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1                   ACTING CHAIRMAN DERMODY: I'd like to  
2 welcome you all here. My name is Frank Dermody, and  
3 I'll be chairing this hearing today. Today is the  
4 hearing that started as a result of a resolution by  
5 Representative Tim Pesci from Freeport regarding  
6 domestic relations and problems in domestic relations  
7 in the judicial system. I would like to welcome all of  
8 you here to Oakmont, my home town and home of the only  
9 lilac bridge in the Commonwealth of Pennsylvania. I  
10 would also like to welcome, today we're in the Tenth  
11 Street School, and I have several classes here, Mr.  
12 Biden's economics and law class is here from the  
13 borough. And I think we have some interview students  
14 in the back, and I would like to welcome you all today  
15 also.

16                   Before we get started, I guess I'd like  
17 the members to please introduce themselves and we'll  
18 call our first witness. Thank you.

19                   MR. KRANTZ: I'm David Krantz, Executive  
20 Director of the House Judiciary Committee.

21                   REPRESENTATIVE FAJT: Greg Fajt, State  
22 Representative from Mount Lebanon.

23                   REPRESENTATIVE PESCI: Tim Pesci, State  
24 Representative, 60th District.

25                   ACTING CHAIRMAN DERMODY: Frank Dermody

1 from Oakmont.

2 REPRESENTATIVE HAGARTY: Representative  
3 Lois Hagarty from Montgomery County, and I would just  
4 like to tell the students and mention it to the  
5 students who drew the poster for us how beautiful it  
6 was and how welcome I feel coming all the way from  
7 Montgomery County that the children made a welcome sign  
8 for us.

9 MR. SUTER: Hi. I'm Ken Suter. I'm  
10 Republican Counsel to the Judiciary Committee.

11 MS. MILAHOV: And Galina Milahov,  
12 Research Analyst for the Judiciary Committee.

13 ACTING CHAIRMAN DERMODY: And before we  
14 get started, I also would like to thank the Riverview  
15 School District and Roger Nash and everyone has been so  
16 gracious to us in allowing us to have this hearing here  
17 today.

18 The first witness is James Beck.

19 MR. BECK: Thank you, Mr. Chairman.

20 My name is James Beck. I am a principal  
21 in the law firm of Gillotti, Capristo and Beck. Our  
22 law firm, which was first incorporated in 1981,  
23 concentrates in family law. That's all we do. We're  
24 five attorneys now, and since 1981 we have only  
25 practiced in family law. Prior to my joining the staff

1 in 1981, I was also the director of the Family Division  
2 of Allegheny County. That didn't work. That was 10  
3 years ago. I'm also the Chair of the Family Law  
4 Section of the Allegheny County Bar Association, and  
5 I'm a member of counsel of the Pennsylvania Bar  
6 Association Family Law Section.

7 Interestingly, I had the opportunity to  
8 talk to many of the people who have previously  
9 testified before this Committee in the last half an  
10 hour and I have concluded that on many issues we are in  
11 agreement. That is, the litigants and those lawyers  
12 that I am indirectly representing today as  
13 practitioners in the Family Law Section in Allegheny  
14 County, and I should comment that my comments can only  
15 be directed to Allegheny County. I am not familiar  
16 with the procedure or any of the judges or any of the  
17 problems in other counties, even though we do practice  
18 somewhat in Westmoreland County and Washington County  
19 and some of the surrounding counties.

20 I wanted to address two issues that are  
21 obviously important to this Committee and important to  
22 the litigants that testified before this Committee and  
23 are important to the practitioners. The first is the  
24 system itself. The Family Law Section or the Family  
25 Law Division of Allegheny County, in my opinion, is so

1 overloaded and overburdened at this point that it is  
2 virtually impossible in some cases for certain  
3 litigants to get his or her fair day in court on  
4 occasion and to have their cases heard expeditiously on  
5 occasion, and I couldn't think of a better way to make  
6 this point than to bring with me, and I've attached to  
7 the last page of my written testimony, yesterday's  
8 court calendar in Allegheny County. And if you look at  
9 it, and it's very difficult to read because I had to  
10 reduce it to 8 1/2 by 11, you will see that there are  
11 approximately 225 cases listed for hearing yesterday in  
12 Allegheny County. This isn't the entire list. The  
13 list went on to another page, but I didn't want to  
14 burden this Committee with more paper.

15           And this is not necessarily a typical  
16 day. You'll note that the administrative judge wasn't  
17 even sitting yesterday because he had to be in juvenile  
18 court in another part of town, so Judge Strassburger  
19 didn't even have a list yesterday. Judge Kaplan was  
20 trying two cases yesterday, two half-day cases. Judge  
21 Baldwin had 11 conciliations. Judge Baer had 8  
22 conciliations but also spent 2 1/2 hours on motions  
23 yesterday where there were approximately 75 to 100  
24 motions brought to him yesterday. I was there,  
25 unfortunately, for that period of time. Judge Melvin,

1 who is on this list, is borrowed from Criminal Division  
2 to help us with the backlog. And then you'll see that  
3 there are 4 hearing officers who are responsible for  
4 approximately 200 support cases.

5 Now, what doesn't appear on this list are  
6 the motions that are heard every day by the judges at  
7 1:30. That can be anywhere from 25 cases to 100 cases,  
8 depending on how many lawyers show up with motions.  
9 Also what does not appear on this list are the final  
10 Protection From Abuse hearings because they have to be,  
11 by statute, as you're well aware, have to be heard  
12 within 10 days of the issuance of the interim order,  
13 and they happen so fast that they can't even get on  
14 this list. This list is usually prepared about two  
15 weeks in advance. Those cases, and they can be  
16 anywhere from 5 to 20 cases a day, are simply put on  
17 top of one of the judges' lists. So I suspect by  
18 looking at this list that it may have been Judge  
19 Baldwin who had the Protection From Abuse cases  
20 yesterday, because Judge Baer had motions, Judge  
21 Baldwin had conciliations, and I suspect on top of  
22 those conciliations she had probably anywhere from 5 to  
23 20 final Protection From Abuse hearings, if they didn't  
24 settle. I don't think I have to say anymore than to  
25 just to look at this list.

1                   It takes weeks for dependent spouses to  
2 get into court for an initial support hearing. It  
3 takes now 3 1/2 months before I can get my first  
4 conciliation for a client in a property distribution  
5 case. The numbers speak for themselves. The problem  
6 is, these numbers of cases won't go away. There will  
7 always be an incredibly large number of litigants. So  
8 what do we do? For years the Family Law Section in  
9 Allegheny County has been begging and screaming for  
10 more judges, more hearing officers, more space. If any  
11 of you has ever had the good fortune, and I say that  
12 facetiously, of visiting the sixth floor of the  
13 City/County Building where the Family Division is, it's  
14 an abomination. People should not be required to stand  
15 around in hallways with this kind of litigation, which  
16 is difficult enough to begin with, under those  
17 conditions. Again, the lawyers have been trying for  
18 years to get more space. We were finally given a  
19 little room on the sixth floor where we're going to be  
20 able to meet with clients and other lawyers in some  
21 privacy, but its one room which will have perhaps two  
22 lawyers in it and their clients, and that's all we're  
23 able to get. There are people sitting behind me that  
24 I've seen on the sixth floor. I recognize their faces.  
25 We've had to go through this system and through this

1 delay and spend their time on the sixth floor, and it's  
2 not right. And I'll be the first to say it, and I  
3 think many of my colleagues will agree with me.

4 So, all that it's going to take is for  
5 this Committee to recommend to the legislature that  
6 they spend another few hundred thousand dollars, a  
7 million dollars, on more judges, more hearing officers,  
8 and more space and that will help. But that's more  
9 easily said than done, I know that. I was being  
10 facetious. We've been trying for years, and that's a  
11 problem. We know that. There are some bills I am  
12 aware of right now pending in the Senate, I think two  
13 weeks ago they were reported out by Senator Greenleaf's  
14 committee, which I think will help not necessarily this  
15 kind of problem. This kind of problem won't go away.  
16 You can't deal with. You only have so much space, you  
17 only have so many judges. But there are a couple of  
18 things that are pending now in the Senate that I think  
19 will be very helpful.

20 The first is the, and again, while I'm  
21 not speaking formally for the Allegheny County Bar  
22 Association and the Family Law Section, I don't know  
23 one of my colleagues that opposes reducing the two-year  
24 waiting period to a one-year waiting period for the  
25 unilateral no-fault divorce. I think that that's

1 widely accepted and endorsed by many lawyers, many of  
2 my colleagues. The 90-day waiting period for a consent  
3 divorce is proposed to be reduced from 90 days to 60  
4 days. That would be of some help, but in consent  
5 divorces generally you don't have a situation where you  
6 need to wait for the system to kick in.

7           The problem is, and this is the problem,  
8 this is where the frustration comes in of lawyers and  
9 litigants and the time problem comes in, is during that  
10 two-year waiting period nothing can happen. Nothing  
11 can happen because under the code as presently written,  
12 a judge cannot distribute property or deal with the  
13 issue of alimony or deal with the issue of counsel fees  
14 unless it's in conjunction with a decree in divorce.  
15 So, if there's no consent, there's no divorce decree  
16 for a minimum of two years, and nothing happens. The  
17 only thing that happens are bad things. While people's  
18 frustrations are festering, and you're going to have  
19 problems with the support cases, you're going to have  
20 problems with children, and until someone can deal with  
21 the issues, assuming there's no agreement, then nothing  
22 happens and things fester. So the reduction from the  
23 two years to one year would be a great step, in my  
24 opinion.

25           There are also bills pending, I

1 understand, for arbitration, binding arbitration, which  
2 is one way of taking some cases out of the system, but  
3 you have to be careful with arbitration. You have to  
4 know that your arbitrators know the law and know what  
5 they're doing because they will act as judges and it  
6 will be, my understanding, binding arbitration, which  
7 means there will be no appeal. But that is one way  
8 that the system can be helped. Again, my bottom line,  
9 I'll try to keep this short, because I know we're  
10 behind, is that the system itself is not the problem.  
11 The problem is it's an overloaded system. It's like  
12 putting a lawn mower engine in an 18-wheel tractor  
13 trailer. It's just not going to pull it. There is  
14 nothing wrong with the engine, it's just not big  
15 enough, and that's really the problem that I am facing  
16 as a representative of other lawyers and my own clients  
17 who are frustrated with this entire process. And I  
18 can't disagree with their frustration at this point.

19 I'll stop here and if you want to ask me  
20 questions, because I know that our time is limited  
21 today.

22 ACTING CHAIRMAN DERMODY: Thank you.

23 I have been on the sixth floor and I  
24 agree with you. Nobody should have to go through that.

25 Any questions?

1 Representative Hagarty.

2 REPRESENTATIVE HAGARTY: Just one.

3 BY REPRESENTATIVE HAGARTY: (Of Mr. Beck)

4 Q. I opposed, I guess when we last looked at  
5 the Divorce Code, the separation period being reduced  
6 from two years to one year, so that you know where I  
7 stand. I had many attorneys tell me at that time that  
8 they found many instances in which at about 9 or 10  
9 months of separation was when the couple started  
10 rethinking possibly the possibility of reconciliation,  
11 and I wonder, let me ask you first, at what point  
12 during that separation period do you generally see  
13 clients? When do they first come to you?

14 A. Generally, very shortly after the  
15 separation. I'm trying to think statistically in my  
16 own case, but it's generally at or about the time of  
17 separation.

18 Q. And have you had couples who have  
19 reconciled then during that two-year period?

20 A. I can say honestly over my 10 years of  
21 practice I can think of one case, and I've probably  
22 been involved in literally hundreds of cases. I can  
23 think of one case where there's been a reconciliation.

24 Q. Have you had any cases in which the  
25 parties have been separated and reconciled and then

1 obviously separated again before they came to you?

2 A. Yes. I've had those cases where I've  
3 seen them in the second separation period.

4 Q. How long, generally, were those  
5 separations before they reconciled?

6 A. Short periods of time. The first  
7 separation is generally a very short period of time, 30  
8 days, 60 days. It's a very short period.

9 Q. So you do not share the experience then  
10 that I remember specifically the Chairman of the Family  
11 Law Section, I don't know when it was anymore that we  
12 did the last amendments, a couple of years ago anyway--

13 A. 1988.

14 Q. '88. So you don't share that experience?

15 A. My personal experience has not been the  
16 same, no.

17 Q. Let me ask you also, one of the other  
18 concerns that I've heard voiced quite legitimately on  
19 this is that if, and I'll give you the example of the  
20 man who chooses to leave the marriage and the woman who  
21 chooses to stay in the marriage, one of my concerns has  
22 been to suddenly have her faced with no husband after,  
23 you know, what may be most of her adult life and with  
24 one year, virtually in my mind no time, to adjust to  
25 such a situation, I think that that's rough on people.

1 I mean, remember, we are dealing with a situation in  
2 which they don't agree. If they do agree, we have  
3 provisions for a 90-day consent decree.

4 A. I agree and I think that -- but I don't  
5 think that the difference between one year and two  
6 years is going to make a big difference in that case.  
7 And the system certainly isn't going to make the  
8 difference, and the lawyers aren't going to make the  
9 difference, because that's not the lawyer's role in  
10 that.

11 Q. Don't you find emotions over a full year  
12 period of time, that's a great deal of time for  
13 healing?

14 A. No.

15 Q. So you don't think that the difference  
16 between one year and two years is significant in terms  
17 of allowing someone who perhaps has not been employed  
18 before, who hasn't faced employment or life without a  
19 spouse, that that additional year of time can be  
20 helpful to her?

21 A. Well, the separation period from when one  
22 can get a divorce and deal with the economic issue, I  
23 think you're talking about apples and oranges. I'm not  
24 sure that in your example that 1 year, 2 years, or 10  
25 years would make a difference. That is where the judge

1 in the court has to determine, at least from their  
2 limited ability, to help that person, and that is  
3 generally financial, that is for that person to deal  
4 with. But I think there are other--

5 Q. But you also can't get the divorce. So  
6 you may say I'm dealing with apples and oranges because  
7 you're talking about property distribution--

8 A. Right.

9 Q. But I'm saying coupled with property  
10 distribution is the divorce decree today, generally?

11 A. That's right, but we're talking about two  
12 different problems. One is if you're going to end up  
13 going through the system, let's get it finished.  
14 You're talking about a different problem, I think, and  
15 that is helping the person who, as you said, has been a  
16 dependent spouse for perhaps 20 years.

17 Q. I'm combining them because I think it may  
18 be some help to give her an additional period of time  
19 to remain married, because I don't share perhaps some  
20 people's confidence that the system provides that well  
21 post-divorce.

22 A. I'm not sure that I share that either.  
23 The law says that they're supposed to, but whether or  
24 not, and again, this is the question of system and law  
25 versus people.

1 Q. I agree with that.

2 A. The system and the law is fine. The law  
3 as it's written, except for some procedural matters  
4 that we're talking about today, is fine. The question  
5 is, how is it applied? How is it applied to a  
6 particular case? And that's the problem. Frankly, I  
7 don't think that an extra year will help that problem  
8 we talked about right now.

9 Q. Is there -- do you bifurcate cases in  
10 Allegheny County?

11 A. Yes, but only if -- the judges in our  
12 county will only permit it so long as the dependent  
13 spouse is no worse off after the decree, at the entry  
14 of the decree, than before. What I mean by that--

15 Q. Well, we provide for that by law. As I  
16 recall, that's how we wrote the '88 amendments.

17 A. That's provided for and it's also  
18 provided for in the Superior Court in the Wall case,  
19 and what I mean by that is if there's bifurcation, the  
20 non-dependent spouse will be required to continue to  
21 provide medical insurance coverage, will be required to  
22 maintain the dependent spouse as beneficiary on life  
23 insurance policies, will be required to maintain the  
24 dependent spouse as surviving spouse on pension plans.  
25 So, it will be permitted in Allegheny County, but only

1 so long as no one suffers for that.

2 Q. Thank you.

3 REPRESENTATIVE HAGARTY: Thank you, Mr.  
4 Chairman.

5 ACTING CHAIRMAN DERMODY: Representative  
6 Fajt.

7 BY REPRESENTATIVE FAJT: (Of Mr. Beck)

8 Q. A quick question, Jim. Thank you for  
9 your testimony this morning.

10 We in Harrisburg heard a lot of  
11 complaints and comments from people, a lot of people  
12 that are here today, about the attorneys involved in  
13 the cases, and obviously we operate in a free market  
14 economy; if people don't like their attorney, they  
15 always have the option of going to another attorney.  
16 But I was a little concerned, and I personally have  
17 gotten involved on behalf of friends who could not get  
18 phone calls returned, thought that their attorneys were  
19 operating the system to run up legal fees on them. We  
20 heard some horror stories about the excessive costs of  
21 a divorce and child custody and property separation  
22 agreements in our hearings in Harrisburg. Other than  
23 the Disciplinary Board, is there anything that we as a  
24 committee should be looking at to try to send a signal  
25 to the attorneys that we are concerned about these

1 costs, and do you as a practitioner see this as a  
2 problem with other attorneys that you have worked with?

3 A. I have seen it as a problem, but let me  
4 be very frank with this. Generally speaking, those of  
5 us that concentrate our practice in this area and do  
6 this, we don't run into this problem because I have no  
7 interest in having a case hanging around my office for  
8 five years. It doesn't help my client; it certainly  
9 doesn't help me. But, to answer your question, there  
10 are people, I'm sure lawyers, that abuse the system.  
11 I'm not here to defend every lawyer. It's just like  
12 any other profession. And unfortunately, I think there  
13 are certain lawyers who have cast a shadow on the rest  
14 of us, particularly in this practice. This is the most  
15 difficult practice of law that there is. It's the most  
16 emotional. When a client comes into my office, it's 90  
17 percent emotion in the beginning and 10 percent  
18 business, and hopefully someday it turns around to be  
19 ultimately a business deal. But I am not going to sit  
20 here and say that there are no abuses of legal fees.  
21 I'm sure there are. I wouldn't pretend to say that it  
22 never happens in my profession.

23 Now, the problem is, what can this  
24 Committee do about that? Unfortunately, it's a  
25 capitalistic system. It's a free market. Maybe one of

1 the answers is, and my partner Chris you'll be hearing  
2 from later, we participate in a professional  
3 organization called the American Academy of Matrimonial  
4 Lawyers, which puts very strict standards on being able  
5 to be even admitted to that organization. Now,  
6 unfortunately, any lawyer can practice family law, and  
7 I think that one of the problems is that those  
8 litigants that hire a lawyer who dabbles in the  
9 practice may run into more problems than if you're  
10 hiring a lawyer who knows the practice and knows the  
11 system.

12 But I wanted to comment on one other  
13 thing, too. There is a huge gap of available legal  
14 services, not only in Family Division but in other  
15 divisions, where there is a gap of people who can't  
16 afford any lawyer, that are not poor enough to receive  
17 the help of a legal aid society or Legal Services, and  
18 Legal Services, for example, their funding has been cut  
19 back so drastically that they don't even represent —  
20 on a very limited basis do they do any family law  
21 practice anymore. So there is a great gap of people  
22 who can't get representation at all. Again, that's a  
23 funding problem.

24 ACTING CHAIRMAN DERMODY: Representative  
25 Pesci.

1 BY REPRESENTATIVE PESCI: (Of Mr. Beck)

2 Q. Mr. Beck, in your testimony, I'd like to  
3 read and maybe correct what I feel is inappropriate.  
4 "Finally, I would like to comment specifically  
5 regarding House Resolution Number 8," and since I am  
6 the chief sponsor of that you say, "I frankly believe  
7 the establishment of a task force which would use  
8 public funds to 'investigate' the allegations of a few  
9 is inappropriate."

10 First of all, Jim, the task force has not  
11 been created, and that's due to the Majority Leader  
12 calling me and asking me if I would turn this over to  
13 the Judiciary Committee. I take exception to the word  
14 "few." Since the resolution went to the House floor,  
15 was recalled back to the Majority Leader's office,  
16 there have been more than a few people in my office in  
17 Harrisburg and also in my office in Forge City and also  
18 at my house with phone calls. There is something wrong  
19 with the system and I'm not sure what it is.

20 You also stated in here, "I also  
21 understand that voluntary binding arbitration has been  
22 suggested by several legislators." Jim, do you  
23 foresee, maybe in the future, that maybe paralegals  
24 would handle that? When you say binding arbitration,  
25 you're saying those people must know the law.

1           A.    Absolutely.

2           Q.    So, do you not have paralegals that work  
3 for you?

4           A.    Yes.

5           Q.    Would you say that maybe in the future do  
6 you think that those people may be qualified to take  
7 the load off, okay, that they may be used in these  
8 binding arbitrations, or do you see--

9           A.    You mean as representatives of litigants  
10 or as the arbitrators?

11          Q.    Well, I'll say the arbitrators.

12          A.    No, because they are not trained in the  
13 law. They are not permitted to give legal advice or  
14 know the law.

15          Q.    Okay, that's what I'm trying to find out.  
16 You would not ever see any paralegals being involved in  
17 any of this?

18          A.    No.

19          Q.    Okay, because of the training?

20          A.    That's right.

21          Q.    Okay. No, I'm just--

22          A.    When you say "involved in this," we use  
23 paralegals for the sole purpose of keeping costs down  
24 for litigants.

25          Q.    For research?

1           A.    Information gathering and discovery,  
2 things like that.

3           Q.    Right, but you don't foresee them ever  
4 getting involved in, just let's say that I'm married  
5 and my wife and I want a divorce and it's dry-cut,  
6 clear, that you never see a paralegal involved in the  
7 future of handling something like that? I'm saying  
8 that—

9           A.    I know what you're saying—

10          Q.    They're studied in law and they're  
11 working for your firm.

12          A.    Right.

13          Q.    Okay, and I come to your firm and I want  
14 to get divorced and you're saying, well, Tim, yours is  
15 a cut-and-dry case, we'll move this over here. Do you  
16 ever foresee a paralegal handling something?

17          A.    Not preparing the legal document, no.

18          Q.    Okay. Thank you.

19                    REPRESENTATIVE PESCI: that's it for me.

20                    ACTING CHAIRMAN DERMODY: Go ahead, Ken.

21 BY MR. SUTER: (Of Mr. Beck)

22          Q.    You talked about arbitration. I was  
23 wondering what your thoughts are on mediation. Would  
24 that just create an extra step and actually prolong the  
25 process?

1           A.    There's a big difference between  
2 arbitration and mediation.  Mediation is a process  
3 where it's a non-adversarial process, meaning that  
4 there are a husband and wife in our case and a third  
5 party who's not permitted to represent either party,  
6 they are there just to try to settle the case.  The  
7 problem is that in most family law cases one of the  
8 parties is at a very serious disadvantage in  
9 negotiation.  The perfect example is the dependent  
10 spouse who has not been involved in the numbers and  
11 recordkeeping and that sort of thing for the last 25  
12 years and wouldn't know where to start to ask for the  
13 appropriate information.  Also, it can be a very  
14 intimidating process for a lot of people.  Keep in mind  
15 that this is emotional enough and to be there in a  
16 setting and try to negotiate in good faith with someone  
17 who the other party feels has wronged them, be it  
18 accurate or not accurate.  I just think that it would  
19 be a wasted step if it was required.  Voluntary is  
20 another thing, because I've seen it work, but in very  
21 few cases.

22           Q.    I agree with you and I just wanted to  
23 bring that point out, because we're constantly seeing  
24 bills that urge for mediation, and I think that it  
25 would do more harm than good.

1           A.    It could very well.  It could add to the  
2 expense tremendously because they are not for free,  
3 mediators.  Mediators charge, too.

4           Q.    Right.  Okay.

5                    ACTING CHAIRMAN DERMODY:  Mr. Krantz.

6           BY MR. KRANTZ:  (Of Mr. Beck)

7           Q.    Attorney Beck, do you feel -- it's been  
8 alleged that through the process of divorce is constant  
9 hearings and, you know, they'll go in for 10 or 15  
10 minutes and draw out the process.  You mentioned in  
11 your practice of having a case four or five years is  
12 quite inconvenient and you would rather take care of it  
13 quickly.  Is there any way to work within the system in  
14 which they add a 180-day rule that would insist that  
15 somehow these prolonged objections, drawing out by one  
16 party or the other to penalize somebody, et cetera,  
17 that it could be done, you know, as quick as possible?

18           A.    Like a speedy trial kind of requirement?

19           Q.    Kind of.

20           A.    The answer is that would be a great  
21 answer, but who's going to do it?  Who would hear the  
22 cases?  There are only 4 judges to do 27,000 cases that  
23 were filed in Allegheny County last year.  Who would do  
24 all these cases in 180 days?

25           Q.    You have mentioned there's 27,000 cases?

1           A.    Right.

2           Q.    And across Pennsylvania, would it be fair  
3 to say there might be a quarter of a million divorce  
4 cases a year?

5           A.    Oh no, that's high.  When I say 27,000,  
6 I'm talking about all kinds of cases--

7           Q.    Okay.

8           A.    --that could be filed in Family Division.  
9 I think there were 12,000 or so divorce cases filed.  
10 When I say 27,000, I'm talking about new filings,  
11 support, custody.

12          Q.    Okay.  Across Pennsylvania, how many  
13 would you say there would be?  Family cases.

14          A.    All kinds of cases?

15          Q.    Yeah, PFA, support, child support,  
16 custody.  Another question I am interested in, when you  
17 talk about 27,000, we hear right now, we've heard from  
18 a number of people in the Commonwealth, and if we  
19 actively advertise it we could probably come up with  
20 2,000, 3,000, 5,000, et cetera, come up with a  
21 percentage of people that were dissatisfied.  It could  
22 approach 50-50, it could be less or even slightly more.  
23 I'm wondering, if we added more judges, would we still  
24 constantly have the problems?

25          A.    And I think Chris is going to address

1 this issue when he talks. There are still going to be  
2 problems because the system is perceived by people  
3 subjectively. They perceive the system and deal with  
4 the system and judge the system based on their own case  
5 and based on their own experience and based on their  
6 own facts. So the answer to the question is if we had  
7 50 judges in Family Division and everyone's case could  
8 be heard within 60 days, some people are still going to  
9 feel wronged by the system, Wronged by the process.

10 Q. One final question which ties in with  
11 that is do you feel that some of the litigants prolong  
12 the process?

13 A. That can happen that the litigant can do  
14 it only because he or she may not cooperate with his or  
15 her own attorney. And it's possible that that can  
16 occur, but generally it's not the litigant that does  
17 it, that is responsible for it. It can be if they  
18 won't cooperate and produce a document that the court  
19 has required or that their own counsel has required,  
20 and it does happen, but it's not the common case where  
21 it is the litigant who is causing the problem.

22 Q. Thank you.

23 ACTING CHAIRMAN DERMODY: Jim, I have one  
24 last question.

25 BY ACTING CHAIRMAN DERMODY: (Of Mr. Beck)

1 Q. You mentioned in your testimony about a  
2 group of people out there who are not poor enough to  
3 qualify for Legal Aid or Legal Services lawyers, not  
4 wealthy enough or not well-off enough to afford a  
5 lawyer to assist them.

6 A. Right.

7 Q. Are these people proceeding pro se in  
8 this process and would the system move quicker and with  
9 less cost if they were provided an attorney?

10 A. I can address that specifically. That  
11 kind of situation is being addressed both by law firms  
12 like ours who do some pro bono work when we can. The  
13 Bar Association in Allegheny County is really pushing a  
14 program that will help with pro bono work. The court  
15 system itself has provided certain forms for certain  
16 kinds of actions where you can do it pro bono. For  
17 example, a mom or a dad can file his or her own partial  
18 custody action and can go to Motions themselves and do  
19 that. Support cases, when they are filed, you don't  
20 need a lawyer to file them. You just go to the sixth  
21 floor and the court is required to do it for you. So  
22 there is some help, but not enough.

23 Q. So the system is taking some steps to  
24 lessen--

25 A. Some steps. Our section, the Family Law

1 Section, lawyers volunteer once a week to mediate,  
2 because we are not allowed to enter orders, on partial  
3 custody cases to try and cut down the waiting time that  
4 people have to wait to set up an order to see their  
5 kids, and I just learned two days ago that we had it  
6 down to about 4 weeks and now it's back up to about 10  
7 weeks again, so our section is going to double it and  
8 we are going to have two lawyers a week volunteer to do  
9 it. So we do what we can, but it's an overwhelming  
10 situation at this the point in this county, in  
11 Allegheny County.

12 ACTING CHAIRMAN DERMODY: Thanks.

13 MR. BECK: Thank you, Mr. Chairman.

14 ACTING CHAIRMAN DERMODY: Mr. Gillotti.

15 MR. GILLOTTI: Mr. Chairman, ladies and  
16 gentlemen. I appreciate the opportunity to be here.  
17 My name is Chris Gilliotti, and I'm appearing here at  
18 the request of Tom Cooper, the President of the  
19 Pennsylvania Bar Association, who asked me to speak on  
20 behalf of our association. Understand, however, I am  
21 not taking a position. The Pennsylvania Bar  
22 Association doesn't have a stated position. My remarks  
23 are only my own, but the intention was for me to share  
24 with this Committee some background in this practice to  
25 help you in your considerations.

1           A little about myself. I'm a principal  
2 in the same firm as Jim Beck, and you've heard about  
3 our firm. My practice has always been primarily in the  
4 area of family law, and for the last 15 years I have  
5 practiced this exclusively. I served as the  
6 chairperson of the Family Law Section of both the  
7 Allegheny County and Pennsylvania Bar Associations. I  
8 was President of the Allegheny County Bar Association  
9 in 1987. I am presently a member of the House of  
10 Delegates of the Pennsylvania Bar Association, and I am  
11 Chairman of the Pennsylvania Bar Association Judiciary  
12 Committee. I am a Fellow of the American Academy of  
13 Matrimonial Lawyers, which is a national organization  
14 of practitioners who concentrate in this area. I've  
15 served as President of the Pennsylvania Chapter and as  
16 a National Governor of that organization. I've  
17 previously testified before the Judiciary Committee of  
18 both the Senate and the House, and was one of the  
19 members of the task force which aided in the drafting  
20 of the Pennsylvania Divorce Code back in 1980.

21           I have practiced under both the old  
22 divorce law and the present Divorce Code, and I was  
23 involved at the time that reform occurred, and let me  
24 start by telling you that it is much better today. We  
25 need not rehash the past, but practice under the old,

1 archaic Pennsylvania divorce law that didn't recognize  
2 alimony and didn't recognize marital property was an  
3 insult to the citizens of the Commonwealth. That is  
4 not to say that Pennsylvania's divorce reform in the  
5 Pennsylvania Divorce Code has solved all the problems.  
6 But let me share with you some experiences and some  
7 insights into this kind of litigation.

8           First of all, the Pennsylvania Divorce  
9 Code sets forth in its preamble a public policy, and we  
10 know that and we know that it is to effectuate economic  
11 justice between parties who are divorced and insure a  
12 fair and just determination in settlement of their  
13 property rights. And that sounds good, except that  
14 there are a couple of fundamental truths that have to  
15 be recognized about litigation under the Divorce Code.

16           Number one, when people divorce, there  
17 isn't enough to go around. And number two, people in  
18 divorce cases are not always as good as they should be.

19           Let me explain what I mean. In every  
20 divorce case, the husband hearing how much money he  
21 must -- and by the way, let me say that although I'm  
22 saying "husband" and "wife," of course it's  
23 gender-neutral, but rather than use terms like "paying  
24 spouse" and "dependent spouse," in most cases it is the  
25 husband who pays and the wife who receives. So I'm

1 going to say that understanding that naturally it can  
2 be the other way around. But in every case, when the  
3 husband hears how much money he is going to be required  
4 under our guidelines or through a court hearing to pay  
5 to his wife, he's outraged and he insists that he  
6 cannot live on what's left. And when the wife hears  
7 how much she or she and the children are going to get,  
8 she is outraged and she says, I cannot live on that.  
9 And they are both right. Because in America today  
10 there are very few families that can separate,  
11 establish two households and maintain anything near the  
12 standard that they had when they were living together.

13           The first awful truth that the people  
14 learn in divorce cases is that they are going to suffer  
15 financially. Both sides are going to suffer  
16 financially. I'm sure that this committee is going to  
17 hear from many people who are going to tell you that  
18 the system is unfair to their gender. The husbands are  
19 going to tell you that it's the law and the judges are  
20 stacked in favor of the wife, and the wife is going to  
21 tell you that wives and children are abandoned and the  
22 law is favoring the husbands. You see, no matter how  
23 intelligent or sophisticated the litigants are, it  
24 isn't until they have separated and faced this awful  
25 economic truth that it comes home to rest. And they

1 are angry about it, and they are bitter about it, and  
2 they are frustrated because there isn't any solution to  
3 that problem. Because their life isn't the way it was  
4 or the way they feel it should be, because their  
5 expectations have not been met, because the wife says,  
6 wait a minute, he left me. I'm entitled to be  
7 supported the same way I was, it's not my fault that  
8 this marriage broke up. And the husband says, wait a  
9 minute, the Divorce Code says I'm entitled to a  
10 no-fault divorce. Now, why do I have to give her all  
11 this money? Why doesn't she get off her duff and go to  
12 work? That's their expectation. Their expectation  
13 isn't being met, and because it isn't being met they  
14 get mad, and because they get mad they have to strike  
15 out at somebody or something.

16 This isn't just money. In custody cases  
17 the father resents not having day-to-day custody,  
18 day-to-day contact with his children. Because as  
19 liberal as the courts may be, he's not going to see the  
20 kids, if he moved out, as often as he did when he was  
21 at home. And the mother may feel resentful of the fact  
22 that the father has the children overnight and away  
23 from her, especially very young children. The father  
24 always tells his lawyer that the mother is poisoning  
25 the kids against him, because they are distant and

1 aloof when they come to visit, and the mother always  
2 tells the lawyers that the kids are crying and upset  
3 and unhappy when they return from their visitation.  
4 What they are seeing is not the action of the other  
5 party. What they are seeing is the fact that it is  
6 affecting the kids and the kids are regretting and  
7 suffering the fact that their family unit no longer  
8 exists.

9           The other truth is that people in divorce  
10 cases are unlike people in any other kinds of  
11 litigation. Most litigation in the Commonwealth is  
12 either between strangers, people who met when their  
13 cars collided in an intersection, or, if the people  
14 knew each other, they are dispassionate. They are  
15 arguing about what their contract means or a commercial  
16 landlord is arguing about whether the tenant should pay  
17 damages under a lease. People in divorce litigation  
18 aren't dispassionate. They are people who have lived  
19 together and loved each other and now they don't  
20 anymore and somebody has been hurt, hurt badly, and now  
21 they feel powerless to right that hurt and sometimes,  
22 unfortunately, they use other methods to get back at  
23 the person who they felt has hurt them. And I'm not  
24 critical of people. That's a very human way to behave.

25           And I've represented -- and by the way,

1 note that we're chameleons. Those of us who practice  
2 in this area don't have a viewpoint because unlike  
3 defense counsel and prosecutors or unlike insurance  
4 lawyers and personal injury lawyers, we don't have one  
5 viewpoint. We represent one position in the morning  
6 and then in the afternoon we have to argue against that  
7 position because we represent both sides, but because  
8 of that, we have seen, we have seen the kind of  
9 frustration bearing on even the most intelligent and  
10 otherwise well-meaning clients that causes them to  
11 react improperly.

12 I have a friend who practices in Florida  
13 who once said to me, in criminal law you represent the  
14 worst people on their best behavior, and in family law  
15 you represent the best people on their worst behavior.  
16 And unfortunately, that all too often is true.

17 So what you have then is a system that  
18 cannot meet the needs or the expectations of the  
19 litigants because there isn't enough money to go  
20 around, and when the case is over, both sides have lost  
21 because they are not going to have what they had. And  
22 the husband who has to give up anything feels he gave  
23 up too much, and the wife never feels that she has  
24 received enough, and I think they are both right, but  
25 that's an economic fact of life. That doesn't have

1 anything to do with the Divorce Code or the judges or  
2 the lawyers. That's just a fact that we have to live  
3 with. But nobody walks out of the courtroom satisfied.  
4 Nobody has been found not guilty. Nobody has won a big  
5 personal injury award. Nobody has caused their  
6 neighbor's fence to have to be repaired. Nobody wins  
7 these cases. And if you don't win, you're frustrated.

8 Last month, your Speaker addressed the  
9 Pennsylvania Bar Association officers of the House of  
10 Delegates, and it was one of the best speeches I ever  
11 heard because what he talked about was the fact that  
12 people blame the system because it's easier to blame a  
13 faceless, nameless thing over which you have no power  
14 or control than it is to get angry at your local school  
15 board or your legislator or your lawyer or your child  
16 or yourself. And although Mr. O'Donnell wasn't talking  
17 about divorce litigation or the Divorce Code, he very  
18 well could have been, because in this frustration  
19 you've got to strike out at somebody else.

20 The Divorce Code is as good, our Divorce  
21 Code is as good as there is in the country. When it  
22 was drafted, we looked upon the divorce codes in the  
23 laws of all the other States. We were one of the last  
24 to do it, so we had the benefit of that. And then when  
25 it was amended, your body attempted to right wrongs,

1 and we think we have. I am not going to tell you all  
2 the things that need to be done. You're going to hear  
3 that from a lot of other witnesses. I will address a  
4 couple of them because I've been asked to do that. but  
5 the primary thrust of what I'm trying to get across is  
6 the system itself is not at fault. There are problems  
7 inherent in it that make the kind of complaints that  
8 you have heard ongoing.

9           Mr. Pesci says that he's gotten a number  
10 of calls. Of course you have. And every one of you  
11 will continue to get these kind of calls. And you will  
12 get these kind of calls because nobody is going to walk  
13 away from this system satisfied. But I suggest to you,  
14 don't look at the system being at fault, look at the  
15 inherent nature of the action going on here, the  
16 dynamics of the activity between the people and what  
17 the system is trying to provide for.

18           Now, I will comment that there are some  
19 things that could be done. The system has to be made  
20 more dignified. People whose lives are breaking up and  
21 whose families are falling apart and are involved in  
22 this most emotional thing should have a more dignified  
23 setting, and Jim addressed that. It has to be made  
24 faster and it has to be made cheaper, and there are  
25 methods of doing this. The Mastership system will, I

1 think, Masters or arbitrators will enable us to get the  
2 cases heard sooner so that the thing won't drag on and  
3 people can get on with their lives. The problem with  
4 the Mastership system as it exists now, and as you  
5 know, the Code provides that a Master can be appointed  
6 to hear all the custody cases, and in some counties  
7 they even have custody Masters who can make a  
8 recommendation. The problem is that the people have to  
9 pay for it.

10 Now, if you have an automobile accident  
11 that causes \$100 damage to your fender, you have an  
12 absolute right to a trial by jury at no cost to you.  
13 But if your marriage breaks up, in most of the  
14 counties, because Allegheny County is one of the few  
15 where the judges try the cases, but in most of the  
16 counties a Master is going to be appointed, and in many  
17 of those cases you're going to have to pay for it, or  
18 the marital estate is going to have to fund it. That's  
19 just not right. It isn't fair that the people have to  
20 pay to get the same kind of justice that every other  
21 citizen in the Commonwealth is entitled to for every  
22 other lawsuit brought.

23 But there are ways to do it, and I know  
24 it's easy to come to you folks and say, give us some  
25 more money, and I know that's the hardest thing for you

1 to do, but there are methods. In Washington County  
2 they are doing it now by assessing costs for each  
3 filing and then an additional cost when you want a  
4 Master appointed. Because most of the cases settle  
5 without the need of a Master, there's enough money left  
6 over to fund this, and these kind of things can happen,  
7 and they can happen through the local county  
8 government. I don't think the legislature has to act  
9 to do this, but I suggest to you that the cost has to  
10 be brought down.

11 Of course, it would be most beneficial to  
12 have more judges and have them available to handle  
13 these cases, and one of the reasons is not so much to  
14 try the cases but, I think, to make sure that the  
15 system that is in place is enforced and run properly so  
16 that that group of people who want to circumvent the  
17 system aren't allowed to do it. So that if somebody is  
18 dilatory, that sanctions can be imposed, that the  
19 judges' list is not so great that they can't bear to  
20 hear another motion, that they will have time to make  
21 people abide by the rules and do what they should do  
22 and get involved in cases to make the system continue  
23 to function.

24 But you can understand. If you're a  
25 judge with this kind of a caseload, when somebody comes

1 to you with a motion that says somebody is about to  
2 take my child to Bolivia, and somebody else comes in  
3 and says the other side hasn't answered any  
4 interrogatories, you know which one you're going to  
5 have to address. So the dilatory practitioner who  
6 doesn't answer the interrogatories may be able to get  
7 away with it because he's got to stop that plane from  
8 taking off and he's got to have that hearing and there  
9 are only so many hours in the day and only so many  
10 words that can be written. But free him up. Give him  
11 time to make people abide by the Code and the rules  
12 that enforce the Code. I don't think you need a task  
13 force to do this.

14 If, in fact, you want to spend some  
15 money, then I suggest that you look to spending money  
16 on providing for litigants in this case counseling.  
17 Marriage counseling generally doesn't work. People who  
18 go to marriage counseling almost without exception want  
19 the counselor to tell their spouse that they are wrong.  
20 Most people who go to counseling, if it works, the only  
21 time it really works is where both people don't know  
22 what's wrong with their marriage and they really want  
23 to solve the problem and save their marriage and they  
24 need some third party to help them. That's rare. Most  
25 of the time, by the time they come to see us, the

1 marriage is over, as my partner told you. People need  
2 divorce counseling, though, and they need counseling  
3 how to deal with each other because if they are not  
4 going to be husband and wife anymore, they are still,  
5 in most cases, going to be parents, and it's a rare  
6 person who can put aside the resentment that they feel  
7 as a husband or as a wife and cooperate as a mother or  
8 a father. They need help to do this and it's  
9 expensive, and I think that the Commonwealth should  
10 find the money to help them do this.

11 In addition, the Master system, and in  
12 custody cases the parties are often asked to fund this.  
13 In custody cases, if you have a psychological  
14 evaluation done or a home study, the people have to pay  
15 for it in most cases. That isn't fair. That isn't  
16 right. There should be money generated somewhere to  
17 help them do it. So I'm saying that if you're going to  
18 put some money aside, spend it on this, because there  
19 are a lot of organizations in the Commonwealth  
20 available to you for factfinding. I would offer  
21 initially the Pennsylvania Bar Association and its  
22 Family Law Section. The Domestic Relations Association  
23 of Pennsylvania, which is made up of those counselors  
24 and the domestic relations officers who work in all the  
25 county systems. The Joint Family Law Council, which is

1 made of lawyers, judges, and people in the domestic  
2 relation system. All these organizations are available  
3 and I think well-meaning and would help you to the  
4 extent that you need more help and more factfinding.

5 That's all I have to say, but I would be  
6 delighted to answer any questions or address any other  
7 issues that you wish.

8 ACTING CHAIRMAN DERMODY: Chris, thank  
9 you very much.

10 When you mentioned that the system should  
11 be more dignified, are you referring to specifically to  
12 Allegheny County, the situation when you get off the  
13 elevator on the sixth floor?

14 MR. GILLOTTI: I think probably the big  
15 counties. I've practiced in the smaller counties and  
16 generally there isn't as bad because the volume isn't  
17 as big, but even there you don't have -- if you have a  
18 case called, for example, a personal injury case, I  
19 keep using this because I think it's so preposterous  
20 that one can have a property damage claim settled in a  
21 court setting and you can have your custody messed up  
22 and ongoing. In most counties there will be a civil  
23 trial list and so the case will be called and it will  
24 be tried. In Domestic Relations cases, divorce cases,  
25 custody cases, you'll get one day, and maybe you won't

1 even start on time. So even if you have a comfortable  
2 place to sit, you're not being addressed. Your fears  
3 and needs aren't being addressed. And maybe they'll  
4 start the case and then the judge will get interrupted  
5 or the Master will have something else happen, and then  
6 when the day is over, you don't come back the next day.  
7 Everybody pulls out their calendars and they say, okay,  
8 we'll see you January 19. Now, that's not right. It's  
9 expensive to do it that way, too. It's more expensive  
10 for the litigants.

11 It should be concentrated. We should get  
12 it over with and done with and we should give them no  
13 better right than other litigants have, even though I  
14 think they're entitled to it because the Commonwealth  
15 says we're an interested party in all custody cases.  
16 Yeah, well, act like it then. Let the Commonwealth  
17 say, if I'm so interested in the marriages of our  
18 citizens and in the children, then let me give them  
19 greater rights, but until we get greater rights, I'll  
20 settle for the same rights as other litigants.

21 ACTING CHAIRMAN DERMODY: Okay.

22 Representative Hagarty.

23 BY REPRESENTATIVE HAGARTY: (Of Mr. Gillotti)

24 Q. Good morning, Mr. Gillotti.

25 A. Good morning.

1 Q. We met, you may recall, when I met also  
2 with your partner before the 1988 amendments.

3 A. Yes.

4 Q. Which I sponsored. And what I recall  
5 then, and I don't know specifically that you said it,  
6 but the Family Law Section at that time of the  
7 Pennsylvania Bar Association, in working with me on  
8 those amendments, felt, and it was the pro-support  
9 guidelines, of course, felt that women and children  
10 were suffering the greatest economic injustice as the  
11 outcome in divorce cases, and I wondered why you share  
12 a perspective this morning that I think is important  
13 for us to hear, because both sides do feel the other  
14 side got the greater advantage. Do you no longer  
15 believe then that it is women and children who are  
16 suffering principally as a result of the outcome in  
17 cases?

18 A. Oh, no, I still do, sure. I mean, it's  
19 just an economic fact. If a husband is required to  
20 give 50 percent of his net income to a wife and three  
21 children, four people are living on the same amount of  
22 money that one person is living on. I mean, you don't  
23 have to be a mathematical genius.

24 Q. So what you're saying is -- are you  
25 saying then that both sides feel that the other side

1 got the greater advantage and, in fact, it is still  
2 women and children who are receiving objectively some  
3 lesser amount of money than they need to live on?

4 A. I'm saying they're probably suffering  
5 more just because the facts, as I said, if there's only  
6 a certain amount of money. You see the problem is  
7 though, and when we drafted our original guidelines for  
8 Allegheny County well before the State guidelines, we  
9 came to the conclusion that in order for a husband,  
10 especially in a lower income situation, in order for  
11 the husband to continue to work, he had to be entitled  
12 to keep a certain amount of money, because otherwise it  
13 was going to be self-defeating. If you gave the wife  
14 such a percentage of his income, he would quit work, it  
15 wouldn't be worth it. And we didn't want that to  
16 happen, so we necessarily said that he has to be paid a  
17 certain amount of money to keep working and keep  
18 supporting the family unit, but no, Representative  
19 Hagarty, I absolutely believe, sure, the wives and  
20 children, when you divide the money up, they are going  
21 to suffer more. Sure they are.

22 Q. Do you feel there's been improvement in  
23 that since the '88 amendments?

24 A. You mean have they suffered less?

25 Q. Yeah. I mean, for example, we did away

1 with rehabilitative alimony and allowed alimony,  
2 permanent alimony without regard to that rehabilitation  
3 concept?

4 A. Sure.

5 Q. Allegheny County, of course, as you've  
6 indicated had guidelines so you may not see that  
7 difference. But I'm wondering overall and in your  
8 activities, obviously, across the State whether you  
9 think courts are now more cognizant of the fact that,  
10 you know, that the children were really suffering  
11 probably more than anyone else economically as an  
12 outcome?

13 A. Oh, I think they are more cognizant of it  
14 and I think probably the guidelines now make more fair  
15 the distribution, because from county to county we used  
16 to always know that the spouse was going to be worse  
17 treated in certain rural counties than they would be in  
18 the urban counties. So if there was an opportunity, if  
19 we represented the dependent spouse and the husband was  
20 in Butler, say, we would want to make sure we got her  
21 into Allegheny and filed here, but, fortunately, with  
22 the guidelines now we've eliminated that. So at least  
23 we're getting across the board a fairer, you know, at  
24 least it's consistent across the board, but we still  
25 are faced with the problem, as I said, there just isn't

1 enough money, and there's no way to avoid that.

2 Q. You see a problem with not enough money  
3 not as a problem of court attitudes that continue that  
4 kind of, and I've heard judges express it myself, well,  
5 he earned the money, you know -- I'll give you the way  
6 I heard it best expressed to me. I heard an attorney  
7 once, I don't know if it was an attorney, it was  
8 someone speaking about this issue, and they said in  
9 England the way the judges look at the cases are what,  
10 first, do the children need? And if typically they are  
11 with their mother, it's what do the children and mother  
12 need to live on, and then how much is left for the  
13 father, the provider? He said in the United States our  
14 judges first say, how much money should he have and  
15 then what is left are for the children and the mother.  
16 You do not feel that that's the problem? You just  
17 simply feel there's not enough money? It's not that we  
18 are not allocating a fair proportion?

19 A. Well, of course, the judges are going to  
20 vary. There are, you know, in the ultimate decision in  
21 permanent alimony and equitable distribution is still  
22 going to be that of the judges, although you're going  
23 to hear individual horror stories. My best sense is  
24 that the judges across the Commonwealth have been, you  
25 know, have gotten away from the initial concept because

1 we've had some experience. We've had 10 years. Don't  
2 forget, in 1980 we had judges who were now asked to  
3 implement a new law that was contrary to the way they  
4 had always been taught. It was something brand new.  
5 They always knew that whatever you owned was yours and  
6 nobody was to share it at the end of a marriage and  
7 that alimony was a no-no and you couldn't enforce it,  
8 so, fortunately, since that time judges have become  
9 better educated, we've had newer judges elected to the  
10 bench who have practiced under the law. I haven't  
11 sensed that the judges are still dinosaurs and are  
12 still not doing it. I think it's improving. I can't  
13 speak for the whole Commonwealth.

14 Q. I'm glad to hear it because I remain  
15 concerned when I read the statistics today about the  
16 poverty of children in this country specifically. I  
17 wanted to ask you with regard to your comments about  
18 dignity in the Commonwealth, kind of addressing this,  
19 and the one thing that struck a chord in my limited  
20 family law practice in my own county that I could never  
21 get over was in Montgomery County, at least they used  
22 to do the same thing, the family court case, you know,  
23 you got two hours, and then you got two hours six  
24 months later. I don't see that there's anything we can  
25 statutorily do.

1           A.    No.

2           Q.    Do you have a recommendation as to how  
3 that could be addressed?

4           A.    Sure.  Family cases could be on a list  
5 just like civil cases so that when a family case is  
6 called, your case is going to be on the list starting  
7 the week of--

8           Q.    Right, but that would be by local rule?

9           A.    Sure.

10          Q.    Now, my other question is, how about the  
11 Pennsylvania Rules Committee?  Could we establish by --  
12 well, we could not, obviously.  Could the Rules  
13 Committee, if they chose to require that of all the  
14 counties, or do you see that as specifically local?

15          A.    Right now it's local option.  They can do  
16 that if they choose to.  I think that perhaps one of  
17 the things might be, and again, I don't want to get  
18 into the dynamics of the politics between your body and  
19 the Supreme Court--

20          Q.    They just overrule us anytime we pass  
21 something they don't like.  Now there's dynamics.  They  
22 supersede us whenever they say it's procedure.

23          A.    Well, I didn't know how else to phrase  
24 it.

25          Q.    You were being diplomatic.  I have not

1       been on that topic.

2               A.     Did your group suggest -- one of the  
3 things that this Committee suggests is that, perhaps,  
4 some implementation of that is to the benefit of the  
5 citizens of the Commonwealth. Maybe they will listen.  
6 But the counties can do it themselves now. I mean,  
7 they don't need a Supreme Court rule to do that.

8               Q.     Why do you think that's not happening in  
9 the counties? Just because the judges don't like  
10 family cases?

11              A.     Well, keep in mind that I think in only  
12 two or three counties do we have family divisions, and  
13 in the other counties what you have is a judge who  
14 generally rotates and gets that. And I think that the  
15 argument has always been, well, we don't want to  
16 schedule it because the case will settle. Well, I  
17 don't think that's right. I think that this is just  
18 the way it's always been done and, you know, it's  
19 inertia. We just always did it this way, but it isn't  
20 fair and isn't right and we can live with that. The  
21 lawyers can adjust to that situation.

22              Q.     I think it's a terrible problem for those  
23 particularly with custody matters with the kinds of  
24 emotional traumas to the family, particularly to the  
25 children, to let these linger on in this way.

1           A.    There was just a recent case where the  
2 Superior Court found that a child had been allowed to  
3 leave the home State and no hearing had been held and  
4 they announced that was improper, that under the  
5 current law, under the Gruber case, that you have to  
6 have a hearing before you can determine whether or not  
7 the child should leave the county in which they live.  
8 But in that case, the child was now gone well over a  
9 year. So by the time they heard the case a year later,  
10 the child has established itself with its mother in  
11 Maryland and the facts were, well, why bring the child  
12 back? Now, there's something wrong with that. And I'm  
13 not taking the father's side, I'm just saying that case  
14 wasn't fairly tried. The father was in a bad position  
15 there because since they couldn't get the case up and  
16 since it was a year later, the child had established  
17 itself with the mother. Maybe that was the best  
18 result, but that isn't the way the case should have  
19 been tried.

20           Q.    Thank you. And thank you for sharing  
21 those thoughts which I think many people need to keep  
22 in mind on the system.

23           ACTING CHAIRMAN DERMODY: Just briefly.  
24 We were just talking about the dignity question. Don't  
25 you think that part of the problem, at least

1 particularly in Allegheny County when you get off that  
2 sixth floor it's like you're in another world compared  
3 to any other county? It's like pick a number. It's  
4 like going to the deli at the Giant Eagle. Isn't part  
5 of that problem the fact that we just don't have enough  
6 judges and Masters to take care of that, and that's  
7 something that can be done probably in Harrisburg?

8 MR. GILLOTTI: Oh, sure. Oh, listen.  
9 The only reason I'm not pushing it is because I wanted  
10 to use what time I had to address other problems. I  
11 think everybody else is going to tell you that. When  
12 the judges come, they're going to tell that, I'm sure.  
13 If we could get more judges, and I think we're entitled  
14 to them, because it's really more important to hear  
15 these cases than it is to hear the fender bender. I  
16 really believe that.

17 ACTING CHAIRMAN DERMODY: Child custody  
18 cases?

19 MR. GILLOTTI: Sure. Sure.

20 ACTING CHAIRMAN DERMODY: Go ahead.

21 BY MR. SUTER: (Of Mr. Gillotti)

22 Q. You outlined for Representative Hagarty  
23 that there is a certain disadvantage in the system for  
24 women regarding the economic situation of a divorce.  
25 Of course, there's another side to that coin, that men

1 are disadvantaged when it comes to custody and those  
2 types of issues. Do you see that there actually is a  
3 bias in the system when it comes to issues such as  
4 custody?

5 A. I can speak primarily only for Allegheny  
6 County and the surrounding counties, and my answer is  
7 that it used to be that way. It was pretty cut and  
8 dried that a father, no matter how connected, was going  
9 to get only a certain amount of time. We have now  
10 found that in Allegheny County primarily, and I tell my  
11 clients this, you'll get, I can get for you whatever  
12 reasonable amount of time you are able to devote to  
13 your kids. And so, for example, it is not unusual to  
14 get virtually, for the non-custodial parent, to get  
15 virtually all of the summer, to get if the mother is  
16 not working and has the children all during the week,  
17 perhaps three out of the four weekends and maybe two  
18 evenings during the week and time during the holidays.  
19 Now, they are certainly not going to get the daily  
20 contact that they were used to, but when you start  
21 adding up days and free hours, it's not unrealistic to  
22 think that you can get 50 percent of the time.

23 Q. What about when mom and dad both work, is  
24 there a bias that still gives the kids to mom?

25 A. No, I don't think so. In that case then

1 they say, well, we can't give dad as much because mom  
2 hasn't had the time. Since she's working, too, she  
3 doesn't have the same amount of time that she otherwise  
4 would. So they still try to divide it. It's just that,  
5 see, if the mother isn't working, then the father can  
6 get more weekend time or vacation time because she has  
7 the kids during the week. If they are both working,  
8 then you've got to take whatever free time they have  
9 and try to apportion it between. But no, I have not  
10 been troubled by that for a long time. At least in  
11 Allegheny County I think the judges are getting more  
12 and more responsive to the concept that fathers who  
13 really sincerely want time with their kids ought to  
14 have it, and I've been successful in getting full  
15 custody for fathers when in the past that would have  
16 been real doubtful, for small children in areas where  
17 the mother had always been the primary custodial  
18 parent, where in the past you would say the cards are  
19 stacked against you, don't even try it. In cases we  
20 have been successful in doing that.

21 Q. Okay, that's something we get a lot of  
22 inquiries about.

23 A. Oh, I'm sure you do because, look, I'm a  
24 father and God forbid if I was separated from my wife  
25 and I didn't have as much time as I presently have, I

1 would resent it and I would say I don't want to hear  
2 the excuses. I am entitled and my kids need me, and  
3 they are right. They are absolutely right.

4 ACTING CHAIRMAN DERMODY: Representative  
5 Pesci.

6 BY REPRESENTATIVE PESCI: (Of Mr. Gillotti)

7 Q. Chris, you hit on the Masters,  
8 complaining of the Masters. Just for general  
9 information in this, I had been a county controller for  
10 fourteen years, and we had Masters for liquid fuel  
11 hearings. You may know that as an attorney, I'm not  
12 sure.

13 A. No, I didn't.

14 Q. But we pay them out of a liquid fuel  
15 account. In other words, there's no fees assessed to  
16 either the person for the right-of-way or what we call  
17 -- what is it, there's a right-of-way and an easement.  
18 But those Masters were only paid a certain amount of  
19 money no matter how long the job took. So, are you  
20 looking at that type of a concept that if we put  
21 Masters out there at a certain rate?

22 A. Well, what you could do, one way to do it  
23 is to have permanent sitting Masters. And you can pay  
24 them less than you pay a Common Pleas judge and  
25 probably get somebody good and you wouldn't have to

1 fund it and you may not need the same support staff  
2 that you would for a judge and their job would be to do  
3 exactly the same thing that the judge does. So that's  
4 having a permanent Master. The way we do it now in  
5 Allegheny County is that Masters are assigned on a  
6 case-to-case basis, and then they are paid an hourly  
7 rate, depending on how long it takes. That's not a  
8 good system because the people should not have to pay  
9 for that.

10 Q. Well, we have a rotating, in Armstrong  
11 County, it's like a rotating Master for right-of-ways,  
12 easements, and only \$75 is all they get for that  
13 hearing, and there's three of them, okay, those three  
14 Masters are paid X number of dollars and that's all  
15 they get, no matter how long it takes.

16 A. Well, the problem I would have with that  
17 is when you limit that, then you're not going to get  
18 the quality of Master that you should have. If you do  
19 it on a volunteer basis, as we sometimes do in  
20 Allegheny County, that's okay, but then again, you're  
21 asking people to give up their time. They'll do it,  
22 but that isn't the best answer.

23 Q. The fee that you talked about, I believe  
24 in Washington County they assess on a filing fee. You  
25 say that they did that on their own?

1           A. Yes, Washington County did that on their  
2 own. What they do is they charge, I think, about \$120  
3 or \$130 when you file, and about \$70 of that goes into  
4 the fund. Then when you ask for a Master you put up, I  
5 think, another \$200. Now, because not all of the cases  
6 are heard by the Master, they have enough money to pay  
7 the Master, and so they have a permanent Master that  
8 they pay for and there's money left over. It goes into  
9 the general fund of the county.

10           Q. But aren't the fees, this is the  
11 Prothonotary's Office, correct? Aren't those fees  
12 regulated by legislation?

13           A. Sure, and a portion of it is regulated.  
14 See, it's only, I think, \$55 or something for the  
15 filing, so the difference between that and \$130 goes  
16 into this general fund to pay for the Master. So they  
17 pay more than they are required to pay.

18           Q. So your suggestion would be that each  
19 county may or could do that or pick up on that?

20           A. Well, again, what you're doing is you're  
21 still charging the litigant.

22           Q. Absolutely.

23           A. But I'm saying it's a fairer way than to  
24 make the people pay the whole thing, at least you're  
25 spreading it across the board. I'd rather charge, I

1 mean, if you charged every, you know, every corporation  
2 that filed something money and then put it into the  
3 divorce fund, I think that might be fairer.

4 REPRESENTATIVE HAGARTY: Why is that  
5 fair? They are not the ones getting divorced. It's  
6 less expensive for the litigants, but why is that fair?

7 MR. GILLOTTI: Because they have deeper  
8 pockets than the litigants do.

9 REPRESENTATIVE HAGARTY: Oh, I'm not sure  
10 that's called fairness. That's called easier when  
11 you're the one who's got to tell the litigant what to  
12 pay.

13 ACTING CHAIRMAN DERMODY: One other  
14 question.

15 MR. SUTER: May I just supplement the  
16 answer a bit?

17 ACTING CHAIRMAN DERMODY: Sure.

18 MR. SUTER: Thank you. I know that there  
19 are programs similar to the one that you addressed in  
20 Washington County in other areas of the State. I think  
21 Dauphin County has a similar program, and the programs  
22 on the whole are working very well.

23 MR. GILLOTTI: Except that this matter  
24 was raised in the Supreme Court. The question of the  
25 Mastership was raised, the issue was raised as being

1 unconstitutional, making people pay, and they said --  
2 you won't be surprised to hear that they said no, it  
3 isn't unconstitutional, because that same issue was  
4 raised in a case.

5 REPRESENTATIVE PESCI: One other  
6 question.

7 BY REPRESENTATIVE PESCI: (Of Mr. Gillotti)

8 Q. In Allegheny County, the DRO division, do  
9 they require, whenever you go to a support hearing, for  
10 the husband and wife to fill out financial forms of how  
11 much income they have?

12 A. Yes.

13 Q. And also their expenditures?

14 A. Yes.

15 Q. Why is that?

16 A. Well, the income is necessary because in  
17 order to establish the amount of support, they have to  
18 compare the income on the guidelines.

19 Q. I understand that.

20 A. Why do they fill out the budget--

21 Q. Why do they go through that budget? And  
22 I can understand the income part because you can prove  
23 that with check stubs or W2s, correct? But I've seen  
24 more than my share of men and women that they don't use  
25 anything except either the wife's income or the man's

1 income and we're wasting, I think we're wasting a hell  
2 of a lot of time, to be quite frank with you, in that  
3 office and on the part of the litigants.

4 A. Well, that's right. The only time that  
5 I've ever seen the budget come into play is if one or  
6 the other has extraordinary expenses. If the wife's  
7 budget is well in excess of what the guidelines would  
8 show, the recommendation can be higher than the  
9 guidelines or not, and that would be an indication  
10 based on need. If the husband's budget shows other  
11 fixed expenses that are substantial that he can't  
12 avoid, that may be a reason to reduce the guideline  
13 figure. In 90 percent of the cases, they don't even  
14 look at it.

15 Q. I totally agree.

16 A. That's right.

17 ACTING CHAIRMAN DERMODY: Chris, thank  
18 you very much. I appreciate it.

19 It is my pleasure to introduce the  
20 Honorable Cynthia Baldwin, Judge of the Court of Common  
21 Pleas of Allegheny County.

22 Good morning, Judge.

23 JUDGE BALDWIN: Good morning. How are  
24 you, Representative?

25 ACTING CHAIRMAN DERMODY: Nice to see

1 you. Go ahead.

2 JUDGE BALDWIN: To the Chair,  
3 Representative Dermody; Representative Hagarty, who I  
4 see at PCCD meetings--

5 REPRESENTATIVE HAGARTY: Hi. Yes.

6 JUDGE BALDWIN: --Representative Pesci,  
7 and the other committee members, I want to first thank  
8 you for the opportunity to address my concerns relating  
9 to the hearing on "Domestic Relations Injustices in the  
10 Pennsylvania Legal System." My comments will be brief.

11 I am Cynthia Baldwin, Judge, Court of  
12 Common Pleas, Allegheny County, Family Division,  
13 although I also serve in the Civil Division. I felt it  
14 imperative that I testify before this august body. Let  
15 me preface my remarks with some brief history.

16 Last year alone, 4,373 divorce cases,  
17 2,742 Protection From Abuse cases, 17,999 support  
18 cases, and 1,666 custody cases came before our courts.  
19 Because of the number of litigants and the facts that  
20 many parties appear before the court pro se--as you  
21 know that's without counsel--at least initially, the  
22 Allegheny County Family Division has prepared and  
23 distributed information and forms dealing with child  
24 and spousal support, custody, alimony and equitable  
25 distribution. Of course, this will not alleviate all

1 the problems, but it does provide important procedural  
2 and substantive information.

3           Currently, there are four full-time  
4 judges in Adult Family Division in Allegheny County.  
5 We usually have five. House Resolution No. 8 resolved  
6 that a Special Domestic Relations Task Force to  
7 investigate the injustices of Domestic Relations  
8 judicial proceeding be established because, "the  
9 Pennsylvania Rules of Civil Procedure are being  
10 violated in domestic relations cases on a daily basis;  
11 there is extensive documentation of these violations,  
12 and many litigants are being denied due process as a  
13 result of clandestine, out-of-court settlements."

14           Members of the House Judiciary Committee,  
15 I do not know where the above is occurring, but let me  
16 assure you, it is not occurring in Allegheny County.  
17 There is no doubt in my mind that there are persons who  
18 may have some legitimate complaints about the court  
19 system. There is also no doubt in my mind that these  
20 persons make up a very small percentage of the people  
21 who come before our court. There are also people who  
22 have complaints with no credible basis. They've had a  
23 fair hearing at all levels, trial and appellate, and  
24 are still displeased with the outcome, so they make  
25 unsubstantiated allegations about court personnel and,

1 shall we say, less than reasonable suggestions about  
2 modifying the court system. I will not legitimize the  
3 allegations against my colleagues by responding to  
4 them. You, as legislators, already realize there are  
5 at least two sides to every story, and you've heard but  
6 one.

7           There are, however, some issues I must  
8 address because of their importance to litigants,  
9 attorneys, and judges. The court system is not  
10 perfect, and we judges also seek improvement where  
11 necessary. Persons who have testified before you would  
12 have you believe that judges wish to control all cases  
13 filed in the court system and therefore oppose any type  
14 of mediation. Let me assure you that my colleagues and  
15 I welcome any process that would aid litigants while  
16 unclogging the court docket. However, under the  
17 present system, judges cannot and should not order  
18 mediation for which the parties must pay unless both  
19 parties agree. The court cannot force extra-court  
20 mediation at their cost. However, we in Allegheny  
21 County are working with lawyers and other groups  
22 interested in mediation to make mediation available at  
23 reasonable cost in custody proceedings where the  
24 parties agree. This system should be implemented  
25 sometime in early 1992. Judges themselves usually

1 conduct two conciliations prior to equitable  
2 distribution/alimony hearings to determine whether an  
3 equitable settlement can be effected, thereby saving  
4 the parties further attorney's fees and trial costs.

5 Another point of agreement for most of my  
6 colleagues concerns the shortening of the separation  
7 period before a divorce can be granted in the absence  
8 of consent. As you are already aware, under the  
9 current Divorce Code, consenting parties may divorce 90  
10 days from the date of filing, but non-consenting  
11 parties must be living separate and apart for 2 years.  
12 Most judges with whom I've spoken would recommend for  
13 your consideration a waiting period of only one year.

14 While I'm certain others who have  
15 testified have propounded other legitimate and not so  
16 legitimate suggestions for improving the family  
17 divisions of our court system, I think that the two I  
18 have chosen to discuss can be addressed by the  
19 legislature currently. While no system or individual  
20 is perfect, we can all work to improve the system.  
21 Those who advocate abolition will only receive chaos.  
22 As my mother used to say, "Watch what you wish for, you  
23 may get it."

24 Thank you for your attention to my  
25 concerns and your interest in the domestic relations

1 judicial proceeding. That's my prepared statement.

2 ACTING CHAIRMAN DERMODY: Judge, thank  
3 you very much.

4 Any questions?

5 Mr. Krantz.

6 BY MR. KRANTZ: (Of Judge Baldwin)

7 Q. Your Honor, you state in your prepared  
8 testimony that there are 2,742 Protection From Abuse  
9 cases. Now, is that cases that are initially filed in  
10 Allegheny County?

11 A. Those are cases that are initially filed  
12 in Allegheny County.

13 Q. How many of those cases are adjudicated  
14 through the court itself?

15 A. Well, if you will define "adjudicated  
16 through the court," I will attempt to answer.

17 Q. Okay.

18 A. The reason that I ask you that question  
19 is that as you know, after the ex parte order is given,  
20 all of those cases come into the court. Some of those  
21 cases are settled before they go before a judge and the  
22 judge signs the order, but only a judge can do that in  
23 Allegheny County.

24 Q. Well, what I mean is the 2,742 are filed,  
25 right?

1           A.    Right.

2           Q.    Okay.  How many then are dropped by  
3 either--

4           A.    Most of those go through the ex parte  
5 proceeding.  Very few of those are dropped.

6           Q.    Are any of them dropped when they get to  
7 the court level?

8           A.    Yes.  Some of them are dropped when they  
9 get to the court level, when they get to the final  
10 hearing level.

11          Q.    Is that a large--

12          A.    No, it is not a large percentage.  It's a  
13 very small percentage.

14          Q.    Thank you.

15                    ACTING CHAIRMAN DERMODY:  Representative  
16 Pesci.

17                    BY REPRESENTATIVE PESCI:  (Of Judge Baldwin)

18           Q.    Your Honor, in Allegheny County, I'm  
19 married, getting divorced, we are divorced, custody.  
20 You issue me a court order for visitation.  I may see  
21 my children twice a month, four times a month,  
22 weekends, whatever.  My wife happens to just take the  
23 kids and I'm supposed to go pick them up Friday night  
24 and return them Sunday between certain times and I go  
25 to the house to pick the children up and, of course,

1 they are not there. And it keeps progressing that the  
2 kids are absent, they are over at grandma's, or  
3 whatever it be. How do you enforce that court order  
4 for me?

5 A. Well, the fact is that after you come  
6 back into the court system and present your petition,  
7 that is there's a contempt of the order. As you know,  
8 we can hold you in contempt, we can fine you, we can  
9 even jail you.

10 Q. Okay.

11 A. And although that, the latter, is not  
12 done a lot, it is being done more. That's how we  
13 enforce it. We do that and if the problem is not  
14 alleviated, then of course, that goes to who should  
15 have custody. And we may look at that, we may review  
16 that again if you bring it before the court.

17 Q. But it's handled differently in each  
18 county by different judges. Would you say there's  
19 different methods of--

20 A. Representative Pesci, I cannot answer  
21 that for you. Before I became a judge I practiced in  
22 western Pennsylvania, so I know those counties. I do  
23 not know how it's done in central Pennsylvania or  
24 eastern Pennsylvania, but where I have practiced prior  
25 to becoming a judge it was fairly uniform.

1 Q. Thank you.

2 ACTING CHAIRMAN DERMODY: Representative  
3 Hagarty.

4 BY REPRESENTATIVE HAGARTY: (Of Judge Baldwin)

5 Q. Thank you. Good morning.

6 A. Good morning.

7 Q. I often hear, at least in my own county,  
8 Montgomery County, even after the two-year period it's  
9 sometimes another four or five years until the case is  
10 finally finished. Can you give us some sense, is that  
11 a real problem in Allegheny County, or what kind of  
12 time periods do you see going on?

13 A. Well, before, if you mean before the case  
14 is finished--

15 Q. To final--

16 A. We can have a bifurcated proceeding.  
17 That is, you can get your divorce and equitable  
18 distribution doesn't occur until after--

19 Q. I guess I'm more concerned about the  
20 property settlements--

21 A. Equitable distribution--

22 Q. That seem to go on for such a long time,  
23 and at least the experiences that I hear recited to me,  
24 they seem to result from continuances, I think from  
25 failure, frankly, to take strong contempt actions as

1 you're indicating the court will do. And so--

2 A. Well, usually a contempt action is not  
3 brought in that case. Let me tell you that equitable  
4 distribution does usually take longer. Does it take  
5 five or six years? I was thinking back rapidly over  
6 the cases before me now and that means that if it took  
7 five or six years, we're talking about '86 or '85. The  
8 cases that I have coming before me are about two years  
9 right now. And the fact is that it's difficult for the  
10 court to move those if the litigants don't let the  
11 court know that it needs to be moved. There is no  
12 doubt that the impetus is on the litigants to get it  
13 through the system. That is, if you bring it before,  
14 usually what we do in Allegheny County is have a  
15 conciliation to see exactly what the problems are and  
16 then to let people go out and find more information  
17 about the assets, discovery. So we enter an order to  
18 allow that. The second conciliation we honestly take  
19 everything in and we depend upon the litigants and  
20 their attorneys to have the information before us and  
21 we see if we can effect a settlement, thereby saving  
22 people further court time, further money. If we  
23 cannot, at that time a trial date is given. So that it  
24 would be very difficult to go five or six years.

25 Q. Do you think that one party can

1 effectively delay well past what you're indicating is  
2 the average two years, and if so, what can we do? Is  
3 there anything we can do about that?

4 A. Is it possible for a party to delay?  
5 Certainly it's possible for a party to delay. What can  
6 the legislature do about it? I'm not sure. I'm still  
7 trying to figure out what we judges can do about it.

8 Q. Okay. Thank you.

9 MR. SUTER: I have a question.

10 ACTING CHAIRMAN DERMODY: Yeah, Mr.  
11 Suter.

12 BY MR. SUTER: (Of Judge Baldwin)

13 Q. The Senate Judiciary Committee just sent  
14 our Committee some legislation regarding binding  
15 arbitration. Have you had an opportunity to see that?

16 A. I looked at that briefly. I haven't read  
17 it through. I know that there are three bills before  
18 the Senate, one that deals with mediation and custody,  
19 one deals with a point that I've raised, shortening the  
20 period of time. I believe it even deals with  
21 shortening the consent from 90 to 60, so I've briefly  
22 looked at those, and no, I haven't read them in depth.

23 Q. Generally speaking, do you have any  
24 thoughts on binding arbitration?

25 A. Well, generally speaking, although I

1 haven't looked at it, it seems very difficult to effect  
2 a binding arbitration in the absence of a couple  
3 things. One is the consent of the parties. Two, I  
4 haven't looked at it to see how much its going to cost  
5 the parties to get there, because if it costs too much,  
6 we are not going to have too many people going to  
7 binding arbitration. And I also haven't looked at it  
8 to see what the judge's role is. That is, are we  
9 supposed to order this in the absence if we think, if  
10 it's at our discretion? Those are things that would  
11 all bother me and I would have to look at it, and I  
12 haven't read the bill.

13 Q. Do you think, though, an arbitration  
14 system could cut down on the costs? Just in general,  
15 not necessarily addressing the legislation that came  
16 out of the Senate. Could it cut down on the cost and  
17 speed up the process if the arbitration process was  
18 implemented?

19 A. Well, where are we going to use  
20 arbitration? I'm at a disadvantage because I haven't—

21 Q. Okay. Well, let's just say for custody  
22 let's—

23 A. In custody?

24 Q. Let's talk about equitable distribution.  
25 Are there certain areas where you think it would be

1 helpful and maybe others that it would not be helpful?

2 A. Well, I've looked at the mediation one,  
3 and we've all talked about mediation in custody  
4 proceedings. I think a lot of us think that would  
5 help, that would be helpful, because after the  
6 mediation and if the mediation fails, you always have  
7 access to the court system to resolve it. As far as  
8 arbitration and equitable distribution, the way that  
9 equitable distribution is going now, if the parties are  
10 open to settlement, that may very well help. But it  
11 would have to be that determination on whether those  
12 parties are open to settlement, and if it's a  
13 reasonable fee. Then it certainly would help. Believe  
14 me, none of us wants to hold more cases to ourselves.

15 Q. I'm sure you don't. Thank you.

16 BY ACTING CHAIRMAN DERMODY: (Of Judge Baldwin)

17 Q. Judge, in both mediation or arbitration  
18 or binding arbitration, the parties would have to agree  
19 to submit their case to one of those two areas to be  
20 resolved?

21 A. Especially since we're asking them to  
22 pay.

23 Q. That's right, and could we talk about  
24 funding for that and how the State may or should try to  
25 pay for at least part of those types of resolution?

1           A. Well, that's true and that would probably  
2 be very helpful and those people who can pay something,  
3 but we get a lot of people who come before us who  
4 cannot pay. That's how come they're pro se.

5           Q. They are pro se. That's two parts. Do  
6 you find that many of the people who come before you  
7 will be willing to submit their cases to mediation or  
8 binding arbitration? This is an opinion, I know.

9           A. It's very difficult to make that  
10 determination on whether they would be willing to  
11 submit it to binding arbitration, since that's not an  
12 option that's available, but I think if the option were  
13 available, there would be a percentage of people who  
14 would not only be willing to but could afford to pay  
15 for it. There would also be a group of people who  
16 would be willing to and couldn't pay for it.

17          Q. And binding arbitration will limit your  
18 access to the court system after that also?

19          A. That's right.

20          Q. Okay.

21          A. That's why they call it binding.

22          Q. Yeah. In the pro se litigants you have  
23 before you, we talked about that a little bit earlier  
24 also, the fact that we discussed that there is a  
25 certain group of people who are too rich or have enough

1 money and they are not eligible for Legal Services or  
2 Legal Aid attorneys, and yet they don't have enough  
3 money to afford an attorney. Are they having a  
4 delaying effect on the system? Should we look at  
5 guidelines of somehow getting lawyers for these people?  
6 Is that presenting a problem logistically for the  
7 family division?

8 A. Well, the fact is it's very difficult to  
9 get lawyers for the people. If the people come before  
10 you and tell you, I want to do my own case, and then  
11 you tell them about the hazards of doing their own  
12 case, because there are hazards, procedural ones  
13 mostly, not substantive ones, and they insist on that,  
14 then of course they become their own counsel and do  
15 that.

16 Q. Sure.

17 A. If, in fact, they need more time to get  
18 counsel or they have found counsel that's willing to  
19 take them on some arrangement they've set up, the court  
20 is very open to letting them do that. And as long as  
21 there is some notice to the other side and that the  
22 continuance would not prejudice the other side, then we  
23 will do what we can to effect that.

24 Q. You see the number of pro se litigants  
25 growing?

1           A.    Yes.

2           ACTING CHAIRMAN DERMODY:  Thanks, Judge.

3           MR. KRANTZ:  Mr. Chairman.

4           ACTING CHAIRMAN DERMODY:  I'm sorry.  Mr.  
5           Krantz.

6           BY MR. KRANTZ:  (Of Judge Baldwin)

7           Q.    Your Honor, I just have one more  
8           question.  Even though we have a uniform law across the  
9           Commonwealth, it kind of seems that the different 67  
10          county courts are interpreting it differently and  
11          handling the procedure a different way.  Can you think  
12          of any way that somehow the legislature could implement  
13          a mandate across the Commonwealth, that the procedure  
14          would be the same across the land?

15          A.    Well, the legislature already did that.  
16          When I was practicing, I used to head up the Office of  
17          Attorney General for the Western Region, the Bureau of  
18          Consumer Protection, and I was practicing in those 13  
19          counties.  Everybody had different local rules that  
20          really didn't go along with the Rules of Civil  
21          Procedure statewide.  And that was dealt with so that  
22          now if you go from county to county, the procedure is  
23          basically the same.  The local rules may differ a  
24          little, but the procedure is basically the same.  The  
25          legislature could do the same.

1 Q. Another question, in your opinion as a  
2 judge with a large calendar, do you feel that part of  
3 the solution would be adding more judges?

4 A. Oh, the question was so simple I was  
5 waiting for more. Yes. There is no doubt that we need  
6 more judges in the system. There is no doubt. There  
7 is no magic number. And that is not to say that if we  
8 added more judges, if we look 25 years down the lane we  
9 may need more. But when you consider the number of  
10 cases that I've articulated today that we have and the  
11 fact that at the present time four of us are handling  
12 those and handling those in a way that gets them  
13 through the system as fast as we can, then, yes, of  
14 course we need more. It's a Catch-22 for judges.

15 As I said, there are four of us. We work  
16 very hard to move them in the same way as if there were  
17 five of us or six of us. If we do that well, people  
18 say, well, then you don't need any more judges because  
19 you're doing the same job as if you had five or six.  
20 That's not so. What happens is that we have to take on  
21 more of a load, and although people don't see it, my  
22 work day starts at 8:15 and it is very seldom that I  
23 walk out of that building before 7:00. Very seldom.

24 MR. KRANTZ: Thank you.

25 ACTING CHAIRMAN DERMODY: Thanks, Judge.

1 JUDGE BALDWIN: Thank you.

2 ACTING CHAIRMAN DERMODY: Phyllis  
3 Bianculli. Is Phyllis here? Good morning.

4 MS. BIANCULLI: Good morning. I'm  
5 Phyllis Bianculli, and I'm the Assistant Director of  
6 the Women's Center and Shelter. The Women's Center is  
7 a nonprofit agency whose mission is to eliminate  
8 domestic violence in the lives of women and children,  
9 and in order to do that we provide shelter and a full  
10 range of supportive services to them and community  
11 education about domestic violation. We've been  
12 incorporated for 17 1/2 years and have a lengthy  
13 experience in dealing with victims of domestic violence  
14 and helping them through the court system and accessing  
15 the legal remedies that the legislature has passed.

16 In my testimony, I displayed the growth  
17 of our services over the last 10 years and pretty  
18 consistently you can see growth in services that we've  
19 been providing in a full range of capacities, not just  
20 the legal. The problem of domestic violence isn't one  
21 that's been diminishing but one that's been coming more  
22 and more to the forefront in the courts and the  
23 public's mind, and so more people are aware that there  
24 are remedies and options and they are trying to access  
25 them.

1 I've been at the Women's Center since  
2 1977. One of my major areas of responsibility is in  
3 systems advocacy work, which is advocating for changes  
4 in the systems that victims need to turn to for help,  
5 and that includes the justice system and supervision of  
6 our legal advocacy department. So in that capacity,  
7 I'm here to talk to you about our role in helping  
8 people through the court system and the Court of Common  
9 Pleas and what we see happening there and what maybe  
10 could be done to improve it.

11 Our legal advocacy department was  
12 established in '86, and with me is one of our legal  
13 advocates, Ann Hazlet. She's been here since its  
14 beginning, and many years before that also with working  
15 in the shelter. The department exists to assist  
16 battered persons as they seek legal remedies to their  
17 abuse, and because there's increasing complexity  
18 surrounding domestic violence issues, as well as a  
19 growing number of options available to seek relief,  
20 it's very important that victims receive accurate  
21 information on the options and get emotional support  
22 and encouragement, referrals to legal counsel and the  
23 full protection of the courts.

24 Our program addresses these problems by  
25 providing trained staff to assist them through the

1 various components of the legal system as needed. We  
2 have four advocates full-time helping folks to  
3 comfortably navigate the system. They don't act as  
4 attorneys, they don't give legal advice, but they are  
5 an informative and supportive element for the victim  
6 throughout the complicated legal process, and as you  
7 know very well, this is an emotional problem, an  
8 emotional issue, and support is very important for  
9 folks going through it.

10 We work both in the criminal area and in  
11 the civil area. In the criminal area our most -- the  
12 highest caseload that we have is in Pittsburgh City  
13 Court, where we help the thousands of victims whose  
14 abusers are arrested by the Pittsburgh Police. We help  
15 them go through the City Court preliminary hearing  
16 process with prehearing options, counseling,  
17 accompanying them to court and follow-up afterwards.  
18 There are well over 3,000 cases of those a year that  
19 the staff are helping with. And those preliminary  
20 hearings are held two afternoons a week in City Court.

21 Then Neighborhood Legal Services and the  
22 Protection From Abuse Act area is the other part of our  
23 legal advocacy work that has the other major part of  
24 our caseload, and NLSA, or Neighborhood Legal Services,  
25 handled most of the protection orders filed in

1 Allegheny County, and they have seen more than a  
2 100-percent increase in PFA actions filed here since  
3 the passage of the probable cause arrests in the  
4 domestic violence situation law, because police are  
5 required to inform victims of this PFA option, and the  
6 passage of the PFA amendments which broadened client  
7 eligibility. At the end of '87, NLSA centralized its  
8 operations and their downtown office handles PFAs for  
9 victims from all parts of the county except for  
10 McKeesport, and McKeesport cases are handled at the  
11 McKeesport office.

12 In response to a request from NLSA in  
13 '89, we have made an advocate from the Women's Center  
14 available every weekday morning at that office to  
15 provide support through the process to their clients  
16 and also to those who must seek PFA orders pro se  
17 because they are ineligible for NLSA services or they  
18 are just booked up for the day. An advocate is also  
19 present at Family Court every Wednesday to assist  
20 victims pursuing indirect criminal contempt charges  
21 against abusers who violated their PFA order. And the  
22 result of all of our involvement in these cases has a  
23 considerable and beneficial impact on the victims.  
24 They are oriented to the system, they have a better  
25 understanding of what their role is as a victim or

1 witness, they are informed on a range of options  
2 available, including social services, they understand  
3 proceedings, receive an explanation of the consequences  
4 of violations of court orders, receive written resource  
5 materials -- I have copies here for you I'll give you  
6 later -- and support, which is such a critical  
7 component through all the stages of the process. We  
8 find that victims are very appreciative of this kind of  
9 support and we find that they do have an increased  
10 awareness as a result of our work with them and are  
11 more aware of their rights in the system and are more  
12 comfortable in general participating. So on the part  
13 of the court, this means that when people are coming  
14 before them who have had the opportunity to speak and  
15 be counseled by an advocate, it means that they are  
16 better prepared for that court experience and are  
17 educated about these orders and have more realistic  
18 expectations about the outcomes and are emotionally  
19 prepared for the consequences of their actions.

20 In our experience, plaintiffs seeking  
21 orders, PFA orders, are legitimately fearful and truly  
22 worried about their safety and that of their children.  
23 They have usually experienced various forms of abuse  
24 over time - physical, mental, economic, sexual - and  
25 feel in need of immediate protection which can be

1 obtained in an ex parte hearing. About a third of them  
2 have had police or medical intervention in the most  
3 recent incident of abuse. About 20 percent of them who  
4 go to Neighborhood Legal Services for a PFAs are turned  
5 down due to conflict, lack of merit, late arrival, or  
6 there are just too many cases that day for NLSA to  
7 handle. So, out of an average of about 15 cases  
8 presented to NLSA's central office a day, about 3 of  
9 them have to seek a PFA order pro se. They receive  
10 some assistance from the legal advocates who's there  
11 and some more from the court. The court trains its  
12 domestic relations officers to help victims with the  
13 pro se process. They've simplified the petition and  
14 pro se orders and written very clear instructions for  
15 the plaintiffs to follow.

16 The next page shows growth in these  
17 domestic violence court cases in terms of the Women's  
18 Center's advocacy department, Neighborhood Legal  
19 Services, and below that the Court of Common Pleas.  
20 You can see parallel growth among all three of these  
21 groups, and the question was asked, how many -- I think  
22 you were wondering how many orders were granted, final  
23 orders were granted. In 1990, that was 2,696. I got  
24 these figures from the court. And we're projecting by  
25 the end of this year that there will be 2,888

1 protection orders. It's a tremendous caseload that  
2 we're all dealing with. And although the shelter is an  
3 option for some victims, it's really not a realistic  
4 option for this volume of people. We only have so many  
5 beds. This remedy is a very important one in order to  
6 provide that immediate protection.

7 I said before to you something called  
8 systems advocacy. We keep working on these systems to  
9 make them more responsive and to implement the laws  
10 that you have passed. And in order to do that, we've  
11 performed a domestic violence task force. It's an  
12 outcome of a project we started in '87 with the minor  
13 judiciary, and this task force consists of myself and  
14 Ann Hazlet here, representatives from the District  
15 Justices Association, Neighborhood Legal Services, the  
16 DA's office, Pittsburgh and county police departments,  
17 the Administrator for Family Division Court of Common  
18 Pleas, and the Chief Magistrate of the Pittsburgh City  
19 Court. This is an attempt to have the folks who deal  
20 with these cases in the various aspects come together  
21 and work in a collaborative way to identify the  
22 problems that we are encountering in our own work and  
23 to work towards solutions jointly.

24 We have produced some pretty good  
25 successes, we think. One of them is this "Handbook on

1 the Legal Proceedings For Victims of Domestic Violence  
2 -- Procedures and Resources." You can see it's very  
3 thick. And this was reviewed by the President Judge  
4 and the Family Division judges, and the Court  
5 Administrator's Office has this on its computer, the  
6 county printed it and helped disseminate it throughout  
7 the whole justice system, police departments, district  
8 justices, and the judges all got copies of it, and it  
9 won a statewide award. We think something like this  
10 would be very helpful in all the other counties across  
11 the State. It's something that could be replicated  
12 with people working together on the issue and other  
13 problems.

14 Another accomplishment was our  
15 establishment of a county registry of the final PFA  
16 orders on the sheriff's department communications  
17 system. And this year we're working to revise the  
18 handbook, bringing it up to date to include new  
19 information, rules, and procedures.

20 Through the years our experience with the  
21 court system in Family Division shows it to be  
22 responsive to the needs of domestic violence victims  
23 when these concerns are brought to their attention.  
24 And we see Family Division striving to make the court  
25 accessible and intelligible to the folks who need to

1 use it and who don't have an attorney. Some ways they  
2 have done that is by producing three handbooks this  
3 year on PFAs, child and spousal support, and custody  
4 and partial custody. They have trained their domestic  
5 relations officers on the pro se process. They have  
6 centralized and simplified that process. We see the  
7 DROs and hearing officers as good arbitrators in  
8 domestic relations, and the court allowed advocates  
9 from domestic violence programs and from the agency  
10 called "Support" to accompany people to support and  
11 custody hearings, and they have specially trained  
12 advocates in this area of support.

13           Generally, feedback to us from folks who  
14 needed to use Family Division is that they are  
15 satisfied with how the system has treated them, that  
16 the system is generally fair, even though they might  
17 not always be satisfied with the exact outcome or the  
18 decisions in their case, because in these cases very  
19 rarely are both parties satisfied. And although the  
20 amendments to the PFA Act allow emergency orders to be  
21 immediately certified to the court, in Allegheny  
22 County, an ex parte hearing is held for every PFA  
23 petition regardless of whether the emergency order was  
24 issued. The emergency order has minimal information  
25 and doesn't provide for all the possible forms of

1 relief, but the ex parte hearing permits the court to  
2 review the full petition before the 10-day waiting  
3 period has lapsed. This review builds an additional  
4 screening so that a person accused of abuse won't need  
5 to be excluded from the residence any longer than  
6 necessary if the Court of Common Pleas finds that the  
7 case lacks sufficient merit.

8 In response to the provision in the PFA  
9 amendments allowing for plaintiffs to seek  
10 out-of-pocket losses, Family Division established a  
11 bifurcated system to handle these claims if needed. If  
12 the claim cannot be settled at the final hearing, the  
13 plaintiff can file a petition in Family Division for an  
14 arbitration hearing, and I've attached a memo that  
15 explains how that is done in this county. In this way  
16 bifurcation doesn't hold up the remedy of Protection  
17 From Abuse. Following a request from the Women's  
18 Center and Shelter and from Neighborhood Legal  
19 Services, Family Division created and furnished a  
20 separate waiting area this year for PFA plaintiffs,  
21 their attorneys and advocates on the 8th floor of the  
22 City/County Building. Before this area was made  
23 available, the only space for attorneys and their  
24 clients to meet and discuss their case was in front of  
25 the very busy and public elevators of Family Division

1 on the 6th floor, which you heard about earlier, with  
2 their embarrassing injuries, black eyes, et cetera, in  
3 full view of just hundreds of strangers coming off  
4 those elevators and discussing the particulars of their  
5 case in earshot of all of them.

6 We think that the PFA process is working  
7 reasonably well in Allegheny County due in great  
8 measure to the strong commitment of the Court of Common  
9 Pleas, NLSA, and all the county's four domestic  
10 violence programs to ensuring that the law is  
11 implemented and victims are protected. We think the  
12 whole system is extremely taxed by the high volume and  
13 the ever-growing volume of PFA petitions and of  
14 indirect criminal contempt complaints. We think the  
15 process would be more effective if both parties could  
16 see the judge and hear directly from him or from her  
17 that domestic violence is indeed a serious crime with  
18 real consequences. But given the high caseloads of our  
19 judges, this cannot happen, and consent agreements are  
20 the norm.

21 This Family Division could use more  
22 judges. And we certainly see the need for more legal  
23 advocacy. This is a painful and difficult process for  
24 people in crisis, and although we help at the front end  
25 of the process and at hearings for violations of PFA

1 orders, we cannot be present for preliminary and final  
2 PFA hearings on any sort of a regular basis.

3 Presently, the City Court magistrates in  
4 Pittsburgh don't have the power to arraign on indirect  
5 criminal contempt charges following a police arrest. A  
6 legislative change would give them this power to  
7 simplify the arraignment process and thus ensure that  
8 these cases don't fall through the cracks of the legal  
9 system.

10 Many police departments don't have a  
11 domestic violence protocol, or have one that is  
12 inadequate. It might be necessary to mandate that they  
13 adopt a policy and directive following the model  
14 recommended by the Attorney General and his Task Force  
15 on Family Violence.

16 And because domestic violence is a crime  
17 perpetrated by one partner with a good deal more power  
18 than the victim, we believe it would be a serious  
19 injustice and also dangerous to mandate mediation in  
20 domestic relations cases where there is a history of  
21 domestic violence. Voluntary mediation can work,  
22 however, in cases where both partners have equal power  
23 in the relationship and have no history of violence.

24 And finally, I would like to just say  
25 that in order that the House Judiciary Committee fully

1 examine domestic relations injustices in the  
2 Pennsylvania legal system, we further recommend that  
3 you convene some kind of an expert panel or a  
4 commission to study gender bias in the courts.

5 And that concludes my statement.

6 ACTING CHAIRMAN DERMODY: Mr. Suter.

7 BY MR. SUTER: (Of Ms. Biancu111)

8 Q. Just two things. First of all, we do  
9 have legislation pending that requires a protocol on  
10 domestic violence situations. I don't know what the  
11 outcome of that legislation will be, but we are aware  
12 of that situation and we do have legislation pending.

13 I would like to receive copies of your  
14 handbook, if that's possible.

15 A. Oh, okay. I can leave one.

16 Q. Okay, or I can give you my card.  
17 Whatever you want to do.

18 A. We have six -- as I said, we are in the  
19 process of revising it and we're hoping that revisions  
20 can be in shape to go to the printer by the end of this  
21 year, and our objective is to then have it printed and  
22 disseminated and do more training in '92.

23 Q. Why don't I leave you a card and then  
24 when that's finished you can give me a copy.

25 A. Oh, great. We'll do that.

1 Q. As well as the child and spousal support  
2 handbooks. Are they separate or are they all contained  
3 in one?

4 A. Yes, we can get those for you from Family  
5 Division. Yes.

6 Q. Thank you.

7 ACTING CHAIRMAN DERMODY: Representative  
8 Pesci.

9 BY REPRESENTATIVE PESCI: (Of Ms. Bianculli)

10 Q. Two questions. Page 2, under "Legal  
11 Advocacy," the second paragraph. You state there, on  
12 the second paragraph, the last sentence, "They also  
13 refer victims to legal aid and work toward improving  
14 the justice system's response to the abused." What do  
15 you mean, "work toward improving the justice system?"

16 A. That's the piece of our work that I call  
17 systems advocacy. Some of that work takes place  
18 through our membership on the Domestic Violence Task  
19 Force that has all those members that I described for  
20 you, and there we talk about how this isn't working in  
21 the district justice system or we are encountering  
22 these problems in night court or the police response  
23 needs this kind of change. And so we work with those  
24 various components to make recommendations, point out  
25 deficiencies and problems and then come up--

1 Q. Within the system?

2 A. Within the system, yeah.

3 Q. But there are problems.

4 A. Oh, every system, I believe, has ongoing  
5 problems that are just going to come up, but there is a  
6 forum that exists to address them. We also, the legal  
7 advocates in all of Allegheny County come together  
8 regularly and share with one another what problems they  
9 are seeing and encountering that victims are having in  
10 Allegheny County, and then those ideas and  
11 recommendations and strategies are funneled through us  
12 to this bigger task force. So, yeah, there are  
13 problems, naturally.

14 Q. Page 6. Page 6. Very last paragraph.

15 A. Yeah.

16 Q. "In order that the House Judiciary  
17 Committee fully examine domestic relations injustices  
18 in the Pennsylvania legal system, we further recommend  
19 that you convene an expert panel to study gender bias  
20 in the Courts." Why?

21 A. Well, you've heard some testimony this  
22 morning in terms of following divorce, women and their  
23 children are at a greater disadvantage than the  
24 husband, who has been the provider, and you've heard  
25 testimony in the past from people saying men's rights

1 aren't being upheld, they are violated, and women are  
2 saying the same thing. I heard this morning people are  
3 saying on both sides there are injustices.

4 Q. In Allegheny County, though, but before  
5 you had heard that testimony you put into a paragraph  
6 here something you must have seen or heard. Is that  
7 not correct?

8 A. Yes, um-hum.

9 Q. Okay. That's all. Thank you.

10 A. We think that would shed more light in an  
11 objective kind of way in this very subjective issue.

12 ACTING CHAIRMAN DERMODY: Okay. Thank  
13 you, very much. We'll recess until 1:30.

14 (Whereupon, the proceedings were recessed  
15 at 12:20 p.m., and were resumed at 1:30 p.m.)

16 ACTING CHAIRMAN DERMODY: I'd like to get  
17 started. The first witness this afternoon is the  
18 Honorable John E. Blahovec, Judge of the Court of  
19 Common Pleas of Westmoreland County.

20 Whenever you're ready.

21 JUDGE BLAHOVEC: Thank you, Mr. Chairman.  
22 I do want to thank the Committee for the opportunity to  
23 present some of my views on the issues that the  
24 Committee is contemplating and deliberating on. I have  
25 prepared testimony. I don't propose to read it. I

1 would like to highlight some of the things in the  
2 proposed testimony and then answer any questions or try  
3 to answer any questions that you might have.

4 I am a judge in the Family Court of  
5 Westmoreland County. I have been in that position for  
6 -- I am completing my sixth year. We have two judges  
7 in Westmoreland County who are normally assigned to  
8 Family Court, and what I mean by that is the President  
9 Judge of Westmoreland County, Judge Charles Marker,  
10 also handles juvenile cases which are, you know, the  
11 juvenile court in a lot of counties is separate. Three  
12 days a week he's doing juvenile delinquency and  
13 dependency matters, and then he handles the bulk of the  
14 divorce matters, including bifurcations, injunction  
15 requests, and enforcement of marriage settlement  
16 agreements. My responsibility is primarily in the area  
17 of Protection From Abuse, some divorce, all the custody  
18 trials, and the vast majority of the support trials.

19 We have a system that consists of five  
20 nonlawyer hearing officers in domestic relations for  
21 support cases. One individual who's a lawyer, who's a  
22 Special Master, he hears a lot of the preliminary  
23 injunction requests and requests for alimony pendente  
24 lite and special relief. We have an individual which I  
25 would like to talk a little bit more extensively about,

1 an All-Counts Hearing Officer, two Custody Hearing  
2 Officers, and then Masters for divorce.

3 I've submitted some statistics for your  
4 consideration and I don't propose to read them now.  
5 You can see that the number of divorces is fairly  
6 common. As of the end of September of 1991, 999  
7 divorces were filed and 818 were granted.

8 One of the biggest inequities in the  
9 whole divorce system that I see is the fact that people  
10 in divorce have to pay their own way, and I'm sure  
11 you've heard that before. It's not something that I  
12 have an easy solution to. The example that's always  
13 given is that somebody from U.S. Steel can sue Coca  
14 Cola and they get to go in front of a judge or a judge  
15 and a jury and there are no costs involved in that, but  
16 in domestic litigation we have a Master system and  
17 people have to pay to have their case litigated.  
18 That's not something I'm particularly happy with.  
19 We're looking for a solution to that. Some counties  
20 have taken the step, as you may know, of adopting a  
21 flat fee to be added to divorces which funds the system  
22 so that the people just pay the flat fee at the time of  
23 filing and then the divorce goes on that way. It's  
24 litigated. But this is something we're looking at and  
25 it's something that has been addressed by the Supreme

1 Court of Pennsylvania sometimes, but basically they've  
2 avoided the issue.

3 We want to settle divorce cases, and even  
4 though there may be some feeling to the contrary, the  
5 judges don't get any satisfaction out of prolonged  
6 litigation. We're as sad to see these people come back  
7 again and again as they are to be there. The position  
8 that I mentioned earlier in my remarks, the All-Counts  
9 Hearing Officer, is something that we've been fairly  
10 lucky with in Westmoreland County. We had an  
11 individual who is a former Domestic Relations Hearing  
12 Officer, he's not a lawyer, but what happens is before  
13 the case is referred to a paid Master for testimony,  
14 the All-Counts Hearing Officer attempts to conciliate  
15 the case, attempts to mediate it. He has all the  
16 economic information, the lawyers and clients are  
17 present, there's no record, it's purely for the  
18 purposes of attempting to reach a settlement. He has  
19 settled approximately, in the 2 1/2 years that he has  
20 been in operation, over 92 percent of the cases that  
21 come in front of him. Approximately 475 cases that  
22 didn't have to go to a Master. The advantage of that  
23 to the people is obvious. They save lawyers' fees,  
24 they save Master's fees, and that is a substantial  
25 savings.

1                   Now, just last week, I don't want to tell  
2 you a whole bunch of war stories because I'm sure you  
3 get enough of that, but I handled a divorce last week  
4 and touched a file that the divorce was filed in 1984,  
5 and you know the statutes better than I, you know what  
6 the waiting periods are. I handled one filed in 1987.  
7 I'm working on a case now that's been already heard by  
8 a Master that took 14 days of testimony in front of a  
9 Master. That means that's 14 days of testimony that  
10 the people paid for the Master to hear, the transcript  
11 to be reproduced, et cetera. And any time you have a  
12 case like this it consumes a disproportionate share of  
13 the resources, and these are the most bitter cases.  
14 Everybody distrusts the system. There are some cases  
15 that are doomed to drag on for years, and some of that  
16 is the simple fact that the people hate each other.

17                   Again, I don't want to tell you war  
18 stories, but I'll tell you one as fresh as this  
19 morning. The husband is 67 years old, the wife is 63.  
20 The wife has two kinds of terminal cancer, okay. They  
21 have some property, they have a couple of mortgages,  
22 they've been litigating for a year and a half. They  
23 were in front of me today talking about whether she  
24 should pay him support and, you know, she's dying, he  
25 wants to get on with his life. To me, you know, not

1 that the case is insignificant by any means, but they  
2 have property, there are certain issues that need to be  
3 resolved, and to prolong litigation in a case like  
4 that, you know, seems silly, and I don't believe the  
5 lawyers are doing that. I think it's partly because  
6 the people hate each other. Now, when the man was  
7 asked a question about, well, your wife has terminal  
8 cancer, and he says, I've got a mouth full of and  
9 abscessed teeth and I got problems, too. Not that  
10 abscessed teeth aren't serious, but that's the kind of  
11 thing that you sometimes get into.

12 The one thing that we can't fix--and in  
13 these cases "fix" is a bad term, I guess, under the  
14 situation we're talking about--the one thing we can't  
15 resolve is the way people feel about each other, the  
16 way they hate each other. One of the things that's  
17 often talked about is lowering the waiting period.  
18 Well, as you know, if people want to get divorced, they  
19 can get divorced in 90 days by way of consent. That's  
20 pretty quick. I'm not so sure that lowering the  
21 waiting period will make a difference. People can get  
22 divorced quickly if they choose to do it.

23 The biggest problem, I guess, to  
24 resolving the divorces quickly is the property  
25 settlements. Some people have discussed the

1 possibility, and it's something that I have not made  
2 the decision on myself, but maybe it makes sense, is  
3 the idea of community property as opposed to equitable  
4 distribution. There are 14 factors the courts have to  
5 consider in equitable distribution. Our Superior Court  
6 tells us we are not allowed to start, as a matter of  
7 law, from a 50-50 perspective. Then where do you  
8 start? Do you start at 100 percent to one or the  
9 other? Do you start at zero? Maybe realistically  
10 something akin to a community property situation would  
11 be beneficial. Then the trial would be over the values  
12 of the property, which is not an insignificant matter.

13           One of the things that's been  
14 particularly disturbing to me is the cost of experts.  
15 We've talked about Master's fees, we've talked about  
16 the cost of transcripts, lawyer's fees, et cetera, but  
17 I'm seeing thousands of dollars for expert's fees, and  
18 this isn't the court's fault. Each side has a right to  
19 hire their own expert, and if the parties chose an  
20 impartial or court-appointed expert or somebody that  
21 they both selected, now that would save money, but  
22 sometimes they can't even agree on that.

23           Bifurcation is another area that causes  
24 some concern. I can understand the reason for it where  
25 the parties shouldn't be hold hostage, but I think the

1 better solution would be to resolve the whole divorce.  
2 If there was a way to move the entire case it would be  
3 better. We're running into situations where Federal  
4 laws come into play. For example, bifurcation is  
5 granted, the husband gets a divorce. He remarries. An  
6 injunction is issued in the divorce that says he can't  
7 dissipate marital property. Fairly typical. The only  
8 problem is he's a Federal employee and the Federal law  
9 says that his new wife, spouse, has to be the  
10 beneficiary of his pension. Well, that's in direct  
11 conflict to the injunction. The former first wife  
12 maybe he's really fighting a battle now to get off the  
13 pension, and that's a problem.

14 Another example, maybe it's a bit of an  
15 absurd example, but it's a real example nonetheless, is  
16 bifurcation is granted, the economic issues from the  
17 first divorce aren't resolved, the second marriage  
18 blows up and then you have spouses waiting in line to  
19 get at the pot, and add to that in this particular case  
20 there were a number of kids who were concerned about  
21 their inheritance and so they wanted to hire a lawyer  
22 and come in on the first divorce, too. So the more  
23 delays in the economic resolution, the more problems  
24 that are created.

25 One of the other things that I think

1 causes a real problem, especially in our system in our  
2 county, our system started when we had one judge doing  
3 both regular case work and Family Court, so a number of  
4 different entities were set up in different hearing  
5 places. I told you the different people we have  
6 working in our system. In our county if you file for  
7 spousal or child support, you go to domestic relations,  
8 there's a hearing in front of a nonlawyer Hearing  
9 Officer. If you appeal that, you get a brand new  
10 hearing in front of a judge. If you go for alimony or  
11 alimony pendente lite in our county, you go to the  
12 Special Master, who is a lawyer, a record is made and  
13 that case goes to the judge based on the record. It's  
14 theoretically possible then, if you had to bring in an  
15 expert, you would have the expert testify at domestic  
16 relations, then they would testify in front of the  
17 Special Master, they would come back to me if the one  
18 thing was appealed and testify there, if the divorce  
19 Master was hired to resolve the issue of permanent  
20 alimony, they would testify again. So that  
21 fragmentation is a problem. In the best of all worlds,  
22 all the claims would be heard all at once, but that's  
23 not possible, at least in our county at this time.

24 Another problem that I see and I just  
25 would be remiss if I didn't mention it is the question

1 or the problem of expectations. Divorce is a miserable  
2 thing. A lot of bad things are going to happen when  
3 you get divorced. The simple fact remains though that  
4 everything the people settle between themselves rather  
5 than the court-imposed solution is better. I've heard  
6 discussions among my colleagues and other people when  
7 these hearings started about the issue of arbitration,  
8 but if the people wanted to go to arbitration they  
9 could go now if they agreed. Common law arbitration  
10 has been around for hundreds of years. The issue of  
11 mediation. If they want to have a mediator, they can  
12 do that now if they agree. They don't even need court  
13 approval to do that. If people want to settle a case,  
14 they don't have to come and see me at all. You know, I  
15 have a line in my testimony that my own personal belief  
16 in solving the emotional trauma that arises in every  
17 divorce is better left to some counselor's office  
18 rather than the courtroom. But this is America and  
19 everybody has a right to litigate these matters.

20 The issue of support, this is what I used  
21 to illustrate my basic problem that when marriages  
22 break up, there's a certain amount of misery. If you  
23 consider the fact that most of the people that you know  
24 in your lives are pretty much just getting by, don't  
25 have a lot of extra money on what they make, and you

1 divide that into two houses, it shouldn't really  
2 surprise you that nobody has enough money. I mean,  
3 that is a real problem. We have all kind of shortcuts  
4 that we have to use because of the number of cases. I  
5 attached an appendix to my testimony about what our  
6 domestic relations numbers are as far as support. But  
7 there is not enough time to hear these cases. We use  
8 the guidelines, and even when you use the guidelines,  
9 which are great, because people similarly situated are  
10 supposed to be treated similarly, there's still not  
11 enough money to go around. That's a real cost to  
12 divorce.

13           The area of custody is the same thing.  
14 We try to settle every custody case three or four  
15 times. The case goes to one of our two lawyer Hearing  
16 Officers, they try to settle it. Then it goes to a  
17 judge. They try to settle it. If it doesn't settle  
18 there, they come to me for a trial, and before I have  
19 the trial, I try to settle it. I maybe had one custody  
20 case in six years or maybe two that, you know, where  
21 something was really resolved on a permanent basis.  
22 Once they get into court and start saying all the  
23 things that they want to say about each other, things  
24 never, never seem to be the same. Equal rights is  
25 affecting custody. More fathers are getting custody.

1 And, you know, I don't want to get into the issue. I  
2 don't have any statistics in my county in front of me  
3 whether how many fathers got custody or how many  
4 didn't. My answer would be to you that the ones that  
5 should get it do get it. There is no Tender Years  
6 Doctrine. We don't follow that, and it's pretty much  
7 of an equal situation.

8 The last thing that I wanted to just  
9 briefly mention was the area of Protection From Abuse.  
10 This is a real tough area. It's something that causes  
11 a lot of concerns. I have had four of my PFAs in six  
12 years turn into homicides, so it's something to be  
13 concerned about, but I can also tell you that PFAs are  
14 abused. The way the law is set up, and I think rightly  
15 so, by the legislature, is the idea of providing some  
16 type of a 10-day cooling off period to figure out  
17 what's going on here, then in 10 days you sort it out.  
18 I have to tell you that the vast, vast majority of PFAs  
19 that are filed are resolved by way of agreement.  
20 People reach agreements, very few of them end up going  
21 further than that.

22 We have the problem that the police have  
23 and I'm sure courts all over the State and maybe the  
24 country have in the sense that even in cases where  
25 there is a valid PFA, serious injuries occur. Then, as

1 you know, there's an indirect criminal content that the  
2 PFAs violated, the alleged victim not pressing charges.  
3 That causes a lot of frustration. And I don't  
4 understand, as a counselor would maybe, the cycle of  
5 domestic violence and all the issues, but I know that,  
6 you know, resolving the social problems that arise out  
7 of these violent situations and PFA situations, again,  
8 not the place necessarily in a courtroom. Sometimes,  
9 you know, I don't want to take the blame for this, but  
10 sometimes even the granting of the PFA can have the  
11 exact opposite effect. The case that I think of is  
12 there was a lady who was a schoolteacher from the local  
13 community who came in right before Easter for a PFA.  
14 She claimed her husband was crazy, very dangerous, and  
15 she was generally frightened, in my opinion. I said to  
16 her, Ma'am, if this man is as dangerous as you say, you  
17 don't want to go back to your house because until you  
18 call the police, you know, this piece of paper you can  
19 wave it at him and it's not going to have any effect.  
20 Well, it turns out her answer was he's not going to  
21 chase me out of my house. Well, the rest of the story,  
22 as you can guess, was that she was killed, and see,  
23 sometimes the answer is safety, getting away from a  
24 situation rather than, you know, I couldn't protect  
25 that lady but I gave her all the protection the law

1 allowed. I signed my name on a piece of paper, and  
2 those are the kind of situations we sometimes run into.

3 I hope you know that I don't get any more  
4 money based on the number of cases I have or how many  
5 cases people settle or what the lawyers make. I know a  
6 lot of people think I do. And you'll have, and that's  
7 why we have separation of powers and you good people to  
8 look into things like that, why we have district  
9 attorneys and police. Every case I try, every judge I  
10 know in our county and the other judges I know from  
11 around the State try to settle these things. I know  
12 that people are sometimes upset when discussions are  
13 conducted with the lawyers and the judges in chambers.  
14 A lot of times that's a matter of just moving cases.

15 One of the most embarrassing, I guess,  
16 parts of my job, or most unsettling parts maybe is a  
17 better word, is the fact that in the back of my mind  
18 when the lawyer or the litigants or whoever they are  
19 are in front of me, I know I've got 12 other ones  
20 sitting out there and I can't spend as much time on  
21 this lady as I should because I've got to move it  
22 through, but I give it the best time I have for the  
23 time that they are in front of me. We don't have the  
24 resources to double the number of judges or do  
25 whatever, but that is a real problem is the number of

1 cases. The fact that the luxury, I guess I call it,  
2 from my colleagues that when they do a criminal or  
3 civil trial they just sit there until it's done. If it  
4 takes two days, if it takes two weeks, everything else  
5 is canceled. You see nothing in the law, at least in  
6 the perception, I guess, that most of this is more  
7 important than a jury trial. You see, we don't have  
8 that luxury. You may have waited six months to get  
9 into my courtroom, but I got other people who have  
10 waited just as long and we do what we can. That  
11 creates all lot of unsatisfactory feelings about the  
12 system. For what it's worth, we're no more happy about  
13 that.

14 At this point, rather than me rambling  
15 on, I would answer any questions.

16 ACTING CHAIRMAN DERMODY: Thanks, Judge.

17 BY ACTING CHAIRMAN DERMODY: (Of Judge Blahovec)

18 Q. Judge, can you please explain a little  
19 bit in detail about the five nonlawyers who do  
20 mediation or--

21 A. Well, in the support area. In the  
22 support area. There are two procedures under the Rules  
23 of Procedure for establishing a support order.  
24 Allegheny County has one procedure, we have a different  
25 procedure. Under our procedure, you go in front of a

1 nonlawyer Hearing Officer, they keep notes, we call  
2 them pink sheets in our county. There's no record  
3 made. There is no court reporter, no taped record.  
4 They have the right to recommend an order to me. Their  
5 report comes up to, me I sign a report. If the party  
6 doesn't like that decision, all they have to do is, in  
7 writing, submit it to domestic relations saying, I  
8 appeal. They get a hearing then in front of me or  
9 another judge, de novo, starting all over with the  
10 record.

11           You know, in the Allegheny County system  
12 there's an attempt to conciliation if they don't agree,  
13 they go to a lawyer Hearing Officer, a record is made  
14 and if they want to appeal that they go to a judge, but  
15 the judge only sits like an appeals court. That's the  
16 way ours works. Now, you know, the problem with time  
17 on that, the rule that goes with that -- see, the idea  
18 is you go in front of a nonlawyer and you get in front  
19 of a judge fast. The rule says that we're supposed to  
20 have that de novo hearing in 45 days. If you came in  
21 and filed an appeal today in our county, it would be  
22 February, which I would suggest is longer than 45 days.  
23 We have a new judge coming in half-time since the  
24 election, so that will help.

25           Q. Do you get many appeals from the

1 nonlawyer Hearing Officers?

2 A. The percentage is fairly small. I don't  
3 have the exact number, but as of right now I have  
4 attached to I think the number of cases are filed,  
5 2,600 or 2,700 new complaints, 2,700 petitions to  
6 change orders, so, you know, that's somewhere over  
7 5,000 cases we don't — and we get a fraction of that.  
8 Appeals.

9 Q. And you mentioned today two horror  
10 stories of cases that were filed in '87 and '84 that  
11 you just heard. They are exceptions to the rule, I  
12 would take it?

13 A. Sure. If you look at, even the numbers I  
14 have here, 1991 so far, 999 divorces are filed and 818  
15 are granted. Some of those are last year's, but  
16 they're moving. But it's the ones that don't get  
17 granted that eat up all the resources, as you can  
18 imagine.

19 Q. Well, was there anything that we could  
20 have done, or anyone, to help to move those two cases  
21 along?

22 A. No. I don't know that you can. Because  
23 the only thing that would solve that, I guess, is one  
24 thing might solve it maybe our Supreme Court has to do  
25 it maybe if the Master system wasn't there and there

1 were enough resources that the case could be litigated,  
2 but a lot of it is people fighting, and sometimes they  
3 are just not roady, and it's not a pleasant situation.

4 ACTING CHAIRMAN DERMODY: Any other  
5 questions?

6 Mr. Krantz.

7 BY MR. KRANTZ: (Of Judge Blahovec)

8 Q. Your Honor, you mentioned that on the  
9 PFAs, that you have a large amount filed or you have--

10 A. Yeah, anywhere from I'd say the average  
11 is around 450 to 500 a year.

12 Q. Okay, those that are filed, how many get  
13 to court action versus withdrawn after they are filed?

14 A. Well, the majority goes to agreement.

15 Q. That's prior to court action?

16 A. Yeah, well, they come into court. The  
17 day of hearing is when they agree. Usually we have it  
18 on the computer. It's a pretty much standardized  
19 procedure. My secretary and court reporter both have  
20 it on computer. There's a standardized form that most  
21 people do settle. The vast majority are not litigated.  
22 Most of the people make some type of agreement.

23 Q. Okay, so in other words, the agreement  
24 that is reached would then supersede any Protection  
25 From Abuse that would continue?



1 We're trying to protect peoples' lives and safety.  
2 Some people come in, you know, he called me X number of  
3 names. That's abuse. He can't do that. You know,  
4 that's not what it's about, but on those forms you were  
5 getting everything.

6 The other problem, just from a judge's  
7 standpoint, when someone comes in representing  
8 themselves, you almost have to be their lawyer. You  
9 have to ask them the questions. If you just said to  
10 them, all right, you're here for a PFA, what is it you  
11 want me to do? They wouldn't know what to do. So we  
12 have a lot more bad PFAs when people file them  
13 themselves. And we went through a period where there  
14 were, I don't know, it was a big percentage, maybe 40  
15 percent for a period of time when Legal Services wasn't  
16 screening were being withdrawn and whatever.

17 Q. Thank you.

18 ACTING CHAIRMAN DERMODY: Representative  
19 Hagarty.

20 REPRESENTATIVE HAGARTY: Thank you.

21 BY REPRESENTATIVE HAGARTY: (Of Judge Blahovec)

22 Q. I had one question. We've heard  
23 allegations of the PFA process being abused by women in  
24 a divorce context to get some advantage. Do you see  
25 that yourself as a judge?

1           A.    Sure.  Sure, it happens.  The classic  
2 example, usually people are a little more subtle than  
3 this, but because, as I mentioned to you, Legal  
4 Services was handling -- irrespective of income,  
5 because of their contract with Women's Services, they  
6 were representing plaintiffs in PFAs.  You would have a  
7 woman sometimes admit on the stand, well, yeah, my  
8 divorce lawyer told me to run down to Legal Services to  
9 get this PFA.  So that's happened more than once.

10                   There are times when in order to get  
11 leverage.  Now, what I try to do when I get one that  
12 someone is trying to use for leverage, if there is some  
13 kind of injury or something, then you grant the PFA if  
14 there is a risk of imminent serious bodily injury, et  
15 cetera, but if I think, and I don't know that I can  
16 articulate this what I want to say, but if I think that  
17 these people really do need to be apart and they have a  
18 divorce pending and they're just using this, I don't  
19 like to give somebody who has the option of moving  
20 through the divorce a long PFA because I don't want to  
21 give somebody the right to sit in the house and say, I  
22 got you out for a year, you know, go fly a kite, you're  
23 not getting me out of here.  I don't like to do that  
24 and I don't like to let it happen where it's used for  
25 leverage, but it does happen.

1                   And, you know, in a sense you have to  
2                   make a risk assessment is what it is in the beginning.  
3                   You're trying to determine, is this person at risk or  
4                   not? But it is abused. I can't tell you the exact  
5                   numbers. Most of them, the vast number of them are  
6                   valid, but, you know, this will make me sound crazy,  
7                   but some of the worst ones are the ones where the woman  
8                   ends up dropping them or if criminal charges are filed,  
9                   they don't go through with it.

10                  Q.    It doesn't sound crazy to me. I was a  
11                  prosecutor and I watched women withdraw criminal  
12                  petitions where they had been seriously injured. Well,  
13                  the case I never forgot was we had a woman, in those  
14                  days you had to file a private criminal complaint.  
15                  Filed three separate criminal complaints for abuse and  
16                  her husband ultimately killed her. She had withdrawn  
17                  them. So I know. I'm concerned because of these  
18                  allegations and the fact that there are abuses. I  
19                  wouldn't want to jeopardize the gains that women have  
20                  made in the cases where they need real protection.

21                  When you hear someone tell you my  
22                  attorney told me to go file a PFA in the divorce case,  
23                  do you take any action as to that attorney?

24                  A.    No, I have never taken any action against  
25                  the attorney. I might have imposed costs again the

1 person.

2 Q. Doesn't it strike you as a violation? It  
3 strikes me, and I don't know the Code of Disciplinary  
4 Conduct as well you probably do, but it strikes me as a  
5 disciplinary violation that ought to warrant action if  
6 attorneys attempt to misuse the system in that way.

7 A. But what if it's a situation where he  
8 just shoved me, he pushed me and the attorney doesn't  
9 look into it that much and says, look, maybe the  
10 attorney is doing an ethical thing in a sense; they're  
11 saying, look, if you come to me to really discuss this  
12 PFA, I'm going to charge you \$500. You might as well  
13 go down to Legal Services. It would require me to go  
14 further and investigate it, and maybe I should, but I  
15 have not.

16 Q. Have you had any instances where it's the  
17 same attorney that it's occurred twice?

18 A. No, it has not been a pattern or I would  
19 have said something.

20 Q. Someone told me, and I don't know what  
21 county it was in, it could even be Westmoreland County,  
22 I don't recall, that in one of the counties if there is  
23 a divorce pending they don't have ex parte hearings for  
24 abuse.

25 ACTING CHAIRMAN DERMODY: I believe it's

1 Allegheny County.

2 REPRESENTATIVE HAGARTY: Is it?

3 JUDGE BLAHOVEC: I don't know about that.  
4 That's not true in our county. You have to ask so you  
5 don't--

6 REPRESENTATIVE HAGARTY: I understand.

7 JUDGE BLAHOVEC: And that's something  
8 that you have to be--

9 BY REPRESENTATIVE HAGARTY: (Of Judge Blahovec)

10 Q. I don't know at what point they check  
11 that. Does that make any sense to you or you don't  
12 think that's necessary?

13 A. I don't check it at that initial point.  
14 I'm just deciding is there a risk of imminent harm, and  
15 I figure I'll sort it out in 10 days at the hearing.  
16 I'm just deciding is there a risk?

17 Q. Do you think that the number of misuses  
18 of the system where there is a divorce is significant  
19 enough to warrant or would you, you know, to warrant a  
20 process like that?

21 A. You mean to what process to--

22 Q. A process whereby you wouldn't have an ex  
23 parte hearing. You know, what I picture, and if it's  
24 not justified, it's pretty horrible to someone to be  
25 told without any notice that a hearing has occurred,

1 just leave your home and he's never had an opportunity  
2 to tell the court his side, and obviously there's a lot  
3 of incentive, or some incentive, in a divorce case to  
4 do that. I am wondering if there are enough abuses  
5 that we ought to think about providing some protection  
6 in the system so that we're not telling someone to  
7 leave your home without him ever having an opportunity.  
8 I mean, 10 days leaving your home is still 10 days  
9 leaving your home for maybe not doing anything.

10 A. That's true, and I haven't analyzed the  
11 statistics enough. There's certain schools of thought  
12 that say, you know, when someone punches somebody in  
13 the eye or something like that, irrespective if they're  
14 your spouse or a significant other, whoever they are,  
15 that is still a crime, and it seems that the PFA law  
16 was developed to a certain extent to substitute for the  
17 fact that domestic violence crimes were prosecuted, as  
18 you know. So I don't know. I guess maybe I'm too much  
19 in the system in the sense that I become a victim of  
20 err on the side of caution. Well, maybe this really is  
21 something. We don't have a three-bruise rule or  
22 anything like that. It's hard to tell. You try to  
23 assess the risk as best you can, and I guess if I kept  
24 statistics I could answer your question better, but--

25 Q. What do you do if you don't see any

1 physical injuries?

2 A. I assess the credibility of the witness  
3 based on the way I do it all the time. How much fear,  
4 what the nature of the abuse, is there a pattern? If  
5 there was a prior PFA, then that's something I would  
6 certainly strongly consider. Really, it's a question,  
7 you know, it's a philosophical question. You know,  
8 like the lady who I let get back in the house and got  
9 killed. The first question normally would be safety,  
10 get someplace safe, but, of course, as you know you  
11 hear the other argument, well, why do I have to leave  
12 my house? I am a victim of this person. The problem  
13 is in the ex parte that you're hearing it, you know,  
14 you don't have both sides being present, the calm,  
15 measured way we try to resolve something else. So I'm  
16 certainly not going to say we shouldn't have ex parte  
17 PFAs but, you know, and I haven't thought it through  
18 enough, but there are abuses of it. But then, I guess  
19 maybe my answer should be this to you, the bulk of them  
20 still end up in some type of an agreement, so maybe--

21 Q. So maybe there aren't so many abuses?

22 A. Maybe there aren't so many abuses. They  
23 are still resolved somehow. Now, I don't know why that  
24 is, but that is--

25 Q. So your sense really then is that the

1 system is working, that as a judge you're comfortable  
2 on the credibility--

3 A. I think it had to work this way.

4 Q. On the credibility issue making that  
5 decision and that most of them are settled?

6 A. Yeah, that's right, and again--

7 Q. I'm summing it up for you but--

8 A. Well, I think that's right and the  
9 problem is there still are, I don't know, I'm not going  
10 to name any police departments, I don't know of any  
11 specifically, but you all know that the allegation is  
12 you get a call, it's a domestic, we're not coming out.  
13 You've heard that phrase. But the police many times  
14 will also tell the victim, well, we won't come out, he  
15 punched me in the nose, I'm not coming out, but if you  
16 go get a PFA tomorrow at the courthouse then we'll come  
17 out. And that's something that needs to be dealt with,  
18 too, and that almost has to be dealt with on a local  
19 level. There was a seminar at one time that Legal  
20 Services gave in the northern end of Westmoreland  
21 County for police departments and the one attorney from  
22 Legal Services said, I don't believe there's anything  
23 that my wife could do that justifies me using physical  
24 violence on her. How many people believe that in this  
25 room? I think 4 of the police officers out of about 40

1 there raised their hands. So, you know, it's a  
2 question of -- there are a lot of social policy issues  
3 there. I'm just trying to keep people from getting  
4 hurt. I figure I'll sort it out; maybe that's bad, but  
5 that's all I can do.

6 Q. It makes sense to me but I wanted to  
7 know. Thanks.

8 ACTING CHAIRMAN DERMODY: Judge, thank  
9 you very much.

10 JUDGE BLAHOVEC: Thank you.

11 ACTING CHAIRMAN DERMODY: James Mahood.  
12 Did I pronounce that correctly? James Mahood. When  
13 you're ready.

14 MR. MAHOOD: Thank you.

15 First of all, I'd like to thank the  
16 Judiciary Committee for the opportunity to appear this  
17 afternoon and talk about the family law issues that are  
18 being addressed by the Committee. I don't know to what  
19 extent you want to know just a little bit about my  
20 background and experience so you can judge a little bit  
21 about the perspective that I have and the basis for  
22 some of the things I might say. I've been practicing  
23 law since 1974. Since 1980, I have limited my practice  
24 to the family law area. Basically, I am a divorce  
25 lawyer. I am a member of the Pennsylvania and

1 Allegheny County Bar Associations' Family Law Sections.  
2 I am a member of council of both of those sections. I  
3 am a certified Fellow with the American Academy of  
4 Matrimonial Lawyers participating in various continuing  
5 legal education programs for the State and local Bar  
6 Associations, Pennsylvania Bar Institute, and also the  
7 Dickinson School of Law. But basically, I think the  
8 main thing is that I have been doing this for 10 years,  
9 and when you do it for that length of time you tend to  
10 see some of the things that go on on a day-to-day  
11 basis.

12 In preparation for the comments that I  
13 made in the written testimony, I talked to Ms. Milahov  
14 of the House Judiciary Committee staff and tried to get  
15 some sense of the areas in which the Committee might be  
16 interested in hearing about, and I understand that one  
17 of the primary concerns of the Committee is the length  
18 of time, or the perceived length of time, that it takes  
19 to get a divorce and the complaints that arise  
20 surrounding that, and I think in Judge Blahovec's  
21 testimony he made reference to divorce cases that had  
22 been pending for a number of years in Westmoreland  
23 County. One of the things I think that the Committee  
24 must keep in mind is that the litigation or the process  
25 that we're talking about, and we're talking about

1 dissolving marriages, is very complex both legally and  
2 as a matter of fact. People get married, they have  
3 children, they live for years together, they live for  
4 decades together, they buy houses, they earn pensions,  
5 they acquire debts, they spend hundreds of thousands of  
6 dollars over that period of time, they build  
7 businesses, they do everything that we all do in our  
8 day-to-day lives. When that marital union or  
9 partnership fails to work to their satisfaction, one of  
10 them decides that they want to end the relationship,  
11 and when that happens the lawyers and the court have to  
12 resolve it in conformity with the law. You can't do  
13 that overnight.

14           If you're dealing with valuing houses,  
15 you have to obtain an appraisal. If you're dealing  
16 with the valuation of pensions, you have to get the  
17 information that is necessary for that, and that can  
18 take time. If you're dealing with business interests,  
19 you have to — first of all, you have to determine  
20 what's marital property, you have to determine what's  
21 value, you have to get the financial information that  
22 will enable you to do those things that you have to do  
23 before you can even bring it to the court and ask for a  
24 form of resolution. Divorce cases can take time  
25 because they must take time, in other words. And I

1 don't think that there's any shortcut or easy way  
2 around that.

3 Judge Blahovec also mentioned or made  
4 reference to peoples' expectations, and I think that  
5 also figures into this. There is a tendency, I think,  
6 for some people to dislike the messenger because of the  
7 message that's being brought. Lawyers have a  
8 responsibility to give advice to their clients based  
9 upon what the law is and to attempt to work things out  
10 as best they can. Judges have the responsibility to  
11 apply the law based on the facts as they are able to  
12 determine them. A lot of people don't believe that  
13 it's fair what the law says. They don't think that,  
14 you know, it's my pension, I earned it and my spouse  
15 was not employed at my place of business; therefore,  
16 it's mine and it shouldn't be subject to division in a  
17 divorce action. There's a lot of education that has to  
18 go along with this whole process, and that's one of the  
19 great opportunities I think that we have in the  
20 Committee hearings that are taking place because the  
21 more people understand about what it is that happens in  
22 the system, the more they understand the complexities  
23 and logistical difficulties, I think the better able we  
24 all are to deal with things in an appropriate fashion.

25 One of the suggestions that I had heard

1 some time ago in the past was that it might be  
2 appropriate for the legislature to establish guidelines  
3 and say that all divorce cases must be resolved  
4 within--fill in the blank--a year, year and a half,  
5 whatever it would be from the time that the action is  
6 filed. You can't have blanket rules like that, I don't  
7 think. Some cases you can resolve quickly, fairly  
8 quickly; some cases you can't. If people have been  
9 married for a fairly short period of time, if there are  
10 no children, if there are no assets involved, if there  
11 are minimal assets involved, then yes, you can get  
12 those cases dealt with in fairly quick order. If  
13 you're talking about a 35-year marriage with adult  
14 children, perhaps custody is not an issue anymore but  
15 you've got three or four closely held corporations and  
16 half a dozen real estate partnerships, it's going to  
17 take you time to get the information necessary so you  
18 can do the things that are needed to be done before the  
19 case can be resolved. Even if you were to, just as an  
20 example, in a partnership or business thing, if you  
21 filed an action today, now you wouldn't even want to  
22 start until after the end of the fiscal year that  
23 you're dealing with, and once the fiscal year ends then  
24 you have to wait a certain period of time to have tax  
25 returns prepared, financial statements prepared. Once

1 those documents are available, and you have to wait for  
2 their availability, then you can get them. Once you  
3 get them then you have to review them. Once they are  
4 reviewed, then they have to be evaluated by --  
5 evaluation is an issue of an appraiser. All of that  
6 necessarily takes time.

7           This past July the Supreme Court adopted  
8 a new process or procedure that really follows the  
9 Allegheny County practice in terms of a pretrial  
10 process. Prior to, and Allegheny County I guess has  
11 been, to a certain extent, looked upon, or looked to,  
12 by other portions of the State as an example, or they  
13 see that maybe we're doing things in a fairly orderly  
14 and reasonable fashion. The new process is the  
15 Allegheny County system basically and what it provides  
16 is that there will be a pre-trial statement. And to  
17 that statement you have attached exhibits and reports  
18 and then you have a conciliation, at which time the  
19 case is either resolved or scheduled for trial.

20           I understand from acquaintances in the  
21 eastern part of the State that discovery has always  
22 been a problem for them. It's not been a problem in  
23 the western part of the State, in Allegheny County.  
24 This new process I think will enable other parts of the  
25 State that haven't had free discovery to streamline

1 things. If you have to attach these reports to your  
2 pre-trial statement, you necessarily have to have the  
3 opportunity to acquire the documents necessary for the  
4 report so that it will, I think, that new system needs  
5 time to work to see if it can help some of the areas in  
6 other areas of the State.

7           If there would be one thing that I would  
8 suggest to maybe move things a little faster, it would  
9 be more judges. That's a problem. In Allegheny County  
10 now I understand that if I were to seek a conciliation,  
11 I would have to, on an equitable distribution matter, I  
12 would have to wait until sometime in February. That's  
13 not long to wait for a trial date, but it is a long  
14 time to wait for a conciliation date. The more judges  
15 you have, the more time they are able to devote to the  
16 individual cases, the more often they are able to give  
17 you three or four days in a row as opposed to a day  
18 here, a day there.

19           All of that together I think would assist  
20 in the resolution, the prompt resolution of cases.  
21 Family division judges typically resolve cases in a --  
22 the family law cases that get resolved are very  
23 important. They are important not only to the  
24 individuals in terms of their impact on other  
25 individual laws but the dollar amounts involved are

1 also significant. Family law has perhaps been the  
2 stepchild of the judicial system for a long time. The  
3 family law judges have tended to be the judges with the  
4 least seniority in the system. Once you're elected or  
5 appointed, then you go to Family Division because no  
6 one else wants to do it. That has not been the  
7 experience of Allegheny County. In Allegheny County  
8 we've had a fairly stable Family Law Division for about  
9 10 years, and that's been very helpful. If you have a  
10 tort accident, a fender bender, a \$100,000-case, you  
11 can spend a week in a jury trial. Those kinds of  
12 dollar amounts are decided on a daily basis in Family  
13 Division with much less by way of judicial resources  
14 devoted to them, and I think that that's something that  
15 could be addressed and more resources allocated.

16 One of the other issues was the  
17 bifurcation issue that reference was made to earlier.  
18 That's a real problem. That's a real issue. Should  
19 you have the ability to get a divorce decree prior to  
20 the resolution of the economic issues? In some cases I  
21 think the answer is yes. In a lot of cases there are  
22 some real potential mine fields out there if you do  
23 that. Judge Blahovec made reference to one of the  
24 Federal law issues that impinges upon the State divorce  
25 law, and that's the pension issue in terms of the

1       dissipation of assets violation of an injunction.  
2       Another real problem is if I get divorced today and the  
3       economic issues in my case remain pending and the next  
4       day I get hit by a bus and I die or the next day I get  
5       married and then die, Federal law says that my former  
6       spouse is no longer a surviving spouse, and if she is  
7       no longer a surviving spouse, she gets none of that  
8       pension. It doesn't make any difference whether the  
9       entire thing is marital property or not, it all goes to  
10      my other beneficiaries, or in the case of remarriage,  
11      my surviving spouse, and there's nothing that the State  
12      can do to change the impact of that Federal  
13      legislation. So that's a real problem. If that is an  
14      issue in the case, then I think that is a reason in and  
15      of itself that the case should not be bifurcated.

16                   There are other issues in bifurcation.  
17      One of them is that if one person wants to get divorced  
18      and that's the primary motivation, and particularly  
19      where that individual is the individual who controls  
20      the assets, they've gotten what they want, and at that  
21      point I think we've got very little incentive to  
22      resolve, particularly if they are economically  
23      independent and the only thing that's going to resolve  
24      the case is a decision that says I have to pay money.  
25      I want that day to be as long into the future as it can

1 possibly be and I'll do whatever I can do to delay it,  
2 and that makes common sense. I think the system ought  
3 to try to equally motivate people to resolve things and  
4 if you allow one person, one side or the other, it's  
5 not male or female, it varies from individual case to  
6 individual case. It's a question of what the  
7 individual dynamics of that situation are and the  
8 tactics are, but if you allow one side or the other to  
9 get the upper hand, then you're going to -- people are  
10 people and they're going to do what is most  
11 advantageous to their position, and we shouldn't be  
12 surprised when that happens.

13           The other area that I understood was of  
14 concern to the Committee, aside from the PFA thing,  
15 which being from Allegheny County perhaps I can talk  
16 about that experience, is the general custody issue. I  
17 don't have a whole lot to say about that except that  
18 people have suggested in the past that custody cases  
19 favor women. First of all, 90 percent of the women get  
20 custody, or whatever the number is to date. Very few  
21 cases are litigated as far as custody is concerned. So  
22 it's unusual. So maybe in 90 percent of the separated  
23 people you have custody going to the mother, but in  
24 very few, maybe only 10 percent of 100 percent are  
25 litigated, so 90 percent is a misleading number.

1           Everyone knows that the standard is best  
2 interest. I don't think that there's a favoring of one  
3 side or the other in generally legitimately contested  
4 custody issues. Sometimes people raise a custody issue  
5 for some sort of a perceived advantage in the case.  
6 Disregarding those, in those cases where people have an  
7 honest, good faith reasonable basis for dispute, I  
8 think that, in my experience anyway, that the decisions  
9 come down, probably if not 50-50 so close that you  
10 can't tell the difference. Judges are people. They  
11 make the best decisions that they can based upon a lot  
12 of times very hard facts to decide as far as custody is  
13 concerned.

14           In those cases that are disputed, a lot  
15 of times you have both parents are very much -- have  
16 great love for their children. The cases are won or  
17 lost, I think -- made or lost perhaps is a better word,  
18 before they walk in the door. People develop  
19 relationships with their kids before they separate, and  
20 in most cases I think that the decision of the judge in  
21 a custody case is going to follow what the people have  
22 established in their own lives before there is a  
23 separation. And that's my own personal experience.

24           On the PFA issue, in Allegheny County  
25 there is a rule, a practice, I think, I don't think

1 it's actually been in the form of a written rule or  
2 procedure, that if there is a divorce action pending,  
3 they are to give notice to the counsel of record in the  
4 divorce proceeding of their intention to present a  
5 Protection From Abuse petition.

6 ACTING CHAIRMAN DERMODY: It's a fairly  
7 recent practice?

8 MR. MAHOOD: No, I think it goes back at  
9 least four or five years. I think -- I can't  
10 specifically guess, but I know it's been around for a  
11 while. And it seems to work. Well, it works for, at  
12 least, for those, you know, the only people who know  
13 about the rule are lawyers.

14 REPRESENTATIVE HAGARTY: That was my  
15 thought.

16 MR. MAHOOD: So, if someone doesn't tell,  
17 if an individual goes into Neighborhood Legal Services  
18 and says they wants to file a PFA, if they don't  
19 mention that they have a divorce action pending, then  
20 maybe no one knows about it.

21 ACTING CHAIRMAN DERMODY: Do the police  
22 know?

23 MR. MAHOOD: The police officers wouldn't  
24 have any way to know that there would be a divorce  
25 action pending. You know, some of it may depend on the

1 practice that I have, but as best I can recall, I don't  
2 think I've been involved in more than 3 PFAs in 10  
3 years, and this is what I do on a day-to-day basis.  
4 And certainly there are a lot of abusive situations,  
5 but I just don't see them. In terms of numbers, they  
6 are doing about 15 a day in Allegheny County is my  
7 understanding.

8 ACTING CHAIRMAN DERMODY: There are a lot  
9 of PFAs in Allegheny County, that's for sure. I'm  
10 surprised you've only had 3 in 10 years.

11 MR. MAHOOD: Personally, right.

12 ACTING CHAIRMAN DERMODY: You're lucky.

13 MR. MAHOOD: Yeah, I am. They are very  
14 difficult. And I didn't really follow what I had to  
15 say in the written testimony, but I pretty much got  
16 most of the important things.

17 BY REPRESENTATIVE HAGARTY: (Of Mr. Mahood)

18 Q On the PFAs, I forget, how soon do you  
19 get a hearing on a PFA, the preliminary ex parte  
20 hearing?

21 A. The ex parte hearing?

22 Q. Yeah. And I'm wondering how you give  
23 notice, because I thought they were pretty immediate.

24 A. Again, there's nothing specified as to  
25 what kind of notice you have to give. Telephone, fax.

1 If it's a significant situation that warrants going in  
2 for a Protection From Abuse action, you need to get it  
3 in as quickly as you can.

4 Q. I mean, I'm impressed with the idea that  
5 it's not holding it up, and even if it can't be done in  
6 every case, but where notice can be quickly given I  
7 think it's better to hear both sides.

8 Q. Well, just because notice is given  
9 doesn't necessarily mean you're going to hear both  
10 sides because--

11 Q. Well, that's fine, but the person who's  
12 going to be subject to it is going to have the  
13 opportunity then, at least, to be there.

14 A. In theory. If the telephone call comes  
15 in at 10:00 in the morning and the message is I'm  
16 taking him in for a PFA at 1:30--

17 Q. Hey, if I were going to be put out of my  
18 house, I'd be there at 1:30. I mean, it's a drastic  
19 remedy that you're facing.

20 A. Sure, and I can't personally speak at all  
21 as to how often notice is given and people don't show  
22 up, but in terms of, if I understood your question  
23 correctly, what kind of notice--

24 Q. You're saying if you make a phone call  
25 it's not formal notice?

1           A.    Right.  You're not required to give 48  
2 hours or anything like that.

3           Q.    I had one other comment you made that the  
4 kind of thing that happens, and it bothers me, you  
5 indicated that where a person has no incentive to  
6 resolve the case, which is frequently the case with the  
7 person who's going to have to pay the money and maybe  
8 they don't even care about the divorce so bifurcation  
9 doesn't even help, what bothers me about that is why do  
10 we assume that someone has to want to resolve it?  Why  
11 don't these cases get into court and the judge make a  
12 decision and be done with it so that the other person  
13 isn't subject to the person who, you know, doesn't want  
14 to pay out the money and is holding up the case?  I  
15 mean, that's what I hear mostly, that most of the  
16 frustration I hear about the system is that someone  
17 doesn't want to resolve it and I don't understand why  
18 the judges don't make it happen.

19           A.    Well, the judges can make it happen by  
20 entering a decision after a trial, which is, first of  
21 all, it's very expensive.  And it takes a while to get  
22 to that point.  But certainly when, and you want to try  
23 to resolve your case before that happens because you  
24 can't, people can't afford to litigate everything, for  
25 one.  The system can't afford to have everything

1 litigated as well.

2 Q. But these are a minority of the cases.  
3 There are cases that do drag on for five or six years  
4 because someone won't resolve it. It becomes clear at  
5 some point that person is never going to agree to  
6 resolve it and I don't know why they don't get it to  
7 court quicker.

8 A. Well, I don't think that the cases that  
9 are around for five or six years are around for that  
10 length of time because, unless for whatever reasons  
11 individuals have, both people don't want to resolve it  
12 for a period of time. There are some cases that are  
13 filed and people for their own, you know, maybe they  
14 want to reconcile, maybe they don't know what they want  
15 to do, they go back and forth, and cases can hang  
16 around for that reason. Once the case is triable in  
17 the sense that it can be tried in terms of the  
18 information that is obtained, or at least you've gotten  
19 to the point where you can have equitable distribution,  
20 the decree is obtainable so that you can have equitable  
21 distribution. I don't, as a general rule, I don't see  
22 why a case would hang around that much longer, unless  
23 there were problems in terms of valuation that was  
24 significant.

25 And there is a case I'm involved in right

1 now where the parties were married in 1968, at that  
2 time the husband had a significant premarital estate  
3 and business. They lived together until -- in 1978,  
4 excuse me, he sold the business. In 1988 they  
5 separated. Well, we've got to determine the value of  
6 that closely held corporation in 1968 and we are doing  
7 it in 1991. Now, that means you got to go back and  
8 hopefully find some record that's archived somewhere.  
9 And, I mean, we went into the salt mines and you're  
10 looking in attics and all sorts of things. That takes  
11 a long time to dig out that information. There are  
12 proof problems. There are discovery issues.

13 Q. I guess my sense is that the system  
14 seems, because judges don't, you know, if the  
15 information isn't ready and because one person doesn't  
16 want to get it ready, my sense is that the system does  
17 not put enough pressure on a delaying litigant to get  
18 that case moved because the judge really doesn't want  
19 to hear it until all that valuation is in, and so it  
20 allows people to be real victims of, you know, these  
21 strung-out divorces which I think are just terrible  
22 injustices to families.

23 A. The judge can't hear until all the  
24 information is there.

25 Q. He could make them get the information

1 there. Do the judges in Westmoreland County make the  
2 parties get the information there quickly?

3 A. Well, I practice primarily in Allegheny  
4 County.

5 Q. In Allegheny County, I'm sorry.

6 A. But my experience has been if I've got an  
7 order of court that says the other side is supposed to  
8 give me information and they haven't given me the  
9 information, I will file a motion for sanctions, and if  
10 they don't give me the information at that point, you  
11 ask the judge to order sanctions and the sanctions can  
12 include contempt, counsel fees, an order precluding  
13 that person from entering testimony on a disputed issue  
14 of fact or law. The sanctions can be very pervasive.

15 Q. I mean, I just can't understand how these  
16 cases can take so long.

17 A. There aren't that many that--

18 Q. But the ones that do. It's not fair to  
19 the ones that do. I mean, the people who are sitting  
20 here, I can tell you, are the people who -- those cases  
21 have taken that long.

22 ACTING CHAIRMAN DERMODY: We had a Common  
23 Pleas Court judge from Allegheny County who says the  
24 sanctions are out there but they are not worth anything  
25 because they don't have enough people or there are just

1 too many cases to handle. It never gets to the point  
2 where they will even impose the sanctions. I hear you  
3 say that they are out there, I know that--

4 REPRESENTATIVE HAGARTY: Yeah, I  
5 understand that sanctions are imposed--

6 MR. MAHOOD: I am not going to say that  
7 the -- I would love to see sanctions being more  
8 effective. One way that might be something that the  
9 legislature could address would be expressing a matter  
10 of policy that where an order of court directing  
11 production of information or compliance with whatever  
12 has been willfully or deliberately ignored, that the  
13 court should enter sanctions that are fully  
14 compensatory in terms of the loss that has been  
15 suffered by the other side and the costs involved in  
16 enforcing the order. It's very difficult when you file  
17 a motion for sanctions, you go into motions courts and  
18 you say that the other side failed to comply with the  
19 order. Okay. Well, the other side says, I wasn't able  
20 to do it for A, B, C, or D reasons. The other side may  
21 have a right for an evidentiary hearing. Now we're off  
22 trying to decide an issue to which the other can  
23 perhaps file exceptions. I mean, it's a very involved  
24 process. Both sides are entitled to due process. Both  
25 sides are entitled to have their position in the case

1 heard. And there are--

2 REPRESENTATIVE HAGARTY: Countless ways  
3 to delay. That's what I think there are.

4 ACTING CHAIRMAN DERMODY: But if a--

5 MR. MAHOOD: Would you prefer to have a  
6 summary execution?

7 ACTING CHAIRMAN DERMODY: Well, no, let's  
8 say it's in the bifurcated process--

9 REPRESENTATIVE HAGARTY: Sometimes.

10 ACTING CHAIRMAN DERMODY: There's some  
11 advantage to delay financially for one party. They  
12 have to give up the money, they want a delay. Now, is  
13 it the attorney's responsibility to advise that? If  
14 it's to benefit your client to delay financially, are  
15 attorneys going to say to that client we should delay  
16 this whole process as long as we can so you can keep  
17 your money?

18 MR. MAHOOD: You bet. Well--

19 ACTING CHAIRMAN DERMODY: The lawyer?

20 MR. MAHOOD: The lawyer has the  
21 responsibility to aggressively represent a person  
22 furthering that person's best interest within the  
23 limits which the law permits, and there's nothing wrong  
24 with saying if you don't have to do it now, don't do  
25 it.

1           REPRESENTATIVE HAGARTY: That's the  
2 frustration with, though, the anger with lawyers.

3           MR. MAHOOD: Well, lawyers represent  
4 clients, and individual clients have interests, and  
5 those people want to have their best interests  
6 furthered.

7           ACTING CHAIRMAN DERMODY: I understand  
8 that.

9           MR. MAHOOD: And I think that takes you  
10 back to, you know, you don't like the messenger.

11          REPRESENTATIVE HAGARTY: No, but I think  
12 one of the things that we're hearing is that maybe  
13 within the context of families our American legal  
14 system as we know it just isn't working so well with  
15 this entire adversarial climate. That's really what  
16 we're facing.

17          MR. MAHOOD: There have been various  
18 means of alternative dispute resolutions. There are a  
19 couple of possibilities. One suggestion that has been  
20 made at various times is mediation. I'll tell you  
21 right upfront I am not a fan of mediation. I think in  
22 custody areas, yeah, it's a good possibility.

23          REPRESENTATIVE HAGARTY: Why is it good  
24 there?

25          MR. MAHOOD: As opposed to the others?

1 REPRESENTATIVE HAGARTY: Um-hum.

2 MR. MAHOOD: Because in a custody  
3 situation if my wife and I are involved in a custody  
4 dispute, we pretty much have or we can be pretty much  
5 assured that we both have equal access to information  
6 about the kids and we are pretty much on a par on a  
7 knowledge basis, on a power basis, in terms of those  
8 kid issues. If I'm dealing with a closely held  
9 corporation, when we get to economic issues, and my  
10 wife doesn't know anything about it, she doesn't know,  
11 we go to a mediator and in the module of the mediation  
12 process you have two individuals, a mediator and I know  
13 everything about my business and I am not inclined to  
14 share it and I'm going to be secretive or whatever, the  
15 mediator after a while you have a situation where this  
16 mediator is going to start taking one side or the  
17 other. Even if the system works well and you get  
18 beyond those power issues and equality issues, there  
19 are a two individuals who are going to disagree and you  
20 go back to square one and I don't think that works.  
21 But primarily I don't think it works because of the  
22 inequality of power and knowledge. Arbitration is  
23 another possibility. Common law arbitration, as Judge  
24 Blahovec mentioned, has been around, we've had the  
25 statute in Pennsylvania since the early 1830s that

1 permits that. That is another possibility.

2 ACTING CHAIRMAN DERMODY: Most of these  
3 people want to fight, right.

4 MR. MAHOOD: Well, you know, arbitration  
5 can save money and in appropriate cases it can get  
6 things over quickly. I started to say that I just went  
7 to a program training arbitrators for the American  
8 Academy of Matrimonial Lawyers in Boston, and one of  
9 the nice things about that program was the development  
10 of information of what's going on in arbitration and  
11 how it's being developed in other States in the United  
12 States. If people can agree to do that, it's great.  
13 But a lot of -- the old saying that I'm sure you heard  
14 that hard cases make bad law. The cases -- I think  
15 that many cases are processed through the system and  
16 resolved in a reasonable fashion without horror  
17 stories. You are absolutely going to hear about the  
18 horror stories, and you should expect that. The ones  
19 that go through reasonably and quietly get resolved and  
20 you never hear about them. But if people can agree to  
21 arbitration they can avoid paying for transcripts, they  
22 can avoid future delays, they can select the person  
23 who's going to be making the decision, they can decide  
24 what the rules are going to be, they can decide what  
25 the evidentiary restraints are going to be, they can

1 decide what the discovery rules are going to be, they  
2 can decide every single aspect about it except perhaps  
3 what the final resolution is going to be. But they've  
4 got to be agreeable, they've got to have the ability to  
5 reach those kinds of agreements, they've got to have  
6 confidence in the person being selected as arbitrator,  
7 they've got to have confidence in the people who are  
8 representing them. And if they don't have those  
9 prerequisites, then it's not going to work. Nor is the  
10 system that presently exists going to work for them.  
11 If they don't like any of it, its going to fail.

12 ACTING CHAIRMAN DERMODY: Any questions  
13 from anyone else?

14 REPRESENTATIVE HAGARTY: No.

15 ACTING CHAIRMAN DERMODY: Thank you very  
16 much.

17 Mr. Goldberg. Begin whenever you're  
18 ready.

19 MR. GOLDBERG: Good afternoon. My name  
20 is Mark Goldberg. I'm an attorney licensed to practice  
21 law in the Commonwealth of Pennsylvania for the past 25  
22 years. I have submitted my written testimony to you.  
23 With your pleasure, I would like to present it to the  
24 committee and then whatever questions the committee may  
25 have I would be glad to try to answer.

1           I think in order for the committee to  
2 understand and appreciate my testimony here today, a  
3 review of my professional background might be  
4 essential. I'm a former Chairperson of the Allegheny  
5 County Bar Association Family Law Section, I am a  
6 former Chairperson of the Pennsylvania Bar Association  
7 Family Law Section, and I am a former President of the  
8 Pennsylvania Chapter of the American Academy of  
9 Matrimonial Lawyers. Currently, I serve on the  
10 national Board of Governors of the American Academy of  
11 Matrimonial Lawyers, which is a national organization  
12 of approximately 1,300 attorneys throughout the United  
13 States who are considered to be the top matrimonial or  
14 divorce lawyers in the country.

15           In the past I've lectured extensively to  
16 attorneys for the Pennsylvania Bar Institute on Family  
17 Law matters throughout the State of Pennsylvania. In  
18 1978 and 1979, I was instrumental in helping to draft  
19 the Pennsylvania Divorce Code of 1980, and in 1987 I  
20 was instrumental in helping to draft the amendments to  
21 the Pennsylvania Divorce Code which became effective in  
22 February of 1988. In 1979, I had the pleasure of  
23 testifying before the Judiciary Committee in support of  
24 divorce reform. I've also been involved in drafting  
25 rules of procedure for custody cases, divorce cases. I

1 worked with Representative Hagarty in preparation of  
2 support rules back in I believe it was 1986, and I've  
3 worked on the promulgation of the support guidelines.  
4 Fortunately, I've been recognized by my peers by being  
5 included in all four editions of the book "Best Lawyers  
6 in America" as one of the few attorneys in Pennsylvania  
7 recognized as an expert in the area of Family Law.  
8 Currently, I am a--

9 REPRESENTATIVE HAGARTY: I'm going to  
10 hire you.

11 MR. GOLDBERG: Currently, I'm a senior  
12 partner of the Pittsburgh law firm of Goldberg, Gentile  
13 & Voelker, P.C., a six-person law firm whose practice  
14 is limited to family law. I think that based upon my  
15 professional background it becomes evident that I have  
16 had considerable experience in working with the  
17 Pennsylvania Divorce Code and in interpreting the  
18 various issues and sections thereof and litigating the  
19 issues encompassed by the Divorce Code and in the  
20 representation of approximately an equal number of male  
21 and female clients in all aspects of divorce  
22 litigation.

23 I'm aware that in September of this year  
24 this committee held hearings on problems associated  
25 with the Pennsylvania Divorce Code and the judicial

1 system. I've had an opportunity to review some of the  
2 written materials that were prepared by the witnesses  
3 who appeared before this committee. Each of these  
4 people testified about their unpleasant experiences  
5 with their own divorce cases and the judicial system  
6 involved in their particular cases. I do not doubt the  
7 honesty, the sincerity, or the veracity of their  
8 testimony. However, this committee must keep in mind  
9 that the people who testified in September about their  
10 unpleasant and distasteful experiences with the  
11 judicial system were really only speaking of their own  
12 individual experiences. It's been my experience over  
13 25 years of representing people involved in divorce  
14 litigation, both under the prior law prior to the  
15 Divorce Code of 1980 and under the Divorce Code, that  
16 people who are going through a divorce are generally  
17 unhappy, confused, and often distraught. Usually, at  
18 least one of the parties, whether it be the man or the  
19 woman, does not want the separation or the divorce to  
20 take place. Next to the death of a loved one, divorce  
21 is the most devastating and traumatic event most people  
22 experience in their lifetime. Many people who are  
23 going through divorce litigation are at the lowest  
24 point of their life emotionally, have low self-esteem  
25 and a sense of worthlessness about their entire

1 situation. People who are going through this traumatic  
2 experience simply are not happy or content individuals.

3 Speaking from my own personal experience,  
4 my clients are never happy or satisfied, no matter what  
5 I am able to accomplish for them. Usually the  
6 financially dependent clients never feel that they have  
7 received enough money by way of spousal or child  
8 support or through equitable distribution. On the  
9 other hand, the financially independent clients always  
10 believe that they are paying too much support or they  
11 had to give away too much by way of equitable  
12 distribution. This is in no way the fault of the  
13 system. It is human nature that those who have it want  
14 to keep it and those that do not have it want as much  
15 as they possibly can get, if not more.

16 It would be a grave mistake for this  
17 committee to accept the testimony of the lay witnesses  
18 who expressed their displeasure and discontent of the  
19 system based upon their own personal experience and  
20 case. I would venture an opinion that if the spouse of  
21 the persons who testified were to give their own  
22 testimony, it would not substantially differ from what  
23 you already heard, because they were no more satisfied  
24 with the process than was their spouse. They too would  
25 have found the same complaints with the system.

1                   We must not lose sight of the fact that  
2 people who are going through a divorce are asking the  
3 judicial system to solve their problems, problems that  
4 the parties themselves are unable to resolve between  
5 themselves. The system is asked to resolve such issues  
6 as spousal and child support, custody and visitation,  
7 protection from abuse, exclusive possession of the  
8 marital residence, freezing of assets, motions for  
9 production of financial information, distribution of  
10 marital assets, and various and other sundry issues  
11 that are involved in any particular case. To expect  
12 the litigants to be satisfied with all the results is  
13 unrealistic. There are no winners in divorce  
14 litigation.

15                   In fact, an appropriate result--

16                   ACTING CHAIRMAN DERMODY: Please, can we  
17 have order and let's let the person testifying complete  
18 his testimony, all right?

19                   Thank you.

20                   MAN IN AUDIENCE: Yes, sir. I just can't  
21 stand to listen to a liar, that's all.

22                   ACTING CHAIRMAN DERMODY: Well, now, you  
23 had your chance to testify in Harrisburg. I think it's  
24 polite and we will have it. Please be quiet and allow  
25 the testimony to continue.

1                   MR. GOLDBERG: In fact, an appropriate  
2 result is one in which neither party is satisfied. As  
3 practitioners in this field, we often say that the key  
4 yardstick for measuring the fairness of a property  
5 settlement agreement or judicial decision regarding the  
6 divorce and it's attendant financial distribution is  
7 the fact that both parties are mutually dissatisfied.  
8 For one party to be happy with the result would  
9 probably mean that the result is inherently unfair to  
10 the other party.

11                   Another reason that parties to divorce  
12 litigation are unhappy and dissatisfied are caused by  
13 attorneys who give their clients unrealistic  
14 expectations of what they may ultimately realize  
15 through the divorce process. We see this situation  
16 frequently when clients are told by their attorneys  
17 that they can expect to receive a certain amount of  
18 money by way of support and/or equitable distribution  
19 which is totally unrealistic in light of the facts of  
20 that particular case. Once that expectation is  
21 ingrained in the mind of the client, and then those  
22 results are not ultimately accomplished, breeds a  
23 contempt for the system when in reality it is not a  
24 fault of the system but the fault of the inexperienced  
25 or uninformed attorney who has caused the client to

1 expect that which is not attainable.

2 Further, because of that unrealistic  
3 expectation, cases that should be settled without court  
4 intervention now must be tried to conclusion because of  
5 the unreasonable and unattainable position of at least  
6 one of the parties based upon the unrealistic  
7 expectations that that client was given. This just  
8 adds to the burden of the judicial system where cases  
9 that should not be tried before the court, and I submit  
10 to you that most cases should not be tried before the  
11 court, are now bogging down the court system.

12 I do not want to give this committee the  
13 impression that there's nothing wrong with our judicial  
14 system as it deals with family law litigation. Like  
15 any system, it has its imperfections. It is run and  
16 controlled by people, and the Divorce Code attempts to  
17 make rules on a general level to deal with general  
18 cases, and therefore falls short in certain specific  
19 incidents or dealing with certain specific or  
20 individual cases. But to single out the judicial  
21 system and not attribute any fault or recognize any  
22 imperfections in the other various components in  
23 society in general and in family relationships is  
24 short-sighted and disingenuous. This dynamic contains  
25 components of interpersonal relationships between

1 family members and children, social, religious and  
2 psychological implications, clients, attorneys, the  
3 court system, court personnel, governmental budgets and  
4 a whole myriad of components which reflect those we  
5 find in society itself. The awesome task of dissolving  
6 a family unit and simultaneously resolving economic  
7 disputes places an equal burden on all these  
8 components, and when that dynamic fails or falls short  
9 of its goal it is inappropriate to attribute all the  
10 blame to just the judicial system. This is not a  
11 perfect system. It is made of up imperfect players and  
12 it is attempting to perform a function which no system  
13 was designed to undertake, and that is minimizing the  
14 adverse effect of the break-up of the family unit.  
15 Even under ideal circumstances the goal itself is one  
16 which creates problems and is contrary to a wholesome  
17 social structure.

18           What are some of the things that can be  
19 done to improve the divorce process? I submit to you  
20 the following partial suggestions as a place to begin.  
21 One, we need more judges assigned to hear family law  
22 cases. The judges that we have now, for the most part,  
23 are hardworking, caring, and diligent. But they are  
24 overworked and in many instances simply burned out.  
25 Not enough judicial manpower is assigned to the task of

1 resolving marital disputes. Is this area of the law  
2 not more important than resolving personal injury  
3 cases, contract disputes or the administration of a  
4 decedent's estate?

5 Two, I strongly recommend that Section  
6 3301(d) of the Divorce Code be amended to reduce the  
7 waiting period for unilateral divorce from the current  
8 two-year separation period to a one-year separation.  
9 There is good, sound reason for reducing this waiting  
10 period. It is the experience of the attorneys and  
11 judges who practice in this area that once the finality  
12 of the marriage, that is the divorce takes place, that  
13 the attendant economic matters will then fall into  
14 place shortly thereafter. Once the parties have been  
15 separated for 12 months, reconciliation is unlikely.  
16 Therefore, the sooner the parties can get on with their  
17 lives and put their past problems and their unhappy  
18 marriage behind them, the sooner they can become once  
19 again productive citizens. It makes no sense to make  
20 people wait two years from the time they separate  
21 before the economic process of the divorce litigation  
22 begins.

23 Three, I submit that there should be  
24 mandatory mediation in custody and partial custody  
25 disputes by trained and experienced custody mediators.

1 It is my experience that many of the custody and  
2 partial custody problems can be resolved if the parties  
3 sit down and discuss between themselves with the  
4 assistance of some objective, properly trained third  
5 party what is in the best interest and welfare of the  
6 child or the children of the marriage. It is the rare  
7 custody or partial custody case that really has to come  
8 before the court for court intervention. However,  
9 those cases that cannot be resolved by the custody  
10 mediator must then go before the court for final  
11 resolution.

12 Four, I submit that we need legislation  
13 to give our judges the authority to order, in  
14 appropriate cases, binding divorce arbitration by  
15 experienced and trained matrimonial arbitrators. Many  
16 of the complicated and complex issues involved in  
17 today's divorce litigation can be more appropriately  
18 handled through this arbitration process. I am not  
19 suggesting that divorce arbitration be a substitute for  
20 the judicial process. What I am suggesting is that  
21 with proper guidelines in the legislation there are  
22 cases in which binding arbitration would be more  
23 appropriate as a means of resolving the various  
24 economic issues between the parties.

25 Five, parents who owe a duty of support

1 to their children must not be permitted to abrogate  
2 their responsibilities. I strongly suggest that there  
3 be legislation that would make it a criminal offense  
4 for a parent to be in arrears in their child support  
5 payments for a period in excess of 90 days. Other  
6 States, I believe, have similar legislation. Further,  
7 our courts are often reluctant to require a parent who  
8 is in arrears in their child support payments to pay  
9 all of the arrears forthwith, even when that parent has  
10 the financial resources and assets to pay those  
11 arrearages without extending the payment over an  
12 extended period of time.

13           And my sixth and last suggestion for  
14 today is that I believe we need legislation to  
15 determine the appropriate valuation date for various  
16 assets. Currently this area of the law is ambiguous,  
17 confusing, and often very costly to litigants. Some  
18 assets are valued as of the date of separation, whereas  
19 other assets are valued as of the date of trial, which  
20 in many instances can be years after the parties' final  
21 separation. This necessitates extended litigation,  
22 discovery process, and in many instances gives one of  
23 the parties reason or justification for delaying the  
24 process. Specific guidelines should be established as  
25 to what assets are to be valued as of the date of

1 separation and what assets should be valued as of the  
2 date of trial. I submit as a suggestion that assets of  
3 a purely personal nature, such as the marital  
4 residence, the automobiles, the bank accounts, stocks  
5 and other securities be valued as of the date of  
6 distribution. However, business interests of one of  
7 the spouses and retirement plans of one of the spouses  
8 should be valued only as of the date of the separation.  
9 If the uncertainty of the appropriate valuation date is  
10 not an issue and the assets are valued on a date which  
11 most likely recognizes economic reality, then the  
12 parties are more likely to resolve their differences  
13 because the appropriate valuation date will no longer  
14 be an issue.

15 As with any new legislation, such as the  
16 Divorce Code, we must periodically evaluate the  
17 legislation and do whatever is necessary to improve  
18 upon it. This must be an ongoing process. The  
19 legislature should ask the judges, the attorneys and  
20 even some of the litigants for suggestions on how to  
21 improve on the process. It cannot be done in a vacuum,  
22 and divorce litigation, by its very nature, does not  
23 lend itself to specific guidelines. I urge this  
24 committee that before it drafts any new legislation  
25 that it ask for the input and assistance from the trial

1 judges and the matrimonial bar because we are the ones  
2 that work with this legislation on a daily basis.  
3 Let's not point fingers and blame the system. Let's  
4 work together to improve that which we already have.

5 I thank you for your time and  
6 consideration, and I would be glad to answer whatever  
7 questions the committee may have.

8 ACTING CHAIRMAN DERMODY: Representative  
9 Hagarty.

10 REPRESENTATIVE HAGARTY: Thank you.

11 BY REPRESENTATIVE HAGARTY: (Of Mr. Goldberg)

12 Q. Thank you.

13 A. Thank you.

14 Q. Good to hear your testimony today. It  
15 has been a number of years.

16 A. Yes, it has.

17 Q. And I thank you particularly for these  
18 concrete suggestions for improvements. I had some  
19 questions about them. You indicated that you thought  
20 it would be a good idea to have the court have the  
21 power to order compulsory arbitration in certain  
22 instances. What types of situations or how would we  
23 further define that?

24 A. It would have to be the more complex  
25 cases where the issues are extended to the point where

1 the trial itself on those issues would be extended. To  
2 get those cases out of the court system to free up the  
3 time for the court to go through the other cases that  
4 come before it. There may not be specific guidelines  
5 or the appropriate cases. I don't think it could just  
6 be general legislation because then the judges might  
7 assign every case to compulsory arbitration and that's  
8 not the purpose, but the more complicated, the more  
9 complex cases, with proper legislation and guidelines  
10 as to the arbitration process, I think the speaker  
11 before me, James Mahood, spoke about the training  
12 program that the American Academy of Matrimonial  
13 Lawyers is now putting on throughout the country and  
14 they are training divorce arbitrators and it is a very  
15 intensive three-day training program which I understand  
16 is excellent and outstanding. To model something along  
17 those lines with the experience of the Model  
18 Arbitration Code I think would be appropriate in  
19 certain cases.

20 Q. You do not envision an appeal then in  
21 those cases?

22 A. No, there would be very limited right to  
23 appeal in those cases.

24 Q. How do you do that then if the parties  
25 don't agree to that? How can you decide in certain

1 cases to take away their right to a trial and an  
2 appeal?

3 A. I think the judges can exert enough  
4 pressure on the litigants to get them to agree to that  
5 process.

6 Q. The other question that I guess I kind of  
7 asked the last testifier, although everyone keeps  
8 referring to custody as an appropriate area for  
9 mediation. The only thing about that that keeps  
10 bothering me is, you know, we envision somehow  
11 mediation because there is not a judge as something  
12 somehow less important. That's what's bothering me, I  
13 think, and why I keep wondering why custody and why not  
14 property settlement, and so I'm a little bit bothered  
15 about why custody, which is probably the most --  
16 probably, in my mind, is the most important decision to  
17 be made.

18 Q. I agree with you. It is the most  
19 important decision in the entire case, and by my  
20 suggestion I do not mean to minimize that. I don't  
21 think that in the normal custody case, I'm not talking  
22 about where there's allegations of sexual abuse, of  
23 other kinds of abuse, I'm not talking about relocation  
24 cases where one of the parents wants to move away from  
25 the -- the custodial parent wants to move away with the

1 child from the noncustodial parent, I'm talking about  
2 the normal custody, partial custody case where the  
3 parties separate and they can't decide whether the non-  
4 custodial parent is to pick the kid up Friday at 5:00  
5 or Friday at 6:00 and return the child Sunday afternoon  
6 or Sunday evening and what kind of contact there's  
7 supposed to be by way of telephone contact, school  
8 intervention. Those are not issues that require  
9 attorneys, those are not issues that require a judge,  
10 they require, really, psychologists, child  
11 psychologists who deal with people on this level. And  
12 those are the kind of people, in my experience, that  
13 have been much more successful in getting the people to  
14 sit down, realize what the issues are, realize what the  
15 problems are, and get them to come together. At least  
16 if the two parents can speak to each other, if they  
17 can't speak about anything else, if they can speak  
18 about the children, then they are making progress.

19 Q. So you think it would reduce hostilities  
20 in custody?

21 A. It's been my experience it has. I try to  
22 get my clients to go through that process.

23 Q. Don't we need a rules change to do that?

24 A. Probably.

25 Q. And not -- would you venture an opinion?

1           A. I'm never sure whether it requires  
2 legislation or rules changes.

3           Q. That concerns me about that is that it  
4 probably would require a rules change and is it  
5 something we could legislate?

6           A. I'm not sure whether it would be  
7 legislation or rules.

8           Q. Because don't the rules now provide that  
9 you can have mediators except in custody cases? I  
10 think we are calling them conciliators in Montgomery,  
11 for example, probably for that reason, although I'm not  
12 sure.

13          A. I'm not sure what the rules provide for  
14 that. I know they're all doing it. It's often done  
15 with intervention of the court where you first have to  
16 go to the judge and you have to schedule conciliation,  
17 you talk to the judge, both sides give their opinion  
18 and then the judge will appoint a psychologist to do an  
19 evaluation. I'm not really talking about an evaluation  
20 process. We shouldn't have to wait and shouldn't have  
21 to go to court.

22                   One of the first issues that should be  
23 resolved, and there are two very important, I mean, the  
24 custodial parent has to be awarded child support as  
25 soon as possible. But the noncustodial parent has to

1 be able to see and spend significant quality time with  
2 the child because the children need it. Not so much  
3 the parents, but the children need to have intervention  
4 of both parents as soon as possible after the marital  
5 break-up.

6 Q. I was interested, and I've never heard  
7 suggested, criminal sanctions for violations of support  
8 orders. Why have you come to that conclusion?

9 A. Because I think it's being abused. I  
10 think there are people who are not paying their support  
11 who should be paying their support. I think we have to  
12 put more teeth into the support laws, and I believe  
13 that other States have, in fact, implemented that type  
14 of legislation.

15 MR. SUTER: Can you name any of the other  
16 States?

17 MR. GOLDBERG: I was thinking about that  
18 while I was driving down here. I can get that  
19 information for you.

20 MR. SUTER: I would appreciate it.

21 MR. GOLDBERG: I would be glad to send it  
22 to you. I really don't remember what States.

23 BY REPRESENTATIVE HAGARTY: (Of Mr. Goldberg)

24 Q. Tell me, having worked on this whatever  
25 year it was, it's all a while ago now, the support law

1 with you, what you're telling me then is that the  
2 courts are not ordering the mandatory attachment in 30  
3 days, or are you seeing cases in which people are  
4 self-employed and that's the problem?

5 A. That's the problem, where people are  
6 self-employed, where they move around from job to job  
7 so that wage attachment really doesn't mean anything.  
8 And if we can put more teeth into giving people the  
9 incentive, however that might be, that would require  
10 them to pay their support obligations, then I think  
11 that we owe that duty to them.

12 Q. But you are finding the court is  
13 routinely attaching?

14 A. Oh, yes. It's Federal legislation. They  
15 have to.

16 Q. My other question. You had indicated,  
17 and this always frustrated me, that judges will not  
18 order a lump sum payment of arrearages and they are  
19 nice guys and say pay a little at a time, and you  
20 suggested legislation in that area. How would you  
21 envision that legislation being drafted?

22 A. I'll be glad to work with you on it.

23 Q. Okay.

24 A. I'm not sure exactly how to word it, but  
25 it is frustrating. Right now I represent the wife of a

1 very successful doctor. He makes in excess of a  
2 million dollars a year. By the time we were able to  
3 get in court and have the support hearing he was  
4 \$10,000, \$11,000, \$12,000 in arrears.

5 Q. I hear it all the time.

6 A. And the court ordered him to pay \$6,000 a  
7 month in support plus \$200 a month on the arrears.  
8 It's going to take him 12 years to pay it. Here's a  
9 man that has income of over a million dollars a year,  
10 substantial assets in the case, and the courts -- I'm  
11 not just talking about the trial courts, I'm talking  
12 about the appellate courts, because I've argued the  
13 same issue in the appellate court and I've gotten  
14 nowhere. But I think in appropriate cases where there  
15 are assets and there are income, it's absolutely  
16 ridiculous to the financially dependent spouse to have  
17 to wait years to collect that which she is entitled to.

18 Q. I agree with you. I have one other  
19 question which I asked one of the attorneys this  
20 morning. Reducing the waiting period from two years to  
21 one year, when we were working on the '88 amendments, I  
22 recall attorneys saying to me then that the problem  
23 with that is they see people who start to think about  
24 reconciling at nine months. And one attorney suggested  
25 to me if we reduce it to one year, there's no

1 incentive--incentive isn't the right word--but you're  
2 not going to think about reconciling because you know  
3 you can be out in three months, and he thought it  
4 provided, you know, kind of a reason why people might  
5 be more likely to reconcile that long waiting period.  
6 I take it that's not your experience?

7 A. No, it's not my experience. My  
8 experience is if people have been separated for a year,  
9 reconciliation is unlikely. I'm not saying it's  
10 impossible, but it's unlikely. Nothing says that they  
11 have to get their divorce after one year, and if they  
12 are trying to work on a reconciliation, then they can  
13 continue working on it, but I think the one year is  
14 going to benefit the vast majority of both male and  
15 female clients in the system.

16 Q. The other argument I've heard from  
17 women's groups was that for the dependent spouse who  
18 perhaps had not worked and so was going to be working  
19 for the first time, was going to be facing a very  
20 different life and the divorce not her choice, the  
21 extra year gave her more time to adjust.

22 A. Adjust in what way? Because she's  
23 getting support for an extra year?

24 Q. I think the support, I think also just  
25 the emotional upheaval of being divorced.

1           A. I think the support can continue. I  
2 think that the factors under the Code give the courts  
3 the right and the authority to continue the alimony or  
4 the alimony pendente lite beyond the one year and I  
5 think that just because the one year separation is the  
6 law doesn't mean that the support is not going to--

7           Q. But how about on the emotional side?

8           A. I think, you know, after a year, as I  
9 said in my prepared remarks, people have to get on with  
10 their lives. They have to become productive citizens.  
11 And the sooner that detachment or that divorce is over  
12 with they start to get their lives back together. But  
13 as long as they feel that they are still bound to that  
14 marriage, and whether they are holding out hope or for  
15 whatever reason, I think gives them a false sense of  
16 security, and the most important thing that we can do  
17 for the dependent spouses, and I'm not saying it's an  
18 ideal system because it isn't. It's a problem. But I  
19 think the sooner we can get both of the people, the  
20 family unit, back on a constructive course where, again  
21 as I said, they are being productive citizens  
22 themselves, they are better able to handle their  
23 children, they are over the emotional upheaval of the  
24 family and the break-up of the family, the better off  
25 everyone is going to be.

1 Q. Okay. Thank you.

2 A. Thank you.

3 ACTING CHAIRMAN DERMODY: I just have a  
4 brief question. Lois touched on your suggestions for  
5 remediation and mandatory arbitration. Arbitration can  
6 be available now. It's not mandatory, but the parties  
7 have to pay for it should they decide. Do you have any  
8 suggestions or ideas on how we might be able to fund  
9 these type of things? If we make them mandatory,  
10 obviously, this Commonwealth will have to pay for them.

11 MR. GOLDBERG: You're going to have to  
12 raise the fees for filing a divorce action. Maybe even  
13 raising the fees for obtaining a marriage license. I  
14 think that there are places that we can get the funding  
15 for it.

16 ACTING CHAIRMAN DERMODY: We had some  
17 testimony earlier today discussing that as being a big  
18 problem.

19 MR. GOLDBERG: Well, you raise the fees.  
20 You add \$10 or \$15 to the filing of a divorce  
21 complaint, you add \$5 to the filing of a marriage  
22 license.

23 REPRESENTATIVE HAGARTY: What's the fee  
24 now for filing a divorce complaint?

25 MR. GOLDBERG: I was afraid you would ask

1 that. I don't know. I don't even know how to file a  
2 divorce complaint. I have not filed one personally--

3 REPRESENTATIVE HAGARTY: You have too  
4 many lawyers working for you. You've forgotten too  
5 much.

6 MR. GOLDBERG: I think you asked James  
7 Mahood about the Protection From Abuse actions but you  
8 didn't ask me any of those questions.

9 REPRESENTATIVE HAGARTY: Because I know  
10 you don't handle those.

11 MR. GOLDBERG: Well, I try not to, but I  
12 have a problem--

13 REPRESENTATIVE HAGARTY: It's Legal  
14 Service who handles those. I have now figured it out.  
15 It's not the expensive lawyers.

16 MR. GOLDBERG: I do send women down  
17 whenever, I suggest that they go down there because  
18 it's free, but I have had male clients who have come to  
19 my office who have in fact been served with orders  
20 under the Protection From Abuse Act and I personally  
21 have had some real serious concerns about the ex parte  
22 proceedings. I know people who are being abused and  
23 need the protection of the law, but I also think that  
24 the Protection From Abuse Act in many instances is  
25 being abused and people are being thrown out of their

1 home, whether it be for an hour or 10 days or 10 hours,  
2 they are being thrown out of their home without due  
3 process, and I just have a real problem with that.

4 REPRESENTATIVE HAGARTY: Do you have an  
5 opinion then on how Allegheny County, we don't know yet  
6 whether it is a rule or a practice, is working of at  
7 least giving notice of when a divorce complaint has  
8 been filed?

9 MR. GOLDBERG: A divorce complaint or a  
10 Protection From Abuse action?

11 ACTING CHAIRMAN DERMODY: PFA.

12 REPRESENTATIVE HAGARTY: But we heard if  
13 a divorce complaint has been filed and then if there's  
14 a PFA in an instance where a divorce complaint has been  
15 filed, notice must go to the alleged abuser.

16 MR. GOLDBERG: I believe that's so.

17 REPRESENTATIVE HAGARTY: I knew I  
18 shouldn't have asked you these questions, that's why I  
19 didn't.

20 MR. GOLDBERG: I don't believe there is  
21 any set notice requirement. It just says that you  
22 should give notice, and I'm not sure whether that's a  
23 fax message or a telephone call and hope the other  
24 person is not there to get the message, or whatever,  
25 but it is a problem.

1 REPRESENTATIVE HAGARTY: Okay, thank you.

2 MR. GOLDBERG: Thank you very much.

3 MR. KRANTZ: Mr. Chairman?

4 ACTING CHAIRMAN DERMODY: Oh, I'm sorry.

5 Mr. Krantz.

6 BY MR. KRANTZ: (Of Mr. Goldberg)

7 Q. I just have one question. You mentioned  
8 possible criminal sanctions for an individual who does  
9 not keep up on the support end of it.

10 A. Yes.

11 Q. What about an individual who blocks and  
12 prohibits one spouse or the other from seeing the  
13 child. Would you suggest criminal sanctions in that?

14 A. Yeah, I think that's just as serious and  
15 just as detrimental to the child. I think in both  
16 instances failure to support the child and failure to  
17 not permit the -- failure to permit the noncustodial  
18 parent from having meaningful contact with the child  
19 are both very important instances of child abuse.

20 Q. Can you please, in your spare time, let  
21 us know as to what you might think the criminal  
22 sanctions might be?

23 A. Sure. Have them imprisoned.

24 Q. What?

25 A. I think imprisonment. It has to have

1 teeth to it.

2 Q. Do you have, both your male and female  
3 clients, do you treat both your male and female clients  
4 the same or differently?

5 A. In what way? This isn't sexual  
6 harassment.

7 Q. No, no. That's a whole other thing.  
8 Just in preparing the cases and presenting it, you have  
9 a tendency more to lean toward the female versus the  
10 male, or what?

11 A. Well, I represent both of them. Whether  
12 it be a male or female client, I represent them to the  
13 best of my ability. They have the full resources of my  
14 office and my ability.

15 Q. Thank you.

16 A. Thank you.

17 ACTING CHAIRMAN DERMODY: Thomas Mulroy.

18 MR. MULROY: I'm Tom Mulroy. I have  
19 prepared written testimony which I have handed out to  
20 you and I am not going to read it. I would just like  
21 to go over a few topic points, if I might, in  
22 connection with it. I put my credentials in the  
23 beginning of it. The one thing that I failed to  
24 mention is I am a member of the Board of Governors of  
25 the Pennsylvania Trial Lawyers Association, and it's

1 that organization that I represent here today. I am  
2 also The western Pennsylvania Family Law  
3 Representative.

4 Just sort of informally before I came I  
5 happened to be at a conciliation with Judge Baer, who  
6 is one of our family law judges, and I said to him,  
7 this is your big chance. I'm going to testify, what  
8 should I say, and told him in general what I had said  
9 already in written testimony, and he said one message  
10 they definitely have to understand is something that  
11 Mark just said: We work basically in a system where  
12 nobody is a winner, and he said, I'm not sure that the  
13 legislature understands that most of the cases we deal  
14 with are principally sort of no asset cases and they  
15 don't have enough money to get by and so once they  
16 separate, the financial strains of that make this  
17 process very difficult for them no matter who they are,  
18 where they are going.

19 And the other concept that he and I  
20 talked about that I thought I might mention to you is  
21 this: I think that the most frustrating part of the  
22 system for a litigant is the basic no-fault concept  
23 that we have, and I am not suggesting in any way that  
24 we should change that, but I think that it might help  
25 you understand the critiques that you might hear from

1 those people who are part of the process. If you think  
2 about it, a system of law that doesn't assess fault is  
3 foreign to our system of law. In every other kind of  
4 case the primary job of the factfinder is to determine  
5 who is at fault and what the appropriate remedy should  
6 be, and I'm afraid that people who come into the  
7 divorce forum have that preconception that that's what  
8 the system of justice is about and they find it  
9 frustrating that they don't really get justice in the  
10 sense of punishment of the party who offends.

11           It might sound old-fashioned, but a large  
12 majority of people that I see in my practice still are  
13 complaining about infidelity, that's the reason they  
14 are there, and infidelity causes a lot of anger and  
15 disappointment and broken hearts and dreams and what  
16 they really want, and they will often voice that when  
17 they come in for a initial interview, is a tough guy  
18 who's going to put the screws to my husband or wife  
19 because they want that. I explain to them that the  
20 system to a large extent isn't geared to do that, but  
21 the problem, their problem is compounded by the way the  
22 system operates, and I will talk about that in some  
23 detail, about how not only are we not going to satisfy  
24 their basic desire for punishment but beyond that in  
25 many cases they are never going to see a judge in this

1 system. I've read some of the testimony that you've  
2 heard and people are complaining, you know, gee,  
3 lawyers and judges are making deals and I am not even a  
4 part of that process and I am not sure what is going on  
5 and it's left to Masters and they are complaining about  
6 that often. Some of that maybe we can remedy, but some  
7 of it is just part of the facts of life of living in a  
8 society where there's so many divorces.

9 I thought it might be useful for you,  
10 since you've heard so many complaints about delays, to  
11 tell you just a little bit, walk you through a little  
12 bit of what happens in a typical divorce case in  
13 Allegheny County and what the time lines are. When  
14 somebody files for divorce, there are usually two  
15 questions that have to be remedied upfront. One of  
16 them is support, spousal support and child support, and  
17 the other custody. In this county, if I'm representing  
18 the dependent spouse who has custody of the children, I  
19 want immediately to file a complaint for support, and  
20 it will take me 8 or 10 weeks to get a hearing on that  
21 support because of the number of cases that we're  
22 hearing. Once I get through that hearing I will go  
23 that morning and see a domestic relations officer to  
24 try to conciliate the case, and if that's not  
25 successful, we will go to a hearing officer who, in

1 most cases, will make a decision that day. But if  
2 either party isn't satisfied with this decision, they  
3 have a right to file exceptions and we have to order  
4 transcripts and write briefs and go argue that case  
5 before a judge. That process, the exceptions phase,  
6 will take several months. Even after we have argued  
7 the case before the judge, the judge might want to take  
8 that case under advisement and there might be more  
9 delays, so even at the most primary step of the  
10 process, getting support established, there are  
11 considerable delays involved.

12 I'm not sure what the cure for that is  
13 other than more personnel to deal with the system, and  
14 I think that's one of the issues that needs to be  
15 addressed. In custody, in many cases we're dealing  
16 with partial custody and we're trying to establish  
17 visitation schedule. Currently I think it takes 10  
18 weeks to get a hearing in connection with that, and at  
19 that point you will see a domestic relations officer or  
20 a volunteer attorney giving his or her time to try to  
21 mediate those cases, failing which you go see a judge  
22 that day and get it resolved. If you have a full-blown  
23 custody issue, then you have to file a petition with  
24 the court for conciliation and you'll wait several  
25 weeks to get there.

1           At the conciliation the judge tells the  
2 parties that they must have psychological evaluations  
3 done in almost every case where the people can afford  
4 to pay for it. The psychological evaluation order will  
5 require that the parties pay for that service within a  
6 certain period of time and the fee is anywhere from I  
7 think now \$800 to \$1,200 or \$1,500 for the evaluation  
8 process. Upon receipt of the payment, the parties are  
9 referred to a psychologist appointed by the court to do  
10 the evaluation. That evaluation process itself might  
11 take several months. When it's completed, you get  
12 another conciliation with the judge and it might take  
13 you a month or so to get that, and when you get through  
14 that conciliation and you have it resolved, you can  
15 start down the long line of hearing dates to get that  
16 matter resolved.

17           Equitable distribution and alimony, as  
18 I'm sure you have heard up until this point and as you  
19 know, those matters can't be heard until a divorce has  
20 been entered. Once it's entered, parties have to file  
21 inventories with the court, get a conciliation date,  
22 there's a delay of about eight weeks to get your first  
23 meeting with the judge to discuss the case. If that  
24 fails, usually you're given another 120 days for  
25 discovery before pretrial conferences are heard, and at

1 that point, depending on the complexity of your case,  
2 you may be assigned to a Master. If it's assigned to a  
3 Master, how long it takes is really going to depend  
4 upon the availability of the Master. We have no paid  
5 Masters in Allegheny County, they are all specially  
6 appointed by the Court, and how long it takes you to  
7 get through the hearing process, how long it takes the  
8 Master to do a report and then the parties have a right  
9 to file exceptions to the Master's report, so you might  
10 be waiting several months for an adjudication of those  
11 as well. So after we have waited the 2-year period to  
12 get that part of the case started, you could easily be  
13 a year or 18 months going through that process as well.

14 One of the things I wanted to you talk to  
15 you about is the use of Masters. Our system is rather  
16 overwhelmed. We, with some regularity, use Masters to  
17 hear cases on equitable distribution and alimony. The  
18 Masters are paid for by the parties. The process is  
19 very expensive. The Masters are usually experienced  
20 divorce attorneys who are billing their time to the  
21 parties at their normal hourly rate. It takes a long  
22 time to hear a case, to filter through all the  
23 evidence, to write a report, and so several thousand  
24 dollars of Masters' fees would be consumed in that  
25 process. Increasingly, we are seeing a movement

1 towards using Masters in support cases as well.  
2 Currently we are afforded 20 minutes to try a support  
3 case. If we don't get it done in 20 minutes, we are  
4 supposed to tell the court it's complex. We wait  
5 longer to get a hearing date if it's complex, and if  
6 it's complex, you get two hours.

7 The newest system is that if you think  
8 your case is going to take more than two hours you need  
9 to alert the court to that at the onset and the court  
10 will then appoint a Master that you have to pay to hear  
11 your support case. Now, it's obviously a great  
12 disservice not only to the parties but especially to a  
13 dependent spouse who may not have the resources to pay.  
14 And, you know, one of the common complaints that we  
15 hear is that if I was an accident victim and fell down  
16 in the street, I would get the undivided attention of a  
17 judge and jury for as many days as it would take, they  
18 would all be consecutive days and at the end of it I  
19 might have been heard and my case would be over and I  
20 would get justice and other than what I paid my lawyer  
21 I wouldn't incur any fees at all. A typical litigant  
22 in our system who goes through perhaps a complex,  
23 over-two-hour support case and custody evaluations and  
24 a Master and equitable distribution might incur \$8,000  
25 or \$10,000 in fees for Masters. Now, that would be

1 unusual that it would get that high but it could easily  
2 get to \$3,000 or \$4,000 or \$5,000 in connection with  
3 that. So what we find is that divorce litigants are  
4 being treated as second-class citizens and being  
5 required to pay for justice where others aren't.

6 I went and did a little research on some  
7 statistics about our county and its court system and I  
8 found out that last year the Family Division handled  
9 27,000 new matters, 27,000 new filings. Now, if I  
10 looked at the system and I took out of the statistics  
11 small claim arbitrations which never get to a judge,  
12 they are resolved by a board of arbitrators, and civil  
13 commitments which are done by a Master, that 27,000  
14 cases represents half of all the cases heard in the  
15 county last year. We have 4 judges dealing with Family  
16 Division matters that handle 27,000 matters. In the  
17 Civil Division there are 20 judges. In the Criminal  
18 Division there are 19 judges. The Orphans Court  
19 Division, which handled 9,000 matters, had 4 judges to  
20 do it, so by that arithmetic we ought to have at least  
21 12 judges in our division, but we don't have the  
22 resources to do it and the way our system really, I  
23 mean, given those constraints, our system works very  
24 well, but it works very well because the judges are  
25 required to delegate out their duties to Masters and

1 hearing officers and domestic relations officers, and  
2 increasingly we are finding that the litigants are  
3 required to pay for that dollar for dollar, minute for  
4 minute. That puts a substantial and unfair burden on  
5 them compared to all the other people who are accessing  
6 the judicial system.

7           One of the problems we are having here I  
8 think is that I don't think anybody really anticipated  
9 when divorce reform went through how many divorces  
10 there would be and what a way of life divorce would  
11 become for America. You know the statistics as well as  
12 I do. For everybody getting married this year there's  
13 somebody getting divorced. An alarming statistic is  
14 that about 60 percent of the kids who are under 18 in  
15 this country will experience divorce at least once  
16 before they reach the age of 18, and I was out giving a  
17 talk to a parents group at a very upscale private  
18 school and a Head Master came to me and said, I know  
19 just what you're talking about. We have kids here who  
20 have been through this process two and three and four  
21 times by the time they got here. Well, all of those  
22 kids and all of their parents are putting a great  
23 burden on our system, and frankly, we just don't have  
24 adequate resources or we are not allocating them  
25 adequately to address the problems.

1           I have been reading the legislation and I  
2 have been reading the testimony you have received and I  
3 think that what we're trying to do here is put a  
4 band-aid on a problem that's more significant.  
5 Frankly, I don't agree that we ought to be moving  
6 towards binding arbitration that somehow is going to be  
7 forced upon the parties because I think ultimately  
8 we'll wind up having them hate that too. And I don't  
9 think that in that process, like the rest of this  
10 process, they ought to be denied their due day of  
11 justice. Many of the people I deal with have no other  
12 contacts with the judicial system at all. They are as  
13 entitled as criminal or civil litigants to have the use  
14 of the resources of the court, and I'm afraid that  
15 these proposals that we're going to have presumptions  
16 that are going to shortcut the process, that binding  
17 arbitration or binding mediation are all just ways to  
18 push those people out of the system because we don't  
19 want to spend the money to give them what they deserve,  
20 and I think to that extent we are doing them a  
21 disservice.

22           The one-year statute of limitation is,  
23 I'm sympathetic to the question you asked because I do  
24 think in view only 14 percent of the women in this  
25 country ever get alimony after the divorce is final.

1 The average award is about \$4,000 a year, and that  
2 number, 14 percent is down 1 percent from 1985 when 15  
3 percent of the divorced women got it. So we're putting  
4 blinders on if we think it doesn't have an impact.

5 But beyond all that, unless you intend to  
6 fund a great influx of new judges, how are we going to  
7 service all of those new people who now will have their  
8 process reduced from two years to one year. They are  
9 suddenly going to be thrust into the system and we'll  
10 have to deal with all those cases coming in quicker.

11 One of the proposals that I read is about  
12 interim division of properties before we get to final  
13 distribution. The courts already have the power to do  
14 it and they do do it sometimes and I'm not sure that  
15 legislating that is going to make a significant  
16 difference. I will tell you that if that became the  
17 norm, that would increase the amount of litigation,  
18 obviously, because everybody wouldn't want to get in  
19 their litigation and I think you would have more people  
20 complaining about the expense and the time consumed in  
21 connection with it.

22 Mediation may have a place where two  
23 parties voluntarily determine that that's what they  
24 want. I have seen it work effectively in child custody  
25 and I think the reason why is that many women who are

1 often the dependent spouses feel confident about where  
2 they stand on the issue of children and they feel like  
3 they are an equal in that process in mediating and very  
4 often will voluntarily go into the process. I feel  
5 many of those same women don't feel like they are on  
6 equal standing when it comes to the hearing on  
7 finances, and any process that is going to shortcut the  
8 availability of a full and complete hearing with all  
9 due process requirements is a disservice to those  
10 litigants, I think.

11 Another recommendation that I read was  
12 introducing a presumptive joint custody standard where  
13 that would be presumed to be the case unless it was  
14 contrary. I would just advise you that as I understand  
15 it, most experts in the field of child development  
16 think that that is not a good idea. That in fact we  
17 have sort of gone overboard in using economic models to  
18 deal with the division of children and we may be doing  
19 a disservice to the children doing that and that each  
20 of those cases is unique and has to be handled uniquely  
21 and that in many cases where courts, for convenience,  
22 are ordering joint custody of the children are really  
23 suffering the consequences of that.

24 Bottom line here is that I think  
25 substantively the law is not really at fault here. The

1 law that we're working with is workable, but we're not  
2 dedicating adequate resources to the implementation of  
3 it, and I think a lot of complaints that you're hearing  
4 from the citizens really impact that question, but it  
5 takes too long and that they don't feel like they are  
6 really getting their adequate day in court because we  
7 have decided that other areas of the law are more  
8 important.

9 That's all I have to say. Questions?

10 ACTING CHAIRMAN DERMODY: Yes.

11 MR. SUTER: I just have a question  
12 regarding support.

13 BY MR. SUTER: (Of Mr. Mulroy)

14 Q. When somebody files for support in  
15 Allegheny County and then somewhere down the road, it  
16 might be 10 weeks later, however long, is the support  
17 awarded for the time that from the filing to when the  
18 award is actually--

19 A. It is, but that's one of the things Mark  
20 was talking about. Those arrearages then generally are  
21 ordered to be paid in installments and not in lump sum.  
22 And I had one recently where I was representing the  
23 husband. This is good for my client where the  
24 arrearages were \$15,000 and he was ordered to pay them  
25 off at the rate of \$200 a month. These kids will be

1 grown up by the time the arrearages are caught up, but  
2 it is retroactive to the date of filing.

3 Q. Somebody told me that that wasn't  
4 happening in Allegheny County but it was happening all  
5 over.

6 A. No, it is happening here.

7 Q. And I just wanted to make sure that it  
8 was. Thank you.

9 BY ACTING CHAIRMAN DERMODY: (Of Mr. Mulroy)

10 Q. What was the system where you had 20  
11 minutes? Was that custody?

12 A. No, at a support hearing, at the initial  
13 phase.

14 Q. If it's complex, you get two hours and a  
15 judge for free?

16 A. Well, if it's complex you get two hours  
17 with a hearing officer and then if you're not satisfied  
18 with that then you file exceptions. The judge is never  
19 involved in this process unless exceptions are filed,  
20 and then the judge isn't hearing the evidence, the  
21 evidence is taken down by a court reporter for purposes  
22 of an appeal.

23 Q. So it's like an appeal?

24 A. Exactly.

25 Q. So the litigants aren't before the judge?

1           A. No, no, and that's one of the complaints.  
2           It's highly possible and very frequently occurs. The  
3           litigants that go through the system may never see a  
4           judge because they are always sort of on the other  
5           side. That's not the fault of the judges. It's just  
6           the way the system is working. We have, in this county  
7           we're really blessed with judges who really do a very  
8           good job and who are dedicated to the work that they do  
9           but they only have a limited amount of time.

10           Q. In that system you end up with a Master  
11           and they have to pay for that?

12           A. Well, in a support hearing if it's less  
13           than two hours you don't have to pay for it. But if  
14           it's more than two hours under the new system that was  
15           just installed here, you do have to pay for it, and I'm  
16           not even sure what the fees are going to be but  
17           whatever they are it seems to me it's inappropriate  
18           that that kind of a litigant should have to pay for it  
19           when, if I'm in a fender bender, I don't have to pay  
20           for it.

21           REPRESENTATIVE HAGARTY: I just have one  
22           question. On your comment that you understood my  
23           concerns with reducing the two-year period to one year,  
24           does that mean you actually think it is better not to,  
25           or just that you had some understanding of it, because

1 you would be the first person to testify today to  
2 support that position.

3 MR. MULROY: Well, I should say that it  
4 is not the position of the Pennsylvania Trial Lawyers,  
5 that we're neutral on the position on whether it should  
6 be one year or two years. From my own perspective as a  
7 private party and citizen I think that reducing it from  
8 two years to one year will put a new and significant  
9 burden on dependent spouses in connection with divorce  
10 litigation, and I don't think any of us can ignore the  
11 wealth of statistical information about what's  
12 happening economically to dependent spouses and their  
13 children.

14 REPRESENTATIVE HAGARTY: Well, having  
15 opposed that for eight years now based on the fact that  
16 I have one witness who agrees with me, I am going to  
17 continue to oppose it then. So thank you.

18 MR. MULROY: You're welcome.

19 ACTING CHAIRMAN DERMODY: Mr. Krantz.

20 BY MR. KRANTZ: (Of Mr. Mulroy)

21 Q. When you mentioned the psychological  
22 testing, do you feel, and I know of a case where it's  
23 costing the individual about \$1,350 for himself, his  
24 wife and their two children. The wife never showed up.  
25 Do you find that the information ascertained from the

1 psychological hearing has a benefit?

2 A. You know, this is a thorny question  
3 because the difficulty here is the psychologist makes a  
4 recommendation to the court about how he or she thinks  
5 the custodial arrangements ought to be done based on  
6 the evaluation of the family. There are many people  
7 who think that the court at times too heavily relies on  
8 psychological evidence. I think overall, having the  
9 benefit of the expert testimony is certainly an  
10 advantage in the process. We need all the information  
11 we can get to figure out this most difficult question.  
12 I mean, this is going, as Mark said earlier, this is  
13 the hardest issue to determine in connection with the  
14 divorce case, where the kids are going to end up and  
15 what's best for them, and so we need it. I'm not sure  
16 our system is the ideal one.

17 You know for the \$1,300 a psychologist  
18 might spend 8 hours interviewing everybody and writing  
19 a report. It's hard to distill your life into two or  
20 three of those hours if you're one of the party  
21 litigants, and that's really what the parties are  
22 required to do. I would think that you would find a  
23 psychologist to say in an ideal world they would like  
24 to be spending a lot more time with the family, but  
25 it's a question of money again and because the parties

1 are paying for it, we're dealing with limited  
2 resources. We feel a sliding scale, the amount that  
3 they are required to pay may be anywhere from \$800 I  
4 think to \$1,500 based on their income, but that doesn't  
5 cover a lot of territory.

6 Q. Another thing I wanted to ask you about  
7 when you brought up the situation where an individual  
8 is awarded arrearages, why doesn't the court insist  
9 that the individual pay it totally, because you pay  
10 \$200 and the kid will probably be over 21 by the time  
11 it's paid. There's some cases we've heard about where  
12 it will take 35 years to pay off the arrearages. To me  
13 that's a joke.

14 Q. The practical answer to that probably is  
15 that nobody knows better than a divorce lawyer that  
16 America is living on credit because most of the people  
17 we see have a house with a mortgage and a pension and  
18 nothing else and now that they are separated they can't  
19 afford to live on what they used to live on when they  
20 were together, and so suggesting that the payor has  
21 \$5,000 or \$6,000 sitting somewhere that he can just  
22 dedicate to pay off those arrearages is not practical  
23 in most cases. In other cases where it's proven, like  
24 the case that Mark talked about where the doctor is  
25 making a million dollars a year, I think they ought to

1 pay it in a lump sum.

2 Q. But yet the individual that has  
3 accumulated the arrearages has been cheating the  
4 system. What about a situation where the court insists  
5 on the supporting spouse paying more than reasonable?

6 A. Well, the amount that a supporting spouse  
7 pays in nearly every case is the amount prescribed by  
8 the Supreme Court in the support guidelines, and that's  
9 a function of the mutual income of the parties.

10 Q. Is that too stringent?

11 A. Is it too high?

12 Q. Yeah.

13 A. No.

14 Q. Because we hear from, of course, the  
15 individuals who are required to pay amounts and they  
16 feel that it's in excess.

17 A. Well, let me just give you a little  
18 example here. I mean, a family that has been living on  
19 \$5,000 a month has a wife and three kids and the wife  
20 isn't working, the wife and three kids will end up with  
21 probably about 50 percent of the payor's income, but  
22 out of that she has to meet all of her expenses for  
23 herself, the children, pay the mortgage, pay the  
24 insurance, pay for the car, all of those things. They  
25 probably weren't making it on the \$5,000 when they were

1 together. She sure as hell is not going to make it on  
2 \$2,500, and I don't think you can find an example where  
3 the amount the payor pays exceeds by more than one or  
4 two percent, no matter how many children there are,  
5 more than 50 percent of his net income, and so it's a  
6 question, again, of trying to spread out as much as you  
7 can what wasn't enough to begin with. I'm sure many of  
8 the payors, many especially who are remarried and have  
9 new family responsibilities, say I just can't make it,  
10 it's not enough money. I know that, I represent them  
11 but from the receiver's point of view it's not enough  
12 money either.

13 Q. Thank you.

14 A. Thank you.

15 ACTING CHAIRMAN DERMODY: One brief last  
16 question.

17 BY ACTING CHAIRMAN DERMODY: (Of Mr. Mulroy)

18 Q. We've had some discussions about PFA  
19 practice in Allegheny County, particularly when there's  
20 a PFA filed there is a divorce filed that's requiring a  
21 notice. Are you familiar with that at all?

22 A. I do.

23 Q. Is that a fact? How is that working?

24 A. Well, I mean the way it works primarily  
25 is whoever the abused spouse is files a complaint, it

1 comes to court, they are sort of handled en masse, they  
2 get, almost automatically get, an award excluding the  
3 other spouse, and subsequently 10 days later you come  
4 back for a permanent hearing. This is an area where  
5 our limited resources impact the result. If you're on  
6 the list for the permanent hearing 10 days later, that  
7 judge has a whole list of other things that they are  
8 going to do all day so you may sit out in the hall from  
9 9:00 until 4:00 waiting to get in. That puts terrific  
10 impetus into settling those cases, and so because we  
11 don't have enough judges to hear those cases, many  
12 people are forced into a position because they can't  
13 afford to have a lawyer sitting with them all day long.

14 Q. Do you see much abuse with the PFA law in  
15 divorce situations?

16 A. I do, but I'm not sure what to do about  
17 it because a judge is faced with a panel every day of  
18 20 people who are saying they were abused. The judge,  
19 at the same time, has motions that day so he's got a  
20 room full of lawyers who have contested and uncontested  
21 motions that he has to hear. He can't really sit down  
22 and take evidence on each and every case. Our judges  
23 review every petition that is filed, they do ask some  
24 questions about it, but it's not likely that there's  
25 going to be a full hearing, and so in most cases I

1 think the judges feel they have to err on the side of  
2 protecting the person who is allegedly abused.

3 MR. KRANTZ: Can I ask another question?  
4 Do you think we would have been better off, or would  
5 you think we would be better off reverting to the prior  
6 system of divorce prior to the revision of the Divorce  
7 Code?

8 MR. MULROY: No. And the reason I don't  
9 think that is because our system was really antiquated  
10 in terms of the role models and expectations of men and  
11 women. Women, you know, if you were a woman married  
12 and your husband had title to all the property when you  
13 got divorced you got nothing. You had no equitable  
14 claim and we didn't have any alimony in Pennsylvania  
15 and so I think that's obviously not the solution.

16 MR. KRANTZ: Thank you. Thank you, sir.

17 MR. MULROY: Thank you.

18 ACTING CHAIRMAN DERMODY: We'll take a  
19 5-minute recess.

20 (Whereupon, the proceedings were recessed  
21 at 4:00 p.m., and were resumed at 4:05 p.m.)

22 ACTING CHAIRMAN DERMODY: I guess we'll  
23 reconvene.

24 Our next witness is Judge David Gilmore  
25 from the Court of Common Pleas of Washington County.

1 Judge, whenever you're ready.

2 JUDGE GILMORE: Thank you. What I've  
3 done is in my prepared statement, it's not really a  
4 statement as such, it's separate, individual comments  
5 on some of my experiences. I'm not sure entirely what  
6 you're going into in your investigations, but I've made  
7 those comments.

8 From my observations I should first say  
9 that Family Court has been my assignment, as well as  
10 presiding over jury trials, and also on our court there  
11 are five of us which handle in turn during what is  
12 called a term of court. It's an assignment two weeks  
13 at a time through the course of a year, miscellaneous  
14 matters. Equity complaints and things of that nature.  
15 So I don't just do family court but I have done all of  
16 the custody, all of the support, and all of the divorce  
17 for I think the last four or five years. All of the  
18 support since I've been on the bench.

19 As I indicated, my remarks this afternoon  
20 are in the form of a series of comments which represent  
21 my observations on the various aspects of Family Court.  
22 In this context, I've used the description "Family  
23 Court" because although the letter indicates the  
24 inquiry concerns the Divorce Code, comments thereafter  
25 seem to indicate a broader area of inquiry, such as

1 Protection From Abuse, custody and miscellaneous  
2 matters, and I've incorporated what I believe to be the  
3 views of some others of the system. I asked several  
4 Masters that work under me and some of the  
5 administrative personnel if they had any comments they  
6 thought I should make. They did and I've included them  
7 in what I have to say.

8 As an initial observation, something has  
9 always been the problem and I think will be for the  
10 foreseeable future, that hampers the system that the  
11 perception of Family Court as the stepchild of the  
12 judicial system. It's a very real problem. I think  
13 it's a problem that's everywhere, maybe less so in the  
14 larger counties because they have their own separate  
15 divisions, but certainly in the small and middle-sized  
16 counties where the resources and everything else as far  
17 as Family Court is concerned is secondary. While the  
18 number of cases involved dwarfs even that of the  
19 Criminal Courts, Family Court is invariably allocated  
20 the least amount of resources. Much of this is  
21 historical. The Civil System has been in place for  
22 many years and requires only modest periodic increases  
23 in resources to meet inflation. Criminal Court  
24 sporadically receives heightened attention and,  
25 consequently, increased funding. Family Court, except

1 for the influx of Federal money to Support Court  
2 through the Office of Child Support Enforcement, is  
3 always on a shoestring budget and makes out the best it  
4 can with what resources are made available.

5 A word of caution is appropriate in  
6 considering the financial problem with the system.  
7 Usually, the preferred solution has been to assess  
8 extra costs and filing fees pay for any expansion.  
9 Family Court, unlike Civil Court, generally gets a very  
10 high percentage of its caseload from the lower end of  
11 the economic spectrum. In many ways, custody and  
12 support, but particularly not so much divorce, is  
13 looking very much like the Criminal Court. It's the  
14 absolute bottom end of the economic spectrum, even the  
15 men. That's not to say that middle income and upper  
16 income people do not have divorce, they obviously do.  
17 I'm talking about in the overall numbers and what you  
18 see on a daily basis coming in the door.

19 One of the main contributing factors to  
20 the financial woes of Family Court is the failure of  
21 the State to define and adequately fund a unified  
22 judicial system. It's a problem I understand. We are  
23 required to go to the County Board of Commissioners and  
24 Salary Board on a regular basis to receive the funding  
25 and personnel we need to operate the system. While the

1 Board of Commissioners in our county is as  
2 understanding and helpful as most, the courts are not  
3 their top priority and we are in an age of retrenchment  
4 of government spending, not expansion. It would solve  
5 many problems if there were direct State involvement in  
6 these departments.

7           There is a substantial difference in the  
8 manner, method and procedure utilized in the various  
9 counties. There is also a wide disparity in funding  
10 and personnel. Statewide quantitative guidelines,  
11 coupled with funding, would be most desirable. If you  
12 are going to look at this problem statewide, which  
13 obviously you will, it would be very helpful if there  
14 were guidelines as to the number of personnel and what  
15 you need to adequately handle various caseloads. You  
16 will find incredible differences in how things are done  
17 across the State. There is no reason that the State  
18 shouldn't have input into how these things are going to  
19 happen. Obviously, another county may differ in how we  
20 pay our costs, but nevertheless, I think it's a very  
21 real problem that should be addressed.

22           I probably should indicate what we deal  
23 with in Washington County. I got the numbers that were  
24 most readily available. As of the end of last year,  
25 end of 1990, we had 1,100 pending divorce cases. Just

1 over I think it was 413 custody cases. As of October  
2 30th of this year, there had been 400 Protection From  
3 Abuse petitions filed. Support court had 1,657  
4 petitions, new petitions, filed through the end of  
5 October. The current active caseload is 18,574. When  
6 I took office in January, 1984, they were short at  
7 8,000 cases. These numbers represent dramatic  
8 increases over the last 10-year period. I should  
9 indicate my first year on the bench I think I heard six  
10 Protection From Abuse cases. In my last two-week term  
11 of court I heard 33. During the same period while  
12 there have been increases in the number of clerical  
13 personnel and additional part-time Masters, we still  
14 have the same number of judges as we did in Washington  
15 County 25 years ago. In the final analysis, what is  
16 developing is a bottleneck at the top. The undesirable  
17 result of this is that less and less time is spent on  
18 any individual case, and I think that's probably the  
19 last thing that ought to occur.

20 As a general proposition, I believe the  
21 statutory framework of the entire Domestic Relations  
22 Code now consolidated in Purdon's Title 23, which  
23 encompasses Marriage, Adoption, Support, Divorce,  
24 Protection From Abuse, and all of the other  
25 miscellaneous matters, is a sound statutory framework.

1 I believe the provisions therein were well-thought-out  
2 by the legislature when they were enacted and the  
3 problems which are now occurring are problems with  
4 implementation rather than the underlying law.  
5 Seemingly chaotic and inconsistent results in court are  
6 not necessarily the manifestation of legislation.  
7 Remember that this area of law is relatively new. A  
8 10-year span in the development of the case law is a  
9 very brief period. Most of the basic tenets in the  
10 civil and criminal law have not appreciably changed in  
11 hundreds of years. It would be a mistake of  
12 near-sightedness to consider substantial legislative  
13 change at this time.

14           Nevertheless, fine-tuning of a specific  
15 problem is always appropriate. By this I do not mean  
16 to say there are problems. I think there are very real  
17 and major problems but they are in the implementation  
18 and what happens, I think all of us in government, and  
19 I spent eight years as a County Commissioner, I was an  
20 Assistant District Attorney, a County Solicitor, all of  
21 us are aware that the best thought-out law and the best  
22 scheme and a law enacted for the absolute best motives,  
23 something happens after it's on the books and things  
24 don't always end up 4, 5, 10 years down the road  
25 anywhere near what you thought when they started.

1 There are problems like that in the Family Court area.  
2 I don't know that you can blame any particular segment.  
3 Who is at fault and who you can reach out and grab to  
4 correct the problem. I don't mean that the problems  
5 aren't there, I just don't think they are in the basic  
6 legislation.

7           What that means for you as a legislator  
8 and a law enactor, I don't know. How far you can go in  
9 seeing that a law you have developed and passed  
10 properly works out to the benefit of the citizens as it  
11 is intended is a difficult problem, one you will have  
12 to face. It would be both unfair and inaccurate to  
13 characterize the legislation that was passed during the  
14 latter part of the '70s and early '80s as the cause of  
15 the general explosion in family litigation. However, I  
16 do believe that the legislature, and, indeed, the other  
17 branches of government woefully underestimated the  
18 impact of the new legislation when coupled with an  
19 increase in litigation. This impact is not only felt  
20 by the judicial system but by the Sheriff's  
21 Departments, Prothonotary, and all of the rest of the  
22 support structure of county government. It's been this  
23 witness's experience over the years that many of those  
24 with family problems also have problems involving  
25 alcohol and drugs, finances and mental health. It is a

1 package of problems and very often divorce is the end  
2 result rather than the cause.

3           We should always remember, particularly  
4 when assessing criticism from the general public, and  
5 that's not to say that a lot of the criticism isn't  
6 valuable, but that this area of the law, like no other,  
7 is emotionally charged. The people involved are often  
8 bitter and vindictive. Reason and fairness are often  
9 cast aside in order to "get even" or hurt the other  
10 party. In custody cases I see time and again that one  
11 party will not hesitate to use the children to hurt the  
12 other party and, in consequence, do damage to the  
13 children as well as the intended party. Decisions in  
14 this area of the law are almost always judgment calls.  
15 And in that context they are very often close calls.  
16 They are the type of decision that if 10 different  
17 people were to view the same set of facts, each might  
18 come to a slightly different resolution. The decisions  
19 I make on a daily basis are not easy to make. I would  
20 just as soon not make them. But it is my  
21 responsibility to make them, they are difficult and  
22 they are judgment calls. People could disagree very  
23 easily with the decisions I make. Occasionally, even  
24 the Superior Court even disagrees with the decisions I  
25 make.

1           One often-heard complaint is that it is  
2 difficult to get your case before a judge. There's no  
3 question that the majority of hearings in the entire  
4 Family Court System, other than custody matters, are  
5 heard by Masters. This, of course, is a direct  
6 corollary of the number of judges available to hear the  
7 cases. The response to the vast increase in Family  
8 Court work has been to increase the number and types of  
9 cases that are heard by Masters, thus further removing  
10 judges from the process. Now, this is an absolute  
11 accurate statement, it's not getting better, it's  
12 getting demonstrably worse, and it's going to get  
13 worse. The only solution to that is to increase the  
14 amount of judges. There is no other way around that  
15 particular situation.

16           I often hear the complaint that matters  
17 in divorce take too long and that there are too many  
18 delays. This is undoubtedly an accurate observation,  
19 but everyone deserves a little bit of the blame. There  
20 is no question that attorneys are often not as diligent  
21 as they could be and that they seek to continue matters  
22 until, well, I have here until they are better prepared  
23 or for no other reason than just continuing them  
24 sometimes. That judges often take too long to decide a  
25 matter once it is presented to them, and there is too

1 large a gap of time between filing motions and  
2 petitions and receiving a hearing date. The parties  
3 themselves also are to blame for delays in scheduling  
4 problems. It has been my experience that the litigants  
5 are just as responsible as the attorneys in dragging  
6 their feet and requesting continuances. That is  
7 usually on one side and that's what causes the problem.  
8 One side wants to proceed ahead and the other does not.  
9 This is one problem in the system I think can be met  
10 head-on through increased staff. That portion of the  
11 problem caused by the Court and various Administrative  
12 Offices of the Court is usually the result of the  
13 workload. Given a manageable workload and appropriate  
14 scheduling procedures, delays and requests for  
15 continuances by the litigants and attorneys can be kept  
16 to minimum. It's been my experience that if there is  
17 not some anticipation that things can be prolonged,  
18 delayed attempts to do so will be substantially  
19 decrease.

20 It should also be borne in mind that the  
21 law is best equipped to decide issues after they have  
22 been thoroughly and sometimes painstakingly documented  
23 through various pleadings and preliminary stages in the  
24 litigation process. Family Court is an area where  
25 there is often a desire and a need for quick,

1 expeditious treatment. This, of course, runs against  
2 the grain of the usual judicial process and contributes  
3 to the problem.

4           One of the ongoing problems in Family  
5 Court, and, to some extent, other areas of civil  
6 litigation is the parties' expectation when they  
7 initially become involved in litigation. It is  
8 undoubtedly the role of the attorney to adequately  
9 apprise their client of what can reasonably be  
10 expected, what the potential outcomes are and what the  
11 cost is likely to be. Because of the nature of Family  
12 Court, the expectations of the parties are very often  
13 substantially different from the actual result. This  
14 leads to a high level of dissatisfaction with both the  
15 attorneys and the system itself, obviously including  
16 the judge. Some select areas of this country have  
17 embarked upon educational programs in an attempt to  
18 advise litigants, upon their entry into the system, of  
19 some of the difficulties and pitfalls. I suggest this  
20 to the panel with some hesitation since such programs  
21 can create a real danger of interference with the  
22 attorney/client relationship. But there are a couple  
23 of counties, one in Kansas City and one in California,  
24 that require all litigants in Family Court matters to  
25 view a film that explains some broad statistics and

1 things of that nature to better give them an idea.

2 I think maybe at this juncture it should  
3 also be pointed out that at least a third of the people  
4 that appear in front of me appear without an attorney.  
5 It's getting to be very common not only because of  
6 their situation but because of the costs involved to  
7 them. If they have a custody matter or a Protection  
8 From Abuse, they go to see an attorney, they want \$400  
9 or \$500 more upfront to even talk to them, they just  
10 come and show up themselves--

11 ACTING CHAIRMAN DERMODY: Do they go to  
12 the County Bar Association?

13 JUDGE GILMORE: Some do. Some go to  
14 Legal Aid. The biggest problem is, obviously, the  
15 person just misses Legal Aid and attorneys are  
16 expensive.

17 ACTING CHAIRMAN DERMODY: We talked about  
18 that earlier.

19 JUDGE GILMORE: I'm sure you've talked  
20 about all of these issues.

21 ACTING CHAIRMAN DERMODY: But there is a  
22 problem about the ones that are in the middle there.

23 JUDGE GILMORE: Oh, there's a big gap.  
24 Some of the fees I see in divorce cases are shocking.

25 ACTING CHAIRMAN DERMODY: What type of a

1 problem does that present to you as a judge for your  
2 caseload and expeditiously going through your caseload?

3 JUDGE GILMORE: That they are  
4 unrepresented?

5 ACTING CHAIRMAN DERMODY: Yes.

6 JUDGE GILMORE: I don't think that it  
7 does present a problem. Rightly or wrongly, those  
8 without attorneys generally goes quicker. I'd like to  
9 said the result doesn't change, although that probably  
10 would be an unfair thing. Most difficult cases,  
11 complex cases, obviously cases where there is any  
12 substantial amount of money that is the situation, but  
13 I think the run-of-the-mill support case, most  
14 Protection From Abuse cases, minor custody cases--by  
15 minor I mean the moving party is not seeking custody  
16 but really partial custody or visitation--things work  
17 very well and I think it's unlikely they'd work any  
18 different at all in terms of -- that's my own personal  
19 view.

20 ACTING CHAIRMAN DERMODY: I'm sorry to  
21 interrupt you.

22 JUDGE GILMORE: That's all right. I  
23 think that is it. In fact, that is it. I would be  
24 glad to entertain questions.

25 Also, in that lineup, it has been my

1 experience, and I've tried to as best I can having come  
2 from a political end rather than the country club  
3 lawyer end of the judiciary, for good or for bad, I  
4 think it's a part of my duty to keep in contact with  
5 the public and I've rarely turned down invitations to  
6 speak to a group of people. We are in the television  
7 age. People today are generally convinced that L.A.  
8 Law and Perry Mason represent what actually happens in  
9 the court system. We get people into court that are  
10 conditioned by their televisions as to what the court  
11 system is about. It's very often a slow, laborious,  
12 expensive, distasteful, difficult process. It's the  
13 only one I know. It's the only one any of us know.  
14 I'm not saying it's the best, but it's the one that's  
15 in place and hopefully we'll try to work with it as  
16 best we can.

17 BY ACTING CHAIRMAN DERMODY: (Of Judge Gilmore)

18 Q. Family Division is probably the least  
19 like anything they would see on L.A. Law or anything  
20 else. There is a trial in a criminal case eventually  
21 and, you know, every once in a while, I was also an  
22 Assistant D.A., I used to object because they expect it  
23 at least once or twice, you know, because they saw it  
24 on TV.

25 A. Well, I think what happens is, for

1 instance, on a soap opera or L.A. Law or some other  
2 show, a television movie, they see the beginning and  
3 the end of an entire legal controversy. Well, it  
4 doesn't happen that way, it doesn't happen in two  
5 hours, it probably isn't going to happen in two years,  
6 and it's a problem.

7 Q. We talked earlier also about alternative  
8 ways to resolve these disputes - mediation,  
9 arbitration, that type of thing. How do you feel about  
10 that and the cost for those also? You also mentioned  
11 about the increase. We just talked about the increases  
12 in filing fees and that type of thing, which gives me a  
13 problem because it is getting harder and harder to pay,  
14 it is becoming more like the criminal justice system  
15 where you never collect fees. What are your feelings  
16 about that?

17 A. I think any alternate means that resolves  
18 the problem is fine. As long as the people have  
19 agreed, it's usually a better result because they have  
20 agreed to go into something and they are more likely to  
21 agree with what comes out of it, so I think it's one of  
22 those things where anything that resolves the conflict  
23 is certainly acceptable. There are just certain  
24 aspects of it, at least under the system of law as we  
25 know it, that only judges know what to do. Matters

1 such as contempt which are a very real and daily part  
2 of Family Court. For instance, one of the questions  
3 this gentleman posed, why didn't you make him pay it  
4 all, if I order you right now \$6,000, you're not  
5 leaving unless you pay \$6,000, you're going to the  
6 hotel next door with bars and if I'm going to order you  
7 to pay it, then I'm going to put you in jail if you  
8 don't, so that's why it's very often difficult, they  
9 don't always have it, and only a judge can do that in  
10 our system. I think we're not prepared to move outside  
11 of that.

12 ACTING CHAIRMAN DERMODY: Any questions?

13 BY MR. SUTER: (Of Judge Gilmore)

14 Q. Do you have any thoughts on reducing the  
15 necessary period of living separate and apart from two  
16 years to one year?

17 A. I don't think that will make an  
18 appreciable difference. Do I favor one or the other?

19 Q. Sure.

20 A. I don't think I have an opinion.

21 Q. So you don't think it's going to make any  
22 appreciable difference then?

23 A. I don't think it will make any difference  
24 in the system. I think people tend to do what they are  
25 going to do, and as far as the legal process is

1 concerned, we're going to get them at one point or  
2 another. Whether it's been one or two years, I don't  
3 think that's any different.

4 Q. We've heard previous testimony that one  
5 party may try and delay the proceedings by not  
6 submitting information such as valuation evidence--

7 A. It happens regularly and consistently and  
8 it's the most exasperating thing in the world.

9 Q. In that situation are judges, and I  
10 realize you might not be able to speak for judges other  
11 than yourself, are you reluctant to impose any sort of  
12 contempt remedies or any sort of--

13 A. I am not. I jail people for not paying  
14 up promptly. Well, I won't say promptly, after I've  
15 given them a chance or two.

16 ACTING CHAIRMAN DERMODY: Have attorneys  
17 sought sanction in those instances?

18 JUDGE GILMORE: Well, yes. They have  
19 petitioned. Sometimes I have forced them to sit down  
20 in the back of the room and start answering questions.

21 MR. SUTER: Do you think there is a  
22 problem in the system in that other judges aren't as  
23 aggressive in imposing contempt or any such remedies in  
24 that situation?

25 JUDGE GILMORE: Yeah, that is very much

1 an area of the law where every judge is going to have  
2 his own point of view and some are very quick to  
3 enforce or punish to get the appropriate result and  
4 some are not. I have been criticized for acting too  
5 quickly. I don't know. It's a problem.

6 ACTING CHAIRMAN DERMODY: Do you think  
7 it's something that we can address legislatively?

8 JUDGE GILMORE No. I think it's going to  
9 have to be done with the rules. I don't think a law  
10 can do that -- no.

11 ACTING CHAIRMAN DERMODY: We heard some  
12 testimony from Allegheny County that the caseloads are  
13 such that they had a difficult time getting to those  
14 kind of cases.

15 JUDGE GILMORE: The caseload is such,  
16 because I'm the only one in town, I have Motions Court  
17 every morning at 9:00. If you show up with that  
18 petition, you're eventually, you might have to sit  
19 there 45 minutes to an hour, you're going to get it  
20 stuck under my nose that this person hasn't done this  
21 and I issue a rule upon that day, they come in and they  
22 haven't done it, but I'm usually the one to take some  
23 action.

24 ACTING CHAIRMAN DERMODY: Forty-five  
25 minutes, that's not Allegheny County. We're talking

1 days, or at least eight hours. That's a luxury.

2 JUDGE GILMORE: Where I come from,  
3 Allegheny County isn't the real world.

4 ACTING CHAIRMAN DERMODY: I understand.

5 JUDGE GILMORE: It's big.

6 MR. SUTER: Just out of curiosity, how  
7 many judges are there in Washington County?

8 JUDGE GILMORE: Five.

9 ACTING CHAIRMAN DERMODY: You mentioned a  
10 significant increase in PFAs from, I think it was '80  
11 or '82. Any thoughts on why such an increase?

12 JUDGE GILMORE: Well, certainly the  
13 biggest impetus or the biggest explosion we had was  
14 when the Supreme Court required we make the forms  
15 available for people to do themselves. The police and  
16 the magistrates are a full-time referral basis. It  
17 would not hurt if the police and the magistrates were  
18 much better trained in what a PFA was supposed to do  
19 because I regularly get petitions about their brothers  
20 harassing them, they're having a property dispute with  
21 their neighbor, because if the police think they can  
22 get rid of a problem by telling them to go to the  
23 courthouse and filing a PFA, they do it. But I can't  
24 say that's so because that's headed off at the door,  
25 and I speak to everybody at some point or another. I

1 don't always go to the courtroom or, depending on what  
2 I'm doing, often it's just in the office or something  
3 like that, but I find out basically what's going on,  
4 what they need, why they need it. I don't know that  
5 that's a major part of the problem. I think there is a  
6 lot of abuse out there.

7 ACTING CHAIRMAN DERMODY: That's my next  
8 question.

9 JUDGE GILMORE: Oh, absolutely. The  
10 majority of petitions are well-founded. There is a  
11 portion of them that are absolutely frivolous. Some  
12 are instigated by lawyers, but not most. Most are just  
13 the people themselves. But I would say on a whole I  
14 would grant probably 60 to 70 percent of the petitions  
15 I grant a final order. So that would indicate to me  
16 that somebody hit somebody or threatened somebody or  
17 something of that nature. The difficult aspect of a  
18 PPA is not so much the injunctive relief but are you  
19 going to move somebody out, because then that gets into  
20 a whole other set of problems. Do they have someplace  
21 to go, how serious was the abuse, so on and so forth.  
22 That is granted far less in a general petition. And  
23 oftentimes it is not requested but I order it against  
24 both because I've found that one party virtually  
25 instigated an incident, where the guy, typically, will

1 grab the woman, but this is after she has been harping  
2 on him and throw something at him, and, you know, they  
3 are both fighting. I think it's silly to say that one  
4 needs protection. I put it on both of them. I don't  
5 know if it does any good, but at least that's the way I  
6 looked at the problem.

7 ACTING CHAIRMAN DERMODY: That's all I  
8 have.

9 Mr. Krantz.

10 BY MR. KRANTZ: (Of Judge Gilmore)

11 Q. Your Honor, going into the PFA for a  
12 second, do you find that there is any significant  
13 number of individuals who have filed for a PFA and  
14 recanted prior to court action?

15 A. Yes. Twenty percent.

16 Q. Second, you mentioned in your prepared  
17 statement that you find that the provisions of the law,  
18 Title 23, are well-thought-out by the legislature, et  
19 cetera, and now the problem occurs with implementation.  
20 Can you envision any way to insist, make mandatory,  
21 ordain, et cetera, that the law of the land, Title 23,  
22 is enacted the same way everywhere, which obviously it  
23 is not?

24 A. Are you talking about inconsistencies  
25 among the counties?

1 Q. Yes.

2 A. I think I alluded to that if you did  
3 nothing else, if you could come up with a, from a  
4 quantitative aspect, approach to saying this is  
5 basically the way things ought to operate, this is the  
6 way things ought to be done, this is the staffing and  
7 the personnel required to accomplish it, I think that  
8 would go a long way.

9 Q. In your comment of implementation, is  
10 this what you're talking about or—

11 A. Yeah, I think that's part of it, and a  
12 part of it is what's happening to Family Court has been  
13 foisted upon our judicial system, it's been there a  
14 long time. Most of the judges are the average age is  
15 in the 50s. Most of them never dealt with that. A lot  
16 of them are reluctant and don't want to get involved in  
17 it. We're a part of the problem, I don't deny that,  
18 but at the same time we're people just like anyone  
19 else, and I think the vast, vast majority try to do the  
20 best job they can with the resources available to them.  
21 To make the best call they can under the circumstances  
22 given them. Sometimes that's wrong. Sometimes we make  
23 mistakes, not very often, but we make mistakes.

24 But the reason, I think, if any mistakes  
25 occur, and more mistakes are occurring, is because of

1 the less time we have in which to decide that and we're  
2 called upon to make a very fast decision on a very  
3 serious problem. That would be nice if we said,  
4 fellows, give me a complete brief and we'll argue it  
5 out two or three months from now. We don't have that  
6 luxury in too many situations. Therefore, we get  
7 sometimes a less than desirable result.

8 ACTING CHAIRMAN DERMODY: You don't have  
9 that luxury because of the issue involved or because of  
10 the docket?

11 JUDGE GILMORE: Both.

12 ACTING CHAIRMAN DERMODY: So would more  
13 judges necessarily help that problem?

14 JUDGE GILMORE: To some extent, yes.

15 ACTING CHAIRMAN DERMODY: As far as that  
16 deals with the docket?

17 JUDGE GILMORE: Believe me, I don't say  
18 that that's the solution by any means.

19 MR. KRANTZ: Thank you.

20 ACTING CHAIRMAN DERMODY: Thanks very  
21 much, Judge.

22 JUDGE GILMORE: Okay, thank you.

23 ACTING CHAIRMAN DERMODY: Well, you've  
24 been very helpful.

25 That was our last witness for today.

1 We're adjourned. Thank you.

2 (Whereupon, the proceedings were  
3 concluded at 4:35 p.m.)

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

*Ann Marie P. Sweeney*  
ANN-MARIE P. SWEENEY

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