

4 CHAIRPERSON HARPER: Okay. How about
5 Representative Manderino?

6 REPRESENTATIVE MANDERINO: Good afternoon, and
7 thank you. In your bit of research that you have done on
8 the issue of common-law marriage for these classes that you
9 did, I'm just curious if you have any perspective on either
10 other states -- and particularly, I don't think it was your
11 testimony I was reviewing.

12 And it might have been Professor Rains that
13 talked about states that have recently abolished common-law
14 marriage. And what struck me in your written testimony was
15 your thought that it shouldn't be, that there are some real
16 benefits of abolishing it if we can abolish it in a way
17 that would not put any impediments in folks' ways for the
18 easy obtaining of that license, whether it's in the example
19 that you gave of the elderly gentleman who was, couldn't
20 have made the trip to the courthouse or the example that
21 the, Attorney Vasquez gave earlier with regard to migrant
22 farm workers and their working situation.

23 But I don't know if you have any experience or
24 ideas of what other states have done that might form the
25 example or the, the model for that ease of access and lack

1 of bureaucratic red tape that you're referring to.

2 MR. SHUGHART: The extent of my knowledge was
3 reading Justice Nigro's concurring opinion in the
4 Staudenmayer case where he recited quotes from apparently a
5 number of courts in other states that abrogated common-law
6 by judicial decision. And I would not like to see that
7 occur here.

8 I think it's up to the legislature and not the
9 courts to determine whether it's valid or not. But the
10 sense that I got just reading those cases, that the courts
11 in those states just at one point said this is a doctrine
12 that worked well in the frontier but now with modern
13 transportation and the low cost, it's no longer anything
14 that we need.

15 But again, my concern is that if you do
16 that, there are people -- and I didn't mention in my
17 remarks -- but people with language difficulties, people
18 that still come from other countries where maybe they were
19 married under the laws of that country but they don't have
20 any documents to prove it; that, that if you don't have a
21 method of getting a license without having to go to the
22 courthouse, I think that there can be some harm arise by
23 just abrogating the process.

24 And that's just part of my concern about just
25 having the court say we're just going to abrogate this.

1 REPRESENTATIVE MANDERINO: In your written
2 testimony, you also refer to the fact that -- and this is
3 not something that I have firsthand familiarity with.
4 Maybe you can explain it. Also in your written testimony,
5 you referred to the current minimum requirements under
6 Pennsylvania law for marriage and talk about two persons
7 obtaining a license and marrying each other privately
8 before two witnesses.

9 So it doesn't require currently, under
10 Pennsylvania law, a justice of the peace or something like
11 that; but it still requires that trip to the courthouse to
12 get the license in order to go through the private
13 ceremony?

14 MR. SHUGHART: That's correct. And actually,
15 until I started researching for this, I wasn't even aware
16 there was a provision for private ceremony. But reading
17 the marriage code, I saw it, which is nice. And I think it
18 fits the modern era.

19 But again, in the case I had with the elderly
20 gentleman, because we have a very accommodating clerk of
21 courts office, because I know these people and work with
22 them all the time, it wasn't a problem nor did I
23 anticipate. But in another county --

24 REPRESENTATIVE MANDERINO: Where Joe average
25 walking off the street might not have been able to do what

1 you did in that time frame.

2 MR. SHUGHART: Right. But again, if I
3 couldn't have gotten the license, we would have done a
4 common-law ceremony. But I would have documented it all
5 sort of different ways so that when the tax man came, we
6 could prove that the marriage actually occurred.

7 So I guess the way I started out my remarks is
8 that the actual requirements of the common-law marriage are
9 so technical that the harm of people maybe thinking they're
10 married but not making those requirements is greater than
11 getting rid of it and saying you've got to get a license
12 but you can send in an application and as long as you send
13 in your documentation, you can do it through the mail.

14 REPRESENTATIVE MANDERINO: It seems to
15 me -- to follow up on -- if this committee or subcommittee
16 was interested in following up on your suggestion, we would
17 need some input from our clerks of courts around the
18 Commonwealth to see what would be practical within, within
19 their realm of reason because I can't imagine sending out
20 an employee from the clerk of courts office kind of on an
21 as requested basis. That could get very cumbersome as
22 well.

23 MR. SHUGHART: I'm sure that it would. And I
24 want to correct. I was saying clerk of courts. But it's
25 actually clerk of orphan's court, which is, in most

1 counties like ours, the same person as the register of
2 wills. But clearly, I don't think that, especially in your
3 larger counties, that they can accommodate that nor can
4 they determine who can reasonably get into the courthouse
5 or who can't.

6 That's why, as the more I thought since I did
7 my written remarks, it would be almost equivalent to the
8 voter registration where you can submit the documentation
9 some other way.

10 REPRESENTATIVE MANDERINO: Thank you. Thank
11 you, Madam Chairman.

12 MR. SHUGHART: Thank you.

13 CHAIRPERSON HARPER: Anybody else? You know,
14 I have one follow-up question. It interests me, the
15 mythology surrounding common-law marriage, which has a
16 great effect on whether or not we should affect the law.
17 You started out your remarks by saying that high school
18 students asked you about common-law marriage.

19 And I assume these are not folks who are
20 either people who have difficulty with the language or
21 people who are very old and used to certain accustoms or
22 something like that. I mean, what is the question the high
23 school students are concerned with; or what is the
24 mythology that they, that they want to know about?

25 MR. SHUGHART: The way that it arose was that

1 the material is submitted to the teacher, and they have
2 some preliminary discussions with the students. And then
3 when we prepare our remarks, we talk with the teacher. And
4 the teacher in this case, the first time I taught, said
5 that the students were fascinated by common-law marriage
6 and they wanted me to talk about it.

7 At that point, I realized that it was in their
8 vernacular. So I brought it up. And I said, what's,
9 what's a common-law marriage? And basically, people
10 thought, students thought one of two things. They either
11 thought that it was living together for so many years, or
12 they thought it was living together when you couldn't
13 really get married because you were already married to
14 somebody else or something.

15 Nobody understood exactly what it was. And I
16 think that the reason that the question arises is because
17 today, contrary to 30 years ago, an awful lot of people are
18 living together and not marrying and deliberately not
19 marrying. And then where the fraud comes in is when all of
20 a sudden, having separate estates rather than a marital
21 estate is not to one party's best financial interest.

22 At that point then, they come back and start
23 looking whether they're common-law married. So I submit
24 that the reason the students are asking the question is
25 because they're more likely to live with somebody for some

1 period of time before they actually marry them to decide
2 whether they should marry them than were their parents or
3 certainly their grandparents.

4 And so they're aware of this concept of
5 common-law marriage. And I thought it was important to
6 dispel their misconceptions for at least these small groups
7 of students.

8 CHAIRPERSON HARPER: All right. Actually,
9 based on your testimony and the other testimony we heard
10 this morning, none of those situations would have resulted
11 in a common-law marriage, not living together for a certain
12 period of time, not living together to see if we're going
13 to get married later which would not have words of present
14 intent or are any of the other things that the teenagers
15 thought were a common-law marriage, right?

16 MR. SHUGHART: Correct. They were under total
17 misconception of what it was.

18 CHAIRPERSON HARPER: Thank you very much.
19 Does anyone else, staff attorneys have questions? No.
20 Well, thanks for coming in.

21 MR. SHUGHART: Thank you.

22 CHAIRPERSON HARPER: I think that concludes
23 our hearing for today, unless there's someone else that has
24 a need to have the attention of the committee. And we will
25 share the written testimony as well as the notes of

1 testimony with the rest of the Judiciary Committee.

2 And we thank all our witnesses for coming in
3 and accommodating us. Thank you so much.

4 (Whereupon, at 12:18 p.m., the hearing
5 adjourned.)

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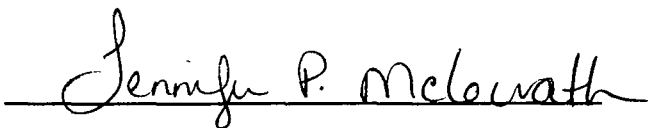
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1 I hereby certify that the proceedings and
2 evidence are contained fully and accurately in the notes
3 taken by me during the hearing of the within cause and that
4 this is a true and correct transcript of the same.

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11 JENNIFER P. McGRATH

12 Registered Professional Reporter

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17 My Commission Expires:
18 April 30, 2005

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