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COMMONWEALTH OF PENNSYLVANIA  
HOUSE OF REPRESENTATIVES  
COMMITTEE ON JUDICIARY

In re: Alleged Abuses in the Domestic Relations  
Field

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Stenographic report of hearing held  
in Room 140, Majority Caucus Room,  
Main Capitol, Harrisburg, PA

Friday,  
December 20, 1991  
10:00 a.m.

HON. THOMAS R. CALTAGIRONE, CHAIRMAN

MEMBERS OF COMMITTEE ON JUDICIARY

Hon. Gregory Fajt                      Hon. David Heckler  
Hon. Lois S. Hagarty                  Hon. Robert D. Reber

Also Present:

David Krantz, Executive Director  
Katherine Manucci, Committee Staff  
Mary Woolley, Republican Counsel  
Ken Suter, Republican Counsel  
Suzette Beemer, Republican Staff

Reported by:  
Ann-Marie P. Sweeney, Reporter

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1                   CHAIRMAN CALTAGIRONE: I would like to  
2 welcome everybody here to the House Judiciary Committee  
3 public hearing on domestic relations. I'm Chairman Tom  
4 Caltagirone, and for the record, if the members and  
5 staff that are present, if they would like to introduce  
6 themselves for the record. We'll start with  
7 Representative Hagarty.

8                   REPRESENTATIVE HAGARTY: Lois Hagarty,  
9 Montgomery County.

10                  MS. WOOLLEY: Mary Woolley, Republican  
11 Counsel to the committee.

12                  REPRESENTATIVE REBER: Representative Bob  
13 Reber from Montgomery County.

14                  MR. SUTER: Ken Suter, Republican Counsel  
15 to the committee.

16                  MR. KRANTZ: Dave Krantz, Executive  
17 Director of the committee. And I'd like to take the  
18 time to thank Ken Suter and Suzette for the fine work  
19 they've done on these two days of hearings. Thank you.

20                  MS. MANUCCI: Katherine Manucci,  
21 Democratic staff.

22                  MS. BEEMER: Suzette Beemer, Republican  
23 staff.

24                  CHAIRMAN CALTAGIRONE: And with that, I'd  
25 like to start off with Attorney Katzman, who was on and

1 off again yesterday, and we wanted to give him the  
2 opportunity since we didn't hear from him yesterday to  
3 start this off, and then go with the regular schedule.

4 MR. KATZMAN: Mr. Chairman, members of  
5 the committee and staff, I appreciate your  
6 accommodation and I hope that the few comments I have  
7 to make will be worth the trouble that I might have put  
8 anybody to because of scheduling problems.

9 In looking over the list of people who  
10 are testifying before your committee, perhaps I should  
11 identify myself a little bit in contrast, I think, to  
12 most, if not all, of them. I do not consider myself a  
13 family law practitioner. I consider myself a general  
14 practitioner with an emphasis in business litigation.  
15 As a matter of fact, for whatever it's worth, in that  
16 publication called "Best Lawyers in America," I'm  
17 listed under business litigation.

18 My view of the Divorce Code is actually  
19 from that standpoint. I do not mean to minimize or  
20 trivialize the emotional impact upon people in cases  
21 that do not involve much in the way of property  
22 division. On the other hand, my emphasis has been  
23 basically in that area of property division and the  
24 economic aspects, so my view might be a little bit  
25 different from some others.

1           I focused a little bit on the two bills  
2 that I saw, Senate Bill 273 with respect to mediation,  
3 and I would like to make just a few comments on that as  
4 well as the other. I believe the bill 273, Senate  
5 Bill, is very -- well, is not a well-drawn bill, let me  
6 say it that way. There are no standards that are  
7 indicated. Mediation normally means just a process of  
8 trying to get people to agree. It's usually  
9 distinguished from arbitration, which means that there  
10 is a decision which the parties must abide by. So I am  
11 presuming that the mediation here is just a counseling  
12 type situation where the parties are free to disregard  
13 any recommendations. But there's nothing to indicate  
14 what the effect of the mediation should be, and since  
15 so much is left to local practice, one county can say  
16 it's to be binding, another county can say it's not to  
17 be binding. It appears to me that it could well be  
18 just another red tape type of delay situation in the  
19 process, and without really having a fleshed out bill  
20 it would seem to me inappropriate to pass it in its  
21 present form.

22           With respect to the Divorce Code proposed  
23 amendments, my personal belief is that the reduction of  
24 the no-fault ground from two years to one year would be  
25 a worthwhile step to be taken. I believe that in most

1 cases that I'm familiar with, if not all, if it's gone  
2 on for a year it's pretty well understood that the  
3 marriage is kaput, is over, and there would seem to be  
4 no reason why the parties should not, without further  
5 adieu, be able to obtain divorce. I think one of the  
6 Superior Court judges put it in a case that the  
7 personal lives of the parties should not be held  
8 hostage to the economic situation. So that people can  
9 get on with their lives personally and let the economic  
10 matters be decided in due course whenever that can  
11 occur.

12                   What happens today is that if the  
13 dependent party, it could be the husband or a wife,  
14 wants to sort of prolong the deal because she's getting  
15 some benefits that she might otherwise not get, she  
16 doesn't have to go to work right away, he doesn't have  
17 to go to work right away, and so forth, they'll just  
18 not agree and nothing can happen for two years,  
19 essentially, until after the two years passes, and then  
20 the grounds for divorce are established and you can  
21 then pursue the matter before a Master. But to a large  
22 degree I find that -- well, I shouldn't say to a large  
23 degree. Sometimes there are abuses by the parties  
24 recognizing that the marriage is certainly  
25 irretrievably broken but hanging on because of some

1 what I consider peripheral and inappropriate reasons.  
2 Of course, on the other side of the coin, you know, our  
3 society today doesn't really frown at all on people,  
4 you know, living with somebody else whether they are  
5 married or not married, et cetera, so to some degree it  
6 really doesn't affect the personal lives of people  
7 except to the extent that they want to do the, quote,  
8 "right thing" morally by not committing adultery in the  
9 official sense and get married to the person that  
10 they've chosen to share their life with from that point  
11 on.

12 But I believe that the one year would be  
13 an improvement. I realize the statute started with  
14 three and then came down to two. I think the question  
15 would be how to do it promptly and without expense. I  
16 know we had a case once where somebody came in and  
17 opposed the divorce after like seven years of  
18 separation. The husband, I guess it was, was living  
19 with somebody else for like five or six years and the  
20 wife it was--and it could have been the husband in  
21 another case, I don't mean to differentiate on the  
22 matter of gender--came in and said, well, the marriage  
23 isn't really irretrievably broken. He still gets mail  
24 at my house. Well, we said, produce some. So she  
25 produced some. It was addressed to "Mr. X or

1 Occupant," and it was a brochure, a couple brochures or  
2 advertisements. So you have that silliness that can go  
3 on, and that's probably an unusual case, but it seems  
4 to me that it ought to be an easy procedure. One year,  
5 or even if the two years has passed, that the parties  
6 can get the divorce, part of it taken care of, and go  
7 on with their lives.

8           With respect to the specifics of the  
9 bill, on page 2 at the top, this is language that is  
10 still -- that is in the present statute. It says the  
11 court may grant a divorce, and so forth. I think that  
12 language, in my opinion, should be changed to "shall,"  
13 so that if the one year or two years, whatever you're  
14 going to retain, is fulfilled and there is a finding  
15 that is irretrievably--or in addition--that's  
16 irretrievably broken, I don't think a judge should have  
17 any discretion in that situation which the word "may"  
18 might indicate that he should have. So I would, my  
19 thought would be that that ought to be changed to  
20 "shall" instead, "shall" instead of "may."

21           There's an interesting interplay I think  
22 procedurally between this type of thing and the Master  
23 system and the Rules of Civil Procedure. It's my  
24 understanding of the rules that the Master does not  
25 deal with the irretrievable breakdown of the two years'



1 duration at this point. That has to be done by the  
2 court. I think sometimes there's some confusion and  
3 some delay and expense that need not occur based upon  
4 the division of responsibilities between a Master and a  
5 judge. And I think it ought to be made clear where it  
6 says the court shall grant, or may grant a divorce  
7 where a complaint has been filed alleging irretrievable  
8 breakdown that it be made clear that that is for the  
9 court to do.

10 On the question of partial distribution,  
11 which is a new section to be added to the statute as  
12 subsection F, which is on page 3, I have a couple  
13 comments to make on that. I believe that there's  
14 nothing wrong with the court having the power to make a  
15 partial distribution. I think what is a problem to be  
16 addressed is I think there should be a procedure to  
17 make a full distribution on the economic issues at some  
18 point prior to a divorce decree being granted,  
19 particularly if you're going to retain two years for  
20 irretrievable breakdown instead of reducing it to one.  
21 The problem -- I think the lower court judges had  
22 assumed from the language in the statute that that was  
23 a permissible procedure. That is, to make a decree on  
24 economic grounds even though you did not first make a  
25 decree on divorce grounds, and several cases had

1 occurred in that regard.

2           The Superior Court got a case, I think in  
3 '85, called Dech, D-E-C-H, versus Dech, and the issue  
4 was neither briefed nor argued but they addressed that  
5 issue. The court had done exactly what I said, had  
6 addressed the economic issues, made decisions on them  
7 but no divorce had ensued, and the court on its own,  
8 and I think rather short-sightedly and without much  
9 experience in the practicalities of the situation, said  
10 that you can't do that, and they said it was because of  
11 interpretation of language in the Divorce Code. The  
12 other side of the coin was there was just as much  
13 language in the Divorce Code that would have supported  
14 what the lower court had done by making an economic  
15 distribution before a divorce decree.

16           The major factor impelling Judge Beck,  
17 who wrote that decision, was that, gee, what would  
18 happen if the parties got back together again, how  
19 could you--and she used the word Humpty Dumpty--how  
20 could you get this property that had been divided back  
21 together again? Well, let's be practical. That's no  
22 big deal. The parties themselves can make agreements  
23 on distribution of their marital property by an  
24 agreement without a divorce decree being entered. If  
25 they get back together again, it gets sorted out. They

1 can get divorced, have the economic property divided,  
2 and get remarried, and that's no big deal. The amount  
3 of cases where you would have this situation arise that  
4 Judge Beck used as the basis for her conclusion is  
5 probably 1 in, what, 10,000? And so I think it's sort  
6 of a tail wagging a dog situation, but nevertheless,  
7 that case became the law and, you know, that's what we  
8 have to live with today.

9           So what it means is that when you have  
10 the two-year period for the irretrievable breakdown,  
11 when the one party won't agree on the 90-day situation,  
12 you can't do anything really with the economic issues,  
13 unless there's some gross thing that the court can  
14 exercise some equitable powers over, until after the  
15 two years have passed and you then have to go to court,  
16 get the court to issue a bifurcated divorce decree,  
17 that takes a while, and then get a Master appointed,  
18 and then you finally can deal with the economic issues,  
19 which really takes it 2 1/2 to 3 years down the road  
20 from the time the separation might occur.

21           So I believe that the practice of the  
22 lower courts right after the Divorce Code was passed  
23 whereby they thought that you could have an equitable  
24 distribution order without having a divorce should be  
25 something that is reinstated by statute because by

1 judicial declaration it's been overruled.

2 I think also that, again, I didn't mean  
3 to minimize the emotional and other effect on people  
4 and their personal lives in these situations, but I  
5 believe that, at least in the cases that I get involved  
6 in, the property issues are the dog and the divorce is  
7 the tail. The way the system is now you have the tail  
8 wagging the dog, at least, again, in the cases that I'm  
9 involved in. The parties don't seem to care, to a  
10 large extent, at least maybe I run into the wrong  
11 parties who don't have any moral or religious  
12 persuasions, but even the ones that I do don't seem to  
13 care about those kinds of things anymore, about whether  
14 they are divorced or not divorced. Many of them just  
15 tend to go on with their lives and consider that an  
16 irrelevance. But it's the economic issues that are  
17 important ones, and yet those get postponed and delayed  
18 for, as I say, 2 1/2 to 3 years because the divorce is  
19 delayed. And so I feel that the thing should be  
20 reversed around.

21 Let me just say, the procedures that are  
22 now in effect, even after a Master is appointed to deal  
23 with property issues, there is a minimum of 150 days'  
24 built-in time before you can really get to a hearing,  
25 unless something extraordinary happens. Within 60 days

1 -- excuse me, within 90 days an inventory has to be  
2 filed. Well, if one person wants to drag it out,  
3 they'll take the full 90 days and then some, because as  
4 we all know, court deadlines are not very strictly  
5 enforced. So if somebody doesn't file an inventory  
6 within 90 days, you go to a judge or somebody and say  
7 you will make them file one, and they say, okay, you  
8 have another 30 or 60 days to file it, and the 90 days  
9 gets into about 180 days before you really have an  
10 effective remedy.

11 Then after that, 60 days before a hearing  
12 you have to file a pretrial statement, and again, that  
13 60 days probably is not always observed. So you can  
14 see there's some rather built-in delays in getting the  
15 economic issues before the Master, including the two  
16 years of separation. So again, I feel it's practical  
17 to have the Master be allowed to deal with the economic  
18 issues first. Again, if you got to reduce the time to  
19 one year, perhaps that's not so important, but I think  
20 it still is of great significance.

21 The other amendment to Section 3502 A-1  
22 where you're, by statute, declaring the date of  
23 distribution, or at least as close to it, as the date  
24 for valuing marital property. I represented a party in  
25 a case that first brought this issue to the Supreme

1 Court, the Sutliff case, which is somewhat well-cited  
2 and well-known, where the lower court had held that the  
3 date for valuing marital property was the date of  
4 separation, and the Supreme Court reversed that and  
5 said it should be the date or as near as possible to  
6 the date of distribution. And that was my appeal that  
7 was upheld, so I'm very happy with that decision. But  
8 as an aside, some of the problems, and I might mention  
9 that in a minute, of abuse and delay are just problems  
10 with the judicial process itself. They are not just  
11 for divorce cases. I mean, the same judge who took a  
12 year and a half to decide exceptions to a Master's  
13 decree took almost a year and a half to decide motions  
14 for a new trial in a wrongful discharge case after a  
15 jury verdict. That's more than we can deal with right  
16 now, although it's obviously of great importance to be  
17 dealt with.

18 But what happened in the Sutliff case was  
19 in 1988, after the Supreme Court said value as close as  
20 possible to the date of distribution went back to the  
21 county court, and the county court issued an order  
22 saying the relevant -- I asked for information about  
23 the valuation of the husband's companies as of 1988 or  
24 1989, whatever it was by that time, and the lower court  
25 judge said, no the relevant date is 1985 when my first

1 order of distribution, which had been reversed, was  
2 handed down. So I don't know how you can write  
3 language that's going to do the job in all cases.  
4 Obviously, 1985 valuations, after a reversal in 1988,  
5 is not going to be close to the date of distribution,  
6 but that's what we were stuck with. Fortunately, the  
7 husband obtained counsel who was a business litigator  
8 and two business litigators got together and aside from  
9 all the issues of the Divorce Code and the Supreme  
10 Court and everything else, we finally settled the case.

11 And that brings me back to my original thought of what  
12 in many cases is the important fact.

13 So I would suggest that the judicial  
14 definition of determination of property value is  
15 probably as good as you're going to get because here  
16 you just have it flat, as close to the date of the  
17 hearing as possible, and while that's true for most  
18 cases, there are cases where there could be some  
19 dissipation, where there could be some decrease in  
20 value that would occur at some point, and I think the  
21 court decisions, quoting from one case, and I don't  
22 have the name of the case with me, but the court had  
23 generally said that should be the general rule - value  
24 as close to the date of distribution or date of hearing  
25 as possible. Except that the trial court does have

1 discretion to select another date if it serves to  
2 provide economic justice, and that would be in the case  
3 where, as I say, there's maybe been some dissipation by  
4 one party, where there's been some substantial increase  
5 that has occurred in between times.

6           Of course, if you split distribution in  
7 kind, it doesn't matter. We had a case several years  
8 ago where the husband had a whole bunch of Merck  
9 Company stock, and if you know anything about the stock  
10 market and drug companies, you know how that stock has  
11 gone. And he wanted to give the wife X percent of the  
12 value of the Merck stock, and we said, no, we we'll  
13 take half or 60 percent or whatever it came down to of  
14 the Merck stock in kind, so in that case it doesn't  
15 matter, both parties share the increase and the  
16 decrease proportionately, and there is no problem with  
17 the date of valuation, but when one party gets  
18 something set aside to him, you'll get object one and  
19 you get object two, there could be a situation where  
20 the court might say, well, the general rule is value as  
21 of the date of the hearing or distribution, something  
22 has happened here that we should deviate from that.  
23 And so I think that the judicial rule is satisfactory  
24 in that case. Again, like everything, it's not going  
25 to be right 100 percent of the time, but I think it's



1 about as good as you can do.

2           If I could say just a word about what I  
3 think some people have mentioned abuses or delay,  
4 again, I think in my experience the delay is more a  
5 function just of the judicial system than it is of  
6 anything related to matrimonial divorce or family law  
7 matters themselves. And that's an issue that's, I  
8 think, bigger than what we're dealing with here.  
9 Sometimes I think the abuse comes in the delay factor  
10 by the dependent spouse wanting to string things out as  
11 much as possible, and that goes back to my earlier  
12 thoughts expressed to you about how the procedure  
13 should be speeded up on the economic issues and on the  
14 one year -- reduction to one year. There's some, I  
15 guess, expense that could be avoided in the duplication  
16 of work and effort. If you look at the rules, and of  
17 course I realize the Rules Committee of the Supreme  
18 Court in promulgating the rules takes precedence over  
19 anything that can be done really by the committee if it  
20 involves a procedural matter. And as a member of the  
21 Supreme Court Procedural Rules Committee, I'm well  
22 aware of those cases that have so held and some little  
23 interaction between the legislature and the judicial on  
24 who can determine what. But what you have in the rules  
25 is you have a right to discovery only through

1 interrogatories. So what happens? The first thing  
2 happens, a complaint gets filed, particularly if  
3 there's property issues of something, and these long  
4 detailed interrogatories get filed that need answered.  
5 All right, so you do that, but also you have to file an  
6 inventory, and a lot of the same information is on the  
7 inventory, so that's the second thing you've got to  
8 prepare and file. Then you have to prepare a pretrial  
9 statement, as I mentioned before, which also has to  
10 have almost the same information plus information on  
11 values and so forth which probably were asked for in  
12 the interrogatories, and of course if there's a claim  
13 for support or alimony you have to file tax returns and  
14 pay stubs and income and expense statements, so you  
15 have a real like a duplication of about three different  
16 things you have to file. Now, true, the same  
17 information to a large extent is on each one, but it  
18 creates paperwork which just creates delay and creates  
19 unnecessary, in my opinion, expense, so I don't know  
20 what could be done except through the Family Law Rules  
21 Committee, Domestic Relations, I guess it's called,  
22 Rules Committee, that, you know, maybe something could  
23 be done to try to get them to streamline the thing.

24 I think that, for example, there's no  
25 reason to have interrogatories unless and until you

1 have the other documents produced and for some reason  
2 they are not satisfactory. And then it seems to me  
3 that you would -- the better procedure would be to  
4 apply to the court and have the court decide if this is  
5 a special circumstance which would allow you to have  
6 discovery along with all the other documentation that  
7 you received.

8 I think that concludes my remarks, and I  
9 would be happy to deal with any questions or comments  
10 any members of the committee or staff might have.

11 CHAIRMAN CALTAGIRONE: We'll open it up  
12 for questions from the committee.

13 Counselor Suter.

14 BY MR. SUTER: (Of Mr. Katzman)

15 Q. We keep hearing testimony going both ways  
16 with the reduction in the two-year separation period,  
17 and yesterday we heard testimony that if we did reduce  
18 the period to one year that it would have a detrimental  
19 effect mainly for women, that this time is necessary  
20 for a lot of women to get back on their feet, that it  
21 takes a year to really cope with the fact that they are  
22 getting a divorce and then the additional year is  
23 necessary for perhaps getting a job or really  
24 economically getting on their feet, and then they are  
25 in a better bargaining position to negotiate a divorce.

1 Do you feel that it would be detrimental to women?  
2 That was the main focus of the argument for keeping the  
3 two-year period as it presently stands.

4 A. I would disagree with that as a valid  
5 position, and I don't think it's related to just women.  
6 As a matter of fact, I'm in a case right now where the  
7 woman has substantial property and it's the man who's,  
8 the husband who's trying to delay and obfuscate the  
9 situation. I think it's not valid though, irrespective  
10 of gender, for this reason: The divorce itself, except  
11 on moral, religious grounds, becomes a non-event. The  
12 event is the distribution of the marital property, the  
13 awarding of alimony, alimony pendente lite, et cetera,  
14 expenses, and so forth. Those things are not affected  
15 by, in my opinion should not be affected by the  
16 divorce. They are now only to the extent that the  
17 court has ruled that you can't deal with those issues  
18 until a divorce has been entered. But in my opinion  
19 there's no reason why you shouldn't deal with it. And  
20 if the wife is, if we want to assume the gender  
21 situation that your question posed, if the wife does  
22 have difficulty getting on her feet, et cetera, the  
23 existence of a divorce decree, to me, is not relevant.  
24 The relevant thing is then the court should order  
25 sufficient alimony, a good division of the marital

1 property, et cetera, which will help her get on her  
2 feet economically.

3 Now, to get on her feet emotionally, the  
4 mere fact of the divorce decree I've found in my  
5 limited experience is not as shocking as the fact of  
6 the husband leaving in the first place and the  
7 separation having occurred. I think that becomes more  
8 the economic shock than the fact that there's a piece  
9 of paper that says you're now divorced. But I think  
10 the problem can be taken care of very well by the court  
11 or Master awarding sufficient alimony, sufficient  
12 distribution of the marital property.

13 Q. I guess that's part of the problem that  
14 we're hearing, that the courts are not awarding  
15 sufficient alimony, however they will award spousal  
16 support, and that if they have the two-year -- if the  
17 individual has the two-year period to have spousal  
18 support then they are in a better position as opposed  
19 to after the divorce because the courts are so  
20 reluctant to award alimony.

21 A. Well, in my, again, fairly limited  
22 experience in this regard, and by the way, other  
23 lawyers in my office do practice a lot more domestic  
24 relations than I do and I've talked to them, so I'm  
25 speaking not just on my own experience, I think it's

1 rather routine after the divorce decree to transform an  
2 order of support into an order of alimony pendente  
3 lite, where the wife continues getting the same amount  
4 of money, essentially. I know the courts have said  
5 that the two are different, but as a practical matter  
6 they award the same amount, and in going for, say, a  
7 bifurcated divorce, almost invariably the order will  
8 contain -- an order granting the divorce will contain a  
9 requirement that the support that's now being paid will  
10 be transformed into an alimony pendente lite order and  
11 the wife continues getting the same amount. To some  
12 extent that can be just as unfairly burdensome to the  
13 husband, again using your gender situation, as it would  
14 be to the wife to have to continue making those same  
15 payments, but I don't see that as a problem that can't  
16 be and that isn't being dealt with rather adequately  
17 right now.

18 Q. Thank you.

19 REPRESENTATIVE HAGARTY: One question.

20 CHAIRMAN CALTAGIRONE: Yes.

21 REPRESENTATIVE HAGARTY: Thank you.

22 BY REPRESENTATIVE HAGARTY: (Of Mr. Katzman)

23 Q. It has been suggested that we abolish  
24 bifurcation and in its place, I guess by the rules  
25 committee, have firm deadlines, the problem being that

1 bifurcation tends to allow a divorce, or allows a  
2 divorce with then the economically dependent spouse  
3 left in many times for many years while the other  
4 spouse continues to drag out the economic situation. I  
5 wondered what your thoughts were on that?

6 A. Well, it seems to me that the comments I  
7 just made would be relevant to that also. I don't see  
8 the fact of the divorce itself as really influencing or  
9 having anything to do with the economic situation of  
10 the parties. That's just sort of a piece of paper that  
11 somebody gets and says you're divorced. But the courts  
12 generally, as I said, with that order will provide, for  
13 example, if there's alimony, that alimony continue,  
14 albeit in the guise of alimony pendente lite, they can  
15 make awards of expenses, counsel fees, and things of  
16 that nature, and the fact that there was a piece of  
17 paper that says divorce doesn't make any difference.  
18 Now, if you're saying the economic distribution should  
19 be speeded along so that there's no abuses by either  
20 party in dragging that out, fine. But I don't think  
21 that has anything to do with the piece of paper that  
22 says you're divorced.

23 Q. I guess it goes back to the other  
24 argument that counsel made. We are hearing very  
25 different experiences from around the State with regard

1 to the adequacy of alimony and court orders for alimony  
2 pendente lite. I'm pleased to hear that you think in  
3 Dauphin County the courts are awarding alimony pendente  
4 lite in amounts equal to support. That's not what  
5 we're hearing around the State, and what we continue to  
6 hear is that the economically dependent spouse is not  
7 adequately provided for or similarly provided for after  
8 divorce, and so there's a great reluctance, at least on  
9 my part, I don't know about other members of the  
10 committee, to move any quicker to grant a divorce  
11 because I think it places the dependent spouse in  
12 jeopardy. As a matter of fact, I'm not suggesting to  
13 you that if reality were what it should be, that  
14 necessarily that would be a right result, but I don't  
15 think that the reality has caught up with the real  
16 situation of the dependent spouse being significantly  
17 jeopardized by a divorce.

18 A. You might be right with the reality  
19 situation. My recollection is right after the Divorce  
20 Code was instituted, or was passed in 1980, and again,  
21 most judges being males, I believe that the first--

22 Q. We're going to change that.

23 A. You might. In 1980 that was true. The  
24 first decisions that came down in the early '80s I  
25 think I would have to say I think were somewhat, you



1 know, male chauvinistically oriented. I remember a  
2 case from up in Erie where the wife signed the loan for  
3 the husband to acquire his drug store and so forth and  
4 the divorce came and the drug store happened to be in  
5 his name and the judge up there said, well, the fact  
6 that it's in his name, he should get like, you know, 90  
7 percent of it, and the fact that she signed her credit  
8 for him to get the loan to buy it, that's irrelevant,  
9 and I don't think you would have decisions like that  
10 today, and I think it is sort of a moving process for  
11 people to get used to this new system.

12 But in any event, again, I guess I see  
13 that as somewhat of a failing of the judicial system.  
14 If the judges just aren't awarding the right amounts,  
15 it's sort of like saying the judges aren't making the  
16 correct decisions in cases involving automobile  
17 accidents or whatever. You know, that's something that  
18 you can't really control, I think, and what you're  
19 saying is keep a system that's not really what it  
20 should be just because of the fact that the judges  
21 aren't doing maybe what they should do.

22 Q. It's a big "just because." As  
23 policymakers protecting, you know, dependent spouses is  
24 a big because, I guess.

25 A. Yeah. Again, I think though that while

1       there might be some real reasons to move along the  
2       equitable distribution process, I don't know that the  
3       piece of paper that says divorce is really related,  
4       because the same judge who might award less alimony  
5       pendente lite is probably the same judge who would have  
6       awarded less support even with the parties being  
7       married.

8               Q.     The other experience when we were  
9       considering the amendments in '88, we heard testimony,  
10      I believe it was at that time from the head of the  
11      Family Law Section of the Pennsylvania Bar Association,  
12      that in his experience many couples at about eight or  
13      nine months' separation period did begin to think about  
14      reconciling, and he found that there was a true value  
15      in keeping the unilateral time period at two years and  
16      felt that since people don't even begin to think about,  
17      in some instances, reconciling until that period of  
18      time, that if it were just one year that you wouldn't  
19      think about it then because it would be so short,  
20      perhaps, until you could get the divorce, and that if  
21      we do think that there is a value, as I do, in  
22      preserving marriages whenever possible, that it's not  
23      worth reducing the time period.

24              A.     I'd like to see some valid statistical  
25      information on what he testified to in 1988. That

1 would be very contrary to what my experience is.

2 Q. That was my curiosity.

3 A. I believe that by the time the people got  
4 to our firm they have made a lot of decisions. In  
5 other words, it's not like they just came in that day  
6 and decided that they were going to separate, okay?  
7 The thing has been a process that's been going for  
8 quite a while. I used to 20, 25 years ago when people  
9 would come into my office and talk about it, I used to  
10 take a very moral and almost religious position with  
11 them when I found out a little bit about them, and they  
12 looked at me like I was from Mars or something. I  
13 mean, actually if I found out if they were married in a  
14 church I asked them whether they realized that God was  
15 a third party in their marriage and had they prayed and  
16 considered that, and they looked at me like I was  
17 crazy. I stopped doing that because I found that by  
18 the time they came in, they had gone through all those  
19 things, if they wanted to go through them at all, and  
20 had arrived at the situation where now it was just a  
21 matter of how to, in as civilized a manner as possible,  
22 take it apart. And so I would not agree that that's a  
23 typical situation after six to nine months.

24 Q. Well, I don't know that he was suggesting  
25 that it was typical, but just that he did have

1 experience with that, but you don't feel your firm has  
2 any experience with people reconciling at that point?

3 A. No.

4 Q. Okay, thank you.

5 BY REPRESENTATIVE REBER: (Of Mr. Katzman)

6 Q. For the record, Mr. Katzman, I experience  
7 and have shared your experience as to how the people  
8 react in the real world practicing. Representative  
9 Hagarty and I have had this debate now going on 10, 11  
10 years now and I introduced the one year in 1980 and  
11 1984 under Chairman Sam Rappaport, I believe. We were  
12 successful in moving it through the House and it got  
13 bogged down in the Senate committee, then of course in  
14 the amendments it went from 3 to 2 1/2, and a half a  
15 loaf is better than no loaf, so I certainly was glad to  
16 see that movement and I hope that we will prevail  
17 because I have a personal feeling, and I had this  
18 dialogue with two lady practitioners yesterday and they  
19 shared the initial reaction that was the sentiment that  
20 Representative Hagarty did express which we did here in  
21 hearings in '88, but I think when they were done they  
22 were more or less inclined to say that, hey, I think  
23 the one year is inclined to go.

24 Let me just pass this by you. My  
25 experience has been a lot of times, and I think it

1 dovetails to a great extent with what you suggested  
2 from a moral, religious viewpoint, that many times  
3 there are children that are third parties to the action  
4 and can become a pawn and become stigmatized with the  
5 process and the fact that they don't understand that  
6 mommy and daddy are still married but yet they are  
7 living separate and apart, they are carrying on  
8 independent lives of each other, and I also feel that  
9 if the intent of the act was to effectuate economic  
10 justice, what does that little piece of paper, to use  
11 your words, do to or not do to allow that to happen? I  
12 think the act should effectuate economic justice to the  
13 dependent spouse. I don't think all the bad downside  
14 aspects of having to live separate and apart continue  
15 to remain legally married when in fact that's the only  
16 thing that's going on is the trappings of a legal  
17 marriage without the real practicing of such. And I  
18 tend to agree that the more I think about it, the more  
19 I think that what I've always felt is the way that we  
20 ought to be moving from.

21 A practical standpoint, there are 38  
22 States that have a one year or less period. I mean,  
23 we're not exactly in the majority when it comes to  
24 dragging this thing out, which we did with the three  
25 now down to two years. There doesn't seem to be a real

1 duty of economic justice, if you will, to the dependent  
2 spouses in those 38--some other States. I think if that  
3 is an issue it can be addressed in the economic side  
4 and appropriately so, and as the chairman and I have  
5 had discussions on this we had concern about how, for  
6 instance, the children are affected in some instances,  
7 and I've had experiences where many times they become a  
8 pawn and the two years allows them to be a pawn for two  
9 years as opposed to being a pawn for one year, and I  
10 guess what I'm saying is if somehow we can take that  
11 away, I think that's an advantage. Your thoughts just  
12 on that philosophy?

13 A. Yeah, I would agree, of course, with what  
14 you're saying. I think, and again, I don't really feel  
15 that I'm in a position to comment very knowingly on  
16 this, but to the extent that the children are affected  
17 and they are affected and to the extent they are used  
18 as pawns, and I'm sure that happens many times, again,  
19 I don't know that the piece of paper has any more  
20 detrimental effect on them. And it might, as you  
21 indicate, have a beneficial effect by at least they  
22 understand that daddy and mommy are divorced and that  
23 daddy is married to a new woman, I don't know that that  
24 gets them very far, but I don't think that the present  
25 situation is helpful either where it's sort of, well, I

1 shouldn't say forces because it's obviously a personal  
2 decision, but it forces people in that sense to commit  
3 what used to be considered adultery. I guess it still  
4 is but it's just disregarded.

5 Q. I think that's a problem with our  
6 society, frankly, and that's another aspect of it that  
7 I think makes sense in moving to, and by the way, you  
8 can always gets remarried. I mean, I said that to  
9 Representative Hagarty. I mean, you don't have to  
10 reconcile in the 9th, 10th and 11th month. You can get  
11 remarried at any time, at least as I understand in the  
12 state of the law in Pennsylvania, so if that  
13 possibility is there, that possibility can always  
14 invest itself, and God willing I hope it happens.

15 A. I had a case where the divorce went  
16 through agreeably and there was a fairly quick  
17 understanding again and agreement of the parties, you  
18 didn't even have a Master, and the divorce decree was  
19 entered, on the 30th day the husband, who had entered  
20 the divorce decree, moved the court to vacate it and  
21 the court did because within 30 days you can make such  
22 a motion. It was vacated and the parties went back  
23 together again. It lasted for about nine months after  
24 that, then they really divorced.

25 Q. I would check with you after the hearing.

1 I am just wondering if we have the same clients. I  
2 remember a story like that myself. Thank you.

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

5 CHAIRMAN CALTAGIRONE: Thank you very  
6 much for your testimony.

7 MR. KATZMAN: Thank you.

8 CHAIRMAN CALTAGIRONE: We will next go to  
9 Logan Bullett, of Bullett and Wentz.

10 MR. BULLETT: Morning, Mr. Chairman,  
11 members of the committee and staff. My name is Logan  
12 Bullett. I am what is called the custody conciliator  
13 in Montgomery County. That is the title and the job  
14 that I've held for approximately seven years. I have  
15 between practicing law for 15 years with an emphasis on  
16 family law in my practice. I still am a practitioner  
17 today. The mere fact that I am a custody conciliator  
18 doesn't preclude me from practicing or doing equitable  
19 distribution or support work in Montgomery County.

20 I assume I was asked here today to  
21 comment on custody matters, but I do want to engage or  
22 at least render an opinion with respect to the one-year  
23 separation that you've just been discussing. In  
24 Montgomery County, were you required to wait one year  
25 before the divorce decree could be entered and the



1 matter moved along to equitable distribution, one year  
2 doesn't mean one year. It probably means a year and a  
3 half to two years, because our court will not  
4 automatically enter a divorce decree. We don't  
5 bifurcate divorces in Montgomery County. I know other  
6 counties take a different position. Practically  
7 speaking, in Montgomery County, when the one year is  
8 passed, the court will then enter an order moving the  
9 matter on to equitable distribution. Then you must go  
10 in front of the equitable distribution Master. That  
11 can take anywhere from three months to six months, and  
12 I know Gordon Mair is going to testify today and I'm  
13 certain that he will fill you in on that process. Once  
14 you take an appeal from the equitable distribution  
15 Master, if you take an appeal, it could take another  
16 three to six months to have it resolved by the court.  
17 So practically speaking, before a divorce decree is  
18 entered in Montgomery County, if you litigate the  
19 equitable distribution issues, you're talking about two  
20 years to three years if you get divorced, if you're  
21 lucky.

22 Now if I can move on to the custody  
23 conciliation. I've been doing this since 1984. It is  
24 really more of a mediation in the sense that when I  
25 started this process seven years ago I listed six to

1 eight cases a day and I sat two days a week. Now I  
2 list 11 cases a day and I am able only to give people  
3 or parties approximately half an hour or 40 minutes of  
4 my time, depending on the schedule. Very difficult to  
5 sit down with a couple and resolve all of their  
6 custodial problems in a half an hour. I would say  
7 approximately 60 to 70 percent of the cases settle at  
8 that level, at the conciliation conference level. And  
9 my practice usually is where it's a legitimate custody  
10 battle, to refer the matter to a psychologist to  
11 prepare custodial evaluation for issue to the court.  
12 It takes approximately six to eight weeks to appear in  
13 front of me. If I list the matter before a court, it's  
14 going to take another 10 to 12 weeks to get your first  
15 hearing or conference in front of a judge.

16 I think we've been very successful in  
17 eliminating the battle of the experts, that is each  
18 side going out hiring a psychologist to come in and say  
19 mom's great, dad's great, the kids should go here or  
20 the kids should go there. If we have one person doing  
21 the valuations, we've been reasonably successful in  
22 having the cases settle before they go to court. So I  
23 would guess that 60 to 70 percent of the cases settle  
24 at the conciliation level. At least half the cases  
25 settle after the evaluations, and the court is left

1       trying about 10 percent of the cases that get filed.

2                   The two biggest problems I see that we  
3       face are in all areas of divorce law, but particularly  
4       in the custodial questions that arise are the delay  
5       involved in getting to a decisionmaker. I'm not a  
6       decisionmaker. When the parties come in front of me I  
7       take the position that I can only do what they want to  
8       do. If they are willing to reach an agreement, we'll  
9       draft an order right there. I know Chester County has  
10      a different program. They will, the Masters or the  
11      conciliator down there can draft an order, walk right  
12      into a judge and they have an order. So they are a lot  
13      quicker in that sense, but I feel more confident that  
14      what we do in Montgomery County is going to be longer  
15      lasting. The parties can enter into an agreement that  
16      they enter into voluntarily rather than having it  
17      imposed on tends to last longer.

18                   When I started in '84, we had about 600  
19      cases a year filed. We now have 900 cases a year. The  
20      Grandparent's Visitation Act and the Shared Custody Act  
21      I think has led to some increase in litigation, but I  
22      also noted in the last census that the number of  
23      single-parent families in Montgomery County has grown  
24      substantially, so I think that is an indication that  
25      leads to the increase in litigation, at least in

1 Montgomery County.

2                   The second major problem, the delay  
3 involved. I mean, if you were going to litigate a  
4 custody case, you probably will not be able to get a  
5 full hearing and get it resolved for at least nine  
6 months. If you're lucky. The other problem I think  
7 the litigants face and the practitioners face is a lack  
8 of consistency in decisions. It's very difficult for  
9 judges to be consistent in their approach to custody  
10 problems. But we now have seven judges that sit and  
11 hear custody matters and each one of them is going to  
12 approach the problem a little differently, and you do  
13 tend to get decisions that are all over the place on  
14 similar facts, and that's very frustrating to us as  
15 practitioners, it's got to be frustrating for the  
16 parents to know that it depends on what judge they get  
17 as to what their decision is going to be.

18                   I think to some extent these problems  
19 could be alleviated if Montgomery County had a family  
20 court. In other words, a bill, I believe, I don't know  
21 if it's presently under consideration or not, to  
22 require family courts in counties of a certain size. I  
23 think that if we could have one administrative judge  
24 dealing with two or three judges who were devoted only  
25 to family law, I think that would be a great idea and I

1 think would help solve some of the administrative  
2 problems that we face on a day-to-day basis.

3 I would like to answer any questions you  
4 might have. I would just subject myself to your  
5 questions.

6 CHAIRMAN CALTAGIRONE: Representative  
7 Heckler.

8 BY REPRESENTATIVE HECKLER: (Of Mr. Bullett)

9 Q. Well, I recall the legislation concerning  
10 the creation of a family court, and I represent an area  
11 of Bucks County and I recall our judges being fairly  
12 adamantly opposed to that legislation, and I suppose  
13 the question that occurs to me is why do we need to be  
14 passing a law in essence meddling with the ability of  
15 the president judge to run its court? I don't think  
16 there's anything that would preclude your judges either  
17 simply sort of by informal agreement amongst them or  
18 the president judge by his authority to assign cases  
19 from designating two or three, you know, whatever the  
20 appropriate number of judges to principally hear, let's  
21 say hear all domestic relations cases, then if they  
22 have extra time obviously they could hear other matters  
23 which is essentially, I believe, what happens in Bucks  
24 County, rather than having the legislature tell not  
25 only Montgomery County but all 66 other counties what

1 to do. Where's the flaw in my thinking on that?

2 A. No, I think you're absolutely correct  
3 insofar as you go. I don't know, I think in Montgomery  
4 County if the president judge were to assign three or  
5 four judges only to deal with family law matters for  
6 the rest of their careers I think there would be an  
7 exodus of three or four judges from the bench. It's  
8 not something that the judges, with a few exceptions,  
9 that they really look forward to doing. It's not high  
10 on their list of the chores that they would choose to  
11 do, that is to devote themselves exclusively to family  
12 law.

13 Q. Well, again, I think, I didn't know that  
14 the sentence to the family law court in Bucks County is  
15 necessarily a life sentence, but at least my  
16 perception, my experience, is that several of our  
17 judges who do that work have elected, have developed  
18 expertise, and in one a former DA, for instance, with  
19 whom I used to share an office for a number of years  
20 has been doing for a number of years now since his  
21 arrival on the bench doing primarily domestic relations  
22 work. So, again, one of the concerns that was raised  
23 when that legislation was floating around here, and I  
24 don't know when it was reintroduced, was the idea that  
25 frankly, and your response suggests to me that what you

1 need to do is have the judges from Montgomery County  
2 all go off on a retreat, you know, have a few beers  
3 together and work this thing out, because I would agree  
4 with you, it does not make sense to have all the  
5 members of your bench periodically, as penance or  
6 whatever, as the least desired job, you know, taking  
7 some domestic cases that they don't enjoy, don't  
8 develop expertise in resolving in a consistent way  
9 which then gives you and the Masters a predictable base  
10 so that you can say to the litigators and the  
11 litigants, you know, this is my recommendation or this  
12 is generally -- your results will fall within a range  
13 from here to here, why don't you work this out? I  
14 would certainly agree with you if you've got different  
15 judges because of different philosophies and lack of  
16 experience coming out with a range like this  
17 (indicating), you make it a lot harder to get most  
18 cases settled.

19 A. I don't mean to imply by my remarks that  
20 our judges are totally inconsistent in their results.  
21 What I meant to imply was, for instance, if a party,  
22 husband or wife, moves out of the jurisdiction, takes  
23 the kids with them, and then an emergency petition is  
24 filed, one of our judges might view that as an  
25 emergency and order the kids back into the jurisdiction

1 and another judge might not. So it's really the  
2 peripheral things that you get inconsistencies.

3 One experience I had that led me to  
4 suggest that a family court might be appropriate, I  
5 represented a doctor, and no children were involved,  
6 and he had substantial assets, it was a second marriage  
7 for him, it took us two to three years to litigate the  
8 case and another year and a half to get that decision,  
9 and during that period of time the law changed, and  
10 when I say the law, I'm talking about now the Tax Code,  
11 and provided for qualified domestic relations orders  
12 which could divide pensions, and we received an order  
13 from the judge, who was not a family law practitioner  
14 before he went on the bench, which essentially  
15 bankrupted my client. He went down to bankruptcy court  
16 and discharged his obligation down there. But what  
17 frustrated me was the lack of understanding by the  
18 court of a tax law matter related to divorce, and I  
19 think that if there were a family court, that you could  
20 solve problems like that. You would have judges  
21 sitting for more than a year or more than a year and a  
22 half or more than two years who would be abreast of the  
23 law and could deal and could develop.

24 We, as practitioners, you know, judges,  
25 you tend to get their tendencies and how they are going



1 to react to certain situations. It will lead to more  
2 predictability. I think our judges do a good job now  
3 under the circumstances, but they will sit for a year  
4 in family law and civil and then they will move on, so  
5 you lose whatever expertise they've built up over that  
6 period of time. And I suspect that's true in Bucks  
7 County, too, they don't sit forever. I assume they sit  
8 for a year or two years and then would move on to civil  
9 or criminal or whatever.

10 Q. No, my perception, again, I don't do much  
11 of any domestic practice now, not much of any practice  
12 now, but my perception is that there are several judges  
13 who have been consistently seeing, that's not  
14 necessarily the only thing they do, but they currently  
15 are laboring over of the disposing of the bulk of the  
16 domestic cases. Well, I don't recall that proposal,  
17 and I don't want to belabor this if there are other  
18 points that the Chair wants to get to, but are you  
19 suggesting that something like Orphans' Court, which  
20 has the ability at least in some counties, I guess, of  
21 you actually run to be a judge of the domestic court?

22 A. No, I'm not suggesting that. I'm not  
23 suggesting that you should run for it, but what I am  
24 suggesting is that there should be so many family law  
25 positions on the bench and that that's what your

1 primary function is as judge, okay?

2 Q. Okay. Thank you.

3 (Whereupon, Representative Reber assumed  
4 the Chair.)

5 ACTING CHAIRMAN REBER: Are there any  
6 other questions?

7 BY MS. WOOLLEY: (Of Mr. Bullett)

8 Q. In prior days of testimony we had three  
9 days of testimony from litigants, many of whom were  
10 dissatisfied alleging that their spouse -- fathers,  
11 that their spouses made inappropriate use of the  
12 Protection From Abuse to gain leverage in custody and  
13 divorce and distribution of alimony. Could you speak  
14 to your experiences as custody conciliator?

15 A. Sure. When the case has gotten to me,  
16 the divorce complaint has usually been filed and the  
17 parties have some sort of history behind them. When I  
18 hear allegations of abuse, child abuse for the very  
19 first time, and that that is a reason that a father  
20 should not have contact with a child or a mother should  
21 not have contact with a child, I'm always very  
22 suspicious and I suspect that they are being made  
23 solely for the purpose of getting some leverage in the  
24 custody proceeding. Because if in fact I hear  
25 allegations of abuse that happened a year ago, two

1 years ago, well, you know if they were serious my  
2 assumption is that they would have been reported then  
3 and dealt with then. So I'm always a little bit leery  
4 of those types of allegations.

5 I don't receive a lot of them though. I  
6 mean, I'm not saying that I don't get them, but in a  
7 year if I have 10 allegations of abuse, serious abuse,  
8 it's a lot. And I always tell the litigants, I'll tell  
9 them that I don't really want to deal with them,  
10 they've got to go right to Children and Youth and file  
11 a complaint because that's their obligation. I hear  
12 many more allegations of physical abuse between the  
13 parents that the children have witnessed. I mean, that  
14 is very common. I'm not a court of record and I'm not  
15 a trial court, so and we don't cross-examine people,  
16 people don't testify. It's a very informal conference.  
17 So it's tough to resolve those issues and determine  
18 whether or not the abuse took place. But generally, if  
19 it's a serious abuse problem, the case will not settle  
20 in front of me, will end up going to court and they  
21 will litigate that particular issue.

22 Do I -- I just had a case recently, as a  
23 matter of fact, earlier this week, where a lady had  
24 left the home for seven months and then elected to move  
25 back in, came back, filed an abuse petition and

1 received an ex parte order removing the husband from  
2 the house, which he did, and he started yelling and  
3 screaming and she got the police and he was removed. I  
4 talked to the child, the child said the father had not  
5 abused the mother and he felt it was being done solely  
6 to exclude the father, get a better bargaining  
7 position. So it does happen, yes. Does it happen  
8 frequently? Out of 900 cases a year, I would suspect  
9 it happens 5 or 6 times that comes to me.

10 Q. If we could touch on the example you just  
11 gave us, this goes outside of your scope of custody  
12 conciliator in that instance when she got the ex parte,  
13 was that an ex parte by a district justice or a Common  
14 Pleas judge?

15 A. A Common Pleas judge.

16 Q. So if the Common Pleas judge has to enter  
17 the ex parte order, the full hearing occurs?

18 A. Within 10 days.

19 Q. Okay.

20 ACTING CHAIRMAN REBER: Any other  
21 questions?

22 (No response.)

23 ACTING CHAIRMAN REBER: Okay, Logan,  
24 thank you very much.

25 MR. BULLETT: Thank you.

1           ACTING CHAIRMAN REBER: Appreciate it.

2           The next witness on the agenda is Dabney  
3 Miller, Esquire, Program and Development Director for  
4 the Women's Law Project.

5           MS. MILLER: We have multiple copies, as  
6 requested, of our testimony here.

7           ACTING CHAIRMAN REBER: You can proceed.

8           MS. MILLER: Thank you. Good morning.  
9 My name is Dabney Miller, and I am the Program and  
10 Development Director of the Women's Law Project in  
11 Philadelphia. Joining me is Carol Tracy, who is the  
12 Executive Director of the Law Project. And I will  
13 deliver the agency's testimony and Ms. Tracy will join  
14 me in answering questions if you have any.

15           We are delighted to be here today among a  
16 group that we are certain shares a strong sense of  
17 justice and concern for the rights and needs of  
18 children. The figures that I'm about to share with you  
19 demonstrate graphically the economic hardships faced by  
20 children and mother-headed families. I hope they will  
21 light a fire under all of us to work together to better  
22 insure the economic security of these children.

23           Before I begin, I'd like to tell you a  
24 little bit about the Women's Law Project and how I have  
25 come to understand the issue of child support. The Law

1 Project is a nonprofit legal advocacy organization that  
2 seeks to advance the legal and economic status of women  
3 relying on litigation, systems advocacy, public  
4 education, and individual counseling. One of the hats  
5 that I wear at the Law Project is that I am the  
6 director of our telephone counseling service, and in my  
7 six years with the agency our counselors have spoken  
8 with over 30,000 women about a wide variety of  
9 problems, including child and spousal support, custody  
10 separation and divorce, and I have provided supervision  
11 with respect to all of those calls.

12 For the past five years, the Women's Law  
13 Project has also operated the Philadelphia Child  
14 Support Project through which we have provided  
15 extensive information to over 10,000 single parents in  
16 terms of child support. We have also made  
17 presentations to countless community groups, teachers,  
18 social workers, and single parents about how to obtain  
19 and enforce child support orders. We have tracked the  
20 most egregious problems facing single parents in the  
21 child support process and we have worked with the  
22 Family Court in Philadelphia towards correcting those  
23 problems.

24 Today I'd like to address several  
25 questions. First, I want to examine the economic

1 consequences for children living in single-parent  
2 homes, and I would like to point out that all of the  
3 numbers on which I will rely comes from the Census  
4 Bureau publications. Second, I will talk briefly about  
5 how the courts determine the amount of child support  
6 that should be paid by an absent parent in  
7 Pennsylvania. I will also briefly comment on the  
8 relationship between child support and custody. And  
9 finally, I have just a few recommendations relating to  
10 the Pennsylvania divorce law.

11 Since the early 1970s, the number of  
12 single-parent families in the United States has more  
13 than doubled. Single-parent families now account for a  
14 little over a quarter of all American families, and  
15 women account for 87 percent of single parents. The  
16 most common theme among mother-headed families is their  
17 economic vulnerability and the constant threat of  
18 poverty with which they always live. The average  
19 family income for mother-headed families in 1988 was  
20 \$11,989, compared with \$23,919 for father-headed  
21 single-parent families, and \$40,067 for two-parent  
22 families.

23 The average amount of child support  
24 received by mothers with current child support orders  
25 in 1987, which was the most recent year for which we

1 have national figures, was \$2,063. This represents an  
2 increase of only 3 1/2 percent since 1983, adjusting  
3 for inflation. If all ordered support had been paid,  
4 the average amount received would have increased to  
5 \$3,017. In 1987, \$4.6 billion of court-ordered child  
6 support was not paid. Only half of all fathers pay the  
7 full amount of support ordered by the court or agreed  
8 upon outside of the court. About one-quarter paid part  
9 of what they owe, and the final 25 percent paid none at  
10 all, despite the existence of a current child support  
11 order.

12 But what does all this mean for children?  
13 Thirty-four percent of all children in mother-headed  
14 families are living in poverty. In order to grasp the  
15 severity and precariousness of their position, it is  
16 necessary to examine what it really costs to raise  
17 children. What kinds of bills do custodial parents  
18 have to pay? I've put together some figures which are  
19 very conservative estimates of the minimal direct cost  
20 of raising children. I'll go through them just quickly  
21 mentioning the annual totals. More detailed  
22 information is available in the written testimony.

23 Child care, at a minimum for full-time  
24 care is going to cost \$3,354 a year, and I have  
25 received estimates that run very much higher than that



1 for the cost of child care. For minimal part-time care  
2 it might be as little as \$1,200 a year, say for  
3 after-school care for a child. Food can run to \$1,800  
4 per year, clothing at \$780 per year. That's only \$65 a  
5 month, and I should point out that shoes and winter  
6 coats and so forth are tremendously expensive these  
7 days. Transportation in Philadelphia for tokens for a  
8 child who just needs to get around in the city comes to  
9 \$432 annually. A very minimal budget for school  
10 supplies comes to \$45 annually. Then we have school  
11 trips and hair cuts, or we have diapers for smaller  
12 children, and the totals come to \$6,776 for a  
13 school-aged child, or somewhat less, \$4,485 for a  
14 preschool-aged child.

15                   Unfortunately, these approximate costs do  
16 not include the following major expenses. They don't  
17 include any health care, any prescriptions or doctor  
18 visits or any insurance costs. They do not include any  
19 indirect costs such as a child's share of a mortgage or  
20 rent, utilities, family vacations, or a child's gifts  
21 to other people. They include no books or toys, no  
22 extra curricular activities, no entertainment.

23                   Given these facts, I think we all have to  
24 ask, what is a custodial mother to do to support her  
25 children? In our economic system, women on average

1 still earn only 65 cents for every dollar earned by  
2 men, so a custodial mother is unable simply to work  
3 extra jobs if she wants to close the gap, although I  
4 have to say that I have heard from numerous women who  
5 have tried to do that at great sacrifice to themselves  
6 and their children.

7           So the question then becomes why is it  
8 that child support falls so short of providing for a  
9 reasonable share of the needs of children even when  
10 it's paid in full? In order to answer this question,  
11 it is necessary to understand how Pennsylvania's  
12 uniform statewide guidelines were developed.  
13 Pennsylvania's guidelines were based on the widely used  
14 income shares model developed by Robert Williams, who  
15 relied on calculations by Thomas Espenshade concerning  
16 expenditures on children as a percentage of  
17 consumption. The assumptions relied on by the income  
18 shares model to calculate the costs of raising a family  
19 are fundamentally flawed. Income shares relies only on  
20 income designated for current consumption, the  
21 definition of which specifically excludes savings and  
22 important expenditures that benefit children. An  
23 astonishing 42 percent of income is, by this  
24 definition, considered unavailable for child support.  
25 In addition, income shares relies on 20-year-old

1 figures measuring the cost of raising children in  
2 intact families, which do not accurately reflect the  
3 cost of divided families.

4 For example, in two-parent homes, the  
5 parents usually take turns going out to shop or to take  
6 care of other family needs, but in single-parent  
7 families it is necessary to hire a babysitter in order  
8 to accomplish these kinds of tasks. Single parents  
9 also rarely have the time or energy to shop for  
10 bargains and therefore end up paying more for both food  
11 and clothing. None of these very real factors in  
12 people's lives are taken into consideration in the  
13 creation of the Pennsylvania child support guidelines.  
14 As a result, the guidelines levels of support are  
15 simply too low in most cases.

16 I might add that I have a comprehensive  
17 analysis of the amendments to the guidelines that are  
18 currently being considered by the Supreme Court. That  
19 is attached to the testimony.

20 I want to belabor the point just a bit  
21 little longer that these statistics and sophisticated  
22 calculations have significant consequences for  
23 single-parent families. Single mothers must make very  
24 hard decisions about what they and their children will  
25 do without in order to make ends meet. They often

1 sacrifice their own needs, including health care,  
2 sometimes with results that jeopardize their own  
3 well-being and ability to care for their children. If  
4 we are to assure the future of our next generation, we  
5 must all work to increase child support to adequate  
6 levels and to improve the collection of support for all  
7 children.

8 I want to turn briefly to the  
9 relationship between child support and custody, because  
10 I was asked to address that. At the Women's Law  
11 Project, I sometimes hear from women who are extremely  
12 frustrated at their inability to collect regular child  
13 support from their children's absent fathers. These  
14 women want to know if they have the right to refuse to  
15 allow these absent parents to visit with their children  
16 as a way of compelling them to pay support. I am also  
17 aware that fathers are sometimes tempted to withhold  
18 child support because they are not happy with  
19 arrangements for visiting their children. It is our  
20 position that child support and custody or visitation  
21 should be treated as two separate issues. We share the  
22 court's traditional view that both are rights of  
23 children and that neither parent has the right to deny  
24 their children either support or contact with the other  
25 parent simply in retaliation for the other parent's

1 denial of the other right. In instances where there  
2 is, in fact, abuse, we would, of course, deviate from  
3 that line.

4           Instead, we believe that we must work to  
5 streamline access to the court so that all parents,  
6 with or without lawyers, can seek appropriate remedies  
7 on behalf of their children in response to both failure  
8 to provide financial support and failure to allow  
9 visitation as ordered or agreed upon. It is the lack  
10 of such access that creates such enormous frustration  
11 and sense of powerlessness for parents trying to do  
12 what is best for their children. I hear about that  
13 time and time again that people cannot get into the  
14 courts and quickly get results when they need help.

15           I would like to offer two recommendations  
16 relating to the Pennsylvania Divorce Code, the first  
17 relating to the court's power to order one party to pay  
18 interim and final legal fees to the other divorce, and  
19 the other relating to bifurcation of the divorce. The  
20 1988 amendments to the Divorce Code allowing judges to  
21 order one party to pay the other's legal fees during  
22 litigation or at its conclusion was an important  
23 addition to the statute. Unfortunately, the judiciary  
24 has not made use of this amendment as it was intended.  
25 The consequence of the judiciary's failure is that the

1 financially dependent spouse in divorce is frequently  
2 unable to retain legal counsel and may therefore lose  
3 any hope of future financial stability to which she may  
4 well be entitled under the law. This is particularly  
5 true of older women who have been homemakers and who  
6 are not in a position to re-enter a dramatically  
7 changed workforce and earn income adequate to support  
8 themselves and prepare for their later years. The  
9 legislature should explore ways to strengthen the  
10 various provisions regarding the court's power to order  
11 one party to a divorce proceeding to pay interim and  
12 final legal fees, especially interim ones, for the  
13 other so as to send an unmistakable message to the  
14 judiciary as to the legislature's intent.

15           Secondly, I strongly urge the legislature  
16 to eliminate bifurcated divorce in Pennsylvania. I  
17 have heard from a number of women who have struggled  
18 for years, once divorced, to finalize the economic  
19 aspects of their divorces. The consequence of this has  
20 been financial ruin for many economically dependent  
21 spouses because it allows the spouse who can afford to  
22 push for divorce the legal right to gain his or her  
23 freedom and at the same time retain control of the  
24 marital assets indefinitely into the future.

25           I also would like to add a couple of very

1 quick comments. To say that I have not seen the  
2 current mediation bill. I did offer testimony in 19 --  
3 I guess it was 1989 on what was then proposed mandatory  
4 mediation of custody, child support and economic  
5 distribution of assets at divorce. The Law Project's  
6 position is that we oppose mandatory mediation in any  
7 of those areas and we support the availability of  
8 voluntary mediation as an alternative for people who  
9 choose it.

10 Finally, the Law Project has, I testified  
11 in 1988 and would like to reiterate my concern that the  
12 legislature not reduce the waiting period for  
13 unilateral no-fault divorce to one year for all the  
14 reasons that have already been stated regarding concern  
15 for economically dependent spouses, whether they be men  
16 or women.

17 Thank you very much. We would be very  
18 happy to answer any questions you might have.

19 ACTING CHAIRMAN REBER: Ken.

20 BY MR. SUTER: (Of Ms. Miller)

21 Q. You advocate the elimination of  
22 bifurcated divorces even when both parties agree to a  
23 bifurcated divorce?

24 A. It seems to me if there is full and  
25 knowledgeable consent on the part of both parties to a

1 divorce, to bifurcation, that that might be an  
2 appropriate option to retain. My concern is that so  
3 many economically dependent spouses, because they can't  
4 get good legal counsel, don't understand what it means,  
5 because they have never had to handle assets and all  
6 don't understand the potential consequences of that.  
7 And our experience certainly follows what you indicated  
8 earlier regarding the greater ease with which  
9 economically dependent spouses get spousal support as  
10 compared to alimony. So it would depend on whether  
11 people could really know what they were doing.

12 Q. Well, that's kind of difficult to  
13 legislate.

14 A. Absolutely. I agree. I mean, I think  
15 it's a bind, but I think we need to be aware of it.

16 Q. And my second point is I think we have  
17 more of a problem of support enforcement than we do  
18 with increasing the amount of support, although I  
19 understand your concerns.

20 A. Um-hum.

21 Q. Is there anything that we can do to help  
22 the collection rate in terms of enforcing the orders  
23 that are already established? I know I think about  
24 this all the time and try and develop things. Maybe  
25 you have some thoughts that might be helpful.



1           A.    Legislatively?

2           Q.    Yes.

3           A.    It's really difficult.  I mean, the  
4 Federal government has promulgated regulations that are  
5 very specific in terms of time lines for when things  
6 are supposed to happen that are supposed to keep these  
7 cases going.  I think the time lines aren't met much of  
8 the time and I think that remains a problem.  It's not  
9 clear what your role could be in remedying that.  It  
10 seems to me that there may largely be procedural  
11 changes.  For example, I think that we could make it  
12 easier to have the failure to pay child support be  
13 reflected in someone's credit rating.  That happens  
14 sometimes, but it doesn't happen as often as it might,  
15 and it's a remarkably powerful tool.

16           Q.    I drafted something to that effect.  
17 Whether or not it will fly, I don't know.

18           A.    Well, I'm glad to hear that.

19           Q.    Okay, I just hear of these statistics  
20 where we're collecting 60, 70 percent of the cases and  
21 people say that's wonderful, but when you look at 60 or  
22 70 percent of the cases, that is not as great as it  
23 sounds, I mean, in comparison to other States.  But  
24 there still are 30 percent of the cases where there is  
25 no collection made.

1           A. That's exactly right. I think that the  
2 provision of automatic wage attachment has been a very  
3 positive change. I would hope that people view  
4 automatic wage attachment not as a punitive measure but  
5 as a constructive way to easily and simply pay child  
6 support and not have to worry about getting your check  
7 in the mail at the right time. So I'm hopeful that --  
8 that's going to take a couple of more years to be fully  
9 implemented, I think, and I'm hopeful that we will see  
10 a difference as a result of that.

11           Q. Thank you.

12           ACTING CHAIRMAN REBER: Representative  
13 Hagarty.

14           REPRESENTATIVE HAGARTY: Thank you.

15           BY REPRESENTATIVE HAGARTY: (Of Ms. Miller)

16           Q. One question. You state that you oppose  
17 mandatory mediation, but you didn't state the  
18 particulars.

19           A. I didn't. I can state briefly what my  
20 thinking is and then I would be glad to get you a copy  
21 of the testimony that I prepared then if you would like  
22 more extensive analysis.

23           Q. Okay, thank you.

24           A. Our view is that particularly in  
25 instances where there has been domestic violence,

1 mandatory mediation can be very harmful because there's  
2 a lot of literature that shows that it's pretty  
3 difficult to be on an equal footing with someone who  
4 has been physically abusive to you, and presumably  
5 through the courts we have some mechanism to offer  
6 protections. They may not be working very well, but we  
7 do have mechanisms and we do have the law to offer some  
8 protection to people who might otherwise be vulnerable.  
9 The bill that was drafted in 1988 had a provision in it  
10 that people weren't to involve counsel until after any  
11 mediated agreement had been signed. We strongly  
12 opposed that because we thought counsel should be  
13 involved from the beginning.

14           Mandatory mediation also flies in the  
15 face of what we have constructed as a way of dealing  
16 with child support in Pennsylvania and across the  
17 country. We have guidelines and we don't think that  
18 you should mediate what a child needs. Children need  
19 what they need and parents have an ability to pay.  
20 Those are some of my concerns.

21           Q. I agree with those thoughts. I guess,  
22 and I understand your principal concern then with  
23 mediation is the unequal positions of the partner then  
24 in that process?

25           A. That's right.

1 Q. If there were counsel?

2 A. If there were counsel and there were  
3 truly voluntary participation, I think it probably  
4 could be very successful for some people because I  
5 think when people work together to find solutions to  
6 problems and they come to a place where they feel good  
7 about what they've decided, they are probably more  
8 likely to abide by it, and I think that is an important  
9 reason.

10 Q. I guess my other reason for finding it,  
11 at least an appealing option to consider, and I haven't  
12 fully made up my mind yet in what form, is it seems  
13 that the litigious nature though of the advocacy  
14 proceeding in a court of law appears to be so  
15 destructive to the family that this offers an  
16 opportunity for a little less destructive results.

17 A. I think that's a possibility. Again,  
18 where it's voluntary. I think, you know, a number of  
19 people might choose it and that might really be  
20 helpful. The analogy that I can think of is that where  
21 people voluntarily agree to pay child support they are  
22 likely for a time to pay it, and then sometimes later  
23 things fall apart and they don't pay it and then  
24 they're going to end up in the court system anyway, and  
25 I think people who self-select to agree are going to be

1 more likely to follow through.

2 Q. Okay, thank you.

3 A. Sure.

4 ACTING CHAIRMAN REBER: Any other  
5 questions?

6 (No response.)

7 ACTING CHAIRMAN REBER: Okay, thank you  
8 very much.

9 MS. MILLER: Thank you.

10 ACTING CHAIRMAN REBER: Moving right  
11 along, our next witness to appear before the committee  
12 is Lynne Gold-Biken, who is Secretary of the  
13 Pennsylvania Bar Association Family Law Section, and  
14 also is currently Vice Chairman-elect of that section.

15 Lynne, pleasure to have you with us.

16 MS. GOLD-BIKEN: Thank you very much.

17 Good morning. My name is Lynne  
18 Gold-Biken, and I am president of Gold-Biken, Welsh,  
19 and Associates, a five-lawyer firm devoted solely to  
20 family law issues. I note that I've been listed as the  
21 Pennsylvania Bar Family Law Section, of which I am a  
22 member, but I do not speak for the Pennsylvania Bar  
23 Association today because I think they've taken the  
24 position that they don't have a position to take, and  
25 so I'll give you my own positions.

1                   I am Secretary of the American Bar  
2 Association Family Law Section, Vice Chair of that  
3 section. I've recently served two years as Chair of  
4 the Pennsylvania Trial Lawyers Family Law Section, and  
5 before that two years as Chairman of the Montgomery  
6 County Family Law Section. My credentials are at the  
7 end and I don't think you have to hear me recite them  
8 for you.

9                   But I really appreciate the opportunity  
10 to address this committee because there are some very  
11 important concerns about the system. I think the  
12 procedure by which our court system treats dissolving  
13 and reorganizing families is a very complex one. I  
14 have been practicing for 16 years and we figured that I  
15 have probably been involved in over 7,500 different  
16 divorcing families, although I do see a different  
17 segment of the population. I see the wealthier people.  
18 I do not deal in poverty law or with people who don't  
19 have a lot of money. I would be quite candid with you,  
20 that is the perspective that I will take. But I can  
21 tell you that with the number of cases that are pouring  
22 into the system, the system works amazingly well. I  
23 mean, we can all come in with stories and tell you  
24 horror stories and that is always true, but on the bell  
25 curve, on the whole in the long run, the system works

1 well.

2           There are some issues that I think this  
3 committee should address, some of them unfortunately  
4 are rulemaking, and as we have found out, such things  
5 as discovery, which I think is critical, is rulemaking,  
6 and if we try to do something in the legislature, we're  
7 going to hear about it from the judiciary. So in any  
8 way we can to encourage the judiciary to come back on  
9 some of these issues, but I will mention them because I  
10 think they do have an impact on our system the way it  
11 works.

12           First of all, it is true that 50 percent  
13 of the cases that come into the courts, civil and  
14 criminal, are family law. But when you look at the  
15 percentage of judges that are given over to the family  
16 law system, it is less than 20 percent, and it's  
17 illogical because the emotions and the complexities of  
18 family law litigation takes more than the judges we  
19 have.

20           The emotions involved in the dissolution  
21 of a marriage, child custody, support, abuse can't be  
22 rushed through a system that is incapable of handling  
23 it. Recently, I went down to Philadelphia with a  
24 defendant in an abuse case. It was like walking into a  
25 circus. There were 50 cases on the list of 2 judges.

1 There is no way that 2 judges are going to hear 50  
2 abuse cases in one day. It isn't possible. And the  
3 judge very candidly said to me, go back and come again  
4 another day. Well, how many times do you have to come  
5 back? And then the clients say, well, how come it  
6 costs so much money? Well, you stand there for three  
7 hours and wait for the judge to tell you he can't hear  
8 your case, someone is paying for that. Unfortunately,  
9 it's the client. And one of the judges that particular  
10 day was the senior judge and he said to me, I'm not  
11 getting paid for this. They have stopped writing my  
12 checks in Philadelphia. I'm a good sport. But if your  
13 case is continued until January, you're not going to  
14 see me again. Well, this is no way to treat people.

15           The lack of judicial resources results in  
16 other serious problems. It can take 9 to 18 months to  
17 fully litigate a custody case that's going to be  
18 litigated. That is appalling. To file a case and know  
19 that for a year and a half you're not going to get to  
20 court and have it resolved. There is just an  
21 insufficient number of judges assigned to family  
22 courts. For example, in Chester County -- I practice  
23 in nine counties, so I can give you different  
24 perspectives from different counties, but in Chester  
25 County they have one judge assigned 50 percent of the



1 time and one judge assigned 40 percent of the time. In  
2 my mathematics, that's not even one full judge to the  
3 entire Chester County Family Court system. And it's  
4 not that these judges aren't working hard. They are.  
5 But they can't do all the work. They simply cannot do  
6 it.

7 Think about the stress on the family, and  
8 especially on the children who are pulled through this  
9 process. Think about the things that parents can do to  
10 children in 18 months while you are waiting to get  
11 heard by a judge. Think about the things that parents  
12 can do to each other during those 18 months. And in  
13 addition, if you don't start a case and take it to  
14 completion, if you start a case on Monday and when at  
15 4:00 o'clock the judge says, we're finished for the  
16 day, I will see you in three months, I have to relearn  
17 that case because I am not sitting on the shelf waiting  
18 to be pulled off to try it again. So other cases are  
19 coming through my office, just as other cases are  
20 coming through the system. I have to relearn that  
21 case. The judge has to relearn that case. I mean, he  
22 or she may be taking good notes, but they are not  
23 remembering the details of what is going on. And the  
24 fact is, I have to charge the client for relearning the  
25 case. Meanwhile, new things have happened that I have

1 to relearn in that period of time. You have to order  
2 transcripts if you have a case of record. That costs  
3 the clients because you didn't start the case and take  
4 it to completion. I think that is unfortunate.

5           The procedures from county to county are  
6 different. Montgomery County is now going to a  
7 continuous system. Other counties are not doing it,  
8 and I'm here to tell you it is very stressful on the  
9 lawyers, the judges, and on the families. This is the  
10 only area of the law where the litigants have to pay  
11 for their finders of fact. So in most of the counties  
12 if you want a Master to hear your divorce, you pay for  
13 it. There are many litigants who cannot afford to pay  
14 for it, and then if it runs over your filing fee of  
15 \$500 in Chester County, or \$700 in Lehigh County, the  
16 litigants pay for that by the hour. Nobody else pays  
17 for it. If you slip and fall on a banana peel, you  
18 don't pay for your judge, but we pay for that in the  
19 family law area. In addition, we are paid by the hour.  
20 In our canons of ethics we are not permitted to take a  
21 percentage of a case, and we shouldn't take a  
22 percentage of what our litigants win because that would  
23 put us in a conflict situation with our clients.  
24 Consequently, we charge by the hour, and the only thing  
25 we have to sell is our time and expertise, but in some

1 of these cases the clients are very emotional and they  
2 want to talk to you all the time. Quite frankly, it's  
3 often cheaper to talk to a psychiatrist, but their  
4 bills run up and they don't understand it, and the  
5 longer the system goes on, the longer the process goes  
6 on, the more the meter runs, the more they pay. And  
7 they don't understand this. This is not an accident  
8 case where the insurance company pays for it. This is  
9 not a corporate case where the corporate bank account  
10 pays for it. These people pay for every step of the  
11 way, and it really is an indignity for them on top of  
12 it to have to pay for their Master system.

13 So I think that's something that -- I've  
14 made some proposals on this issue, but I want you to  
15 think about the fact that if a case takes a year and a  
16 half and if you have children in one household for that  
17 year and a half, by the time the case finally gets to  
18 completion the judge looks and says, well, it's  
19 perfectly fine, if it ain't broke, don't fix it, and  
20 leaves the kid there, so that if the parent has used  
21 self-help at the beginning of the case and gotten the  
22 child into their home, that may be it for the whole  
23 case. So I think that my proposal would be that we  
24 ought to seriously think about a Family Court system.

25 Now, you all have heard from Allegheny

1 County, which is a Family Court system, and one of the  
2 reasons so many of our cases come out of Allegheny  
3 County, one of the reasons that they were the lead in  
4 bringing forth the percentages and the guidelines and  
5 the form that we now currently use is because those  
6 judges have been on the Family Court for 11 years.  
7 They are dedicated to it, they know it. In most  
8 counties such as Montgomery County, the judges rotate  
9 through and you get them for a year or two years, and  
10 if your case is not complete at the end of two years,  
11 that case which is started with one judge goes to  
12 another judge, and these judges just rotate and rotate  
13 and never really get a handle on what is going on. A  
14 Family Court would be able to consolidate many of the  
15 issues. Indeed, one of the things family courts do in  
16 other States - California for one, New Jersey for one,  
17 Michigan for another - is that all of the issues are  
18 heard at one time. So that you don't go back over and  
19 over and over again. I'd like us to think about the  
20 New Jersey system. I'd like us to think about a  
21 commission to look at a Family Court system and how  
22 that would work and having judges who are dedicated to  
23 family law stay on the courts for their life.

24 Ex parte orders. Let me talk about ex  
25 parte orders, because this is a practice that I know

1 has been criticized before this esteemed committee and  
2 I would like to tell you that I would hate to see this  
3 legislative body take away the judge's power to issue  
4 ex parte orders. It specifically comes up in  
5 kidnapping situations, but let me give you two examples  
6 of where they have been critical that I know of, and I  
7 know that any of my colleagues who speak to you today  
8 will tell you the same thing.

9 I represent a father who has two  
10 children. We discovered that the mother was heading  
11 out of the country. She had ignored prior orders. As  
12 a result of an ex parte order, and a lot of good help  
13 from police across the country, we were able to remove  
14 her and the two children from a 747 in Los Angeles 15  
15 minutes before the plane took off for Hawaii, where it  
16 was heading for Australia. Had we not had that ex  
17 parte relief, had we had to wait one day, those  
18 children's pictures would have been on milk cartons in  
19 Sidney, and that is absolutely the truth.

20 Another case. Father has four children.  
21 He has them for the weekend. He's supposed to return  
22 them on Monday, we don't find them. He's gone. It  
23 turns out he is driving to Canada, where he has tickets  
24 for London. We find out because one of the kids who  
25 has been told he's being returned to his mother in

1 Colorado goes to the flight attendant and says, I think  
2 I'm being kidnapped. The pilot radios back, they get  
3 in touch with us and the mother, we get an ex parte  
4 order while this guy is flying to London. The  
5 Constable is waiting at the other end. When he  
6 deplanes, they take the four children in custody. He's  
7 got one-way tickets to New Delhi, India. Had we not  
8 had that ex parte relief, those children would be lost  
9 somewhere in India.

10 Please, do not take away the ex parte  
11 relief. That is not to say that you're not going to  
12 get an apocryphal story about somebody who has been  
13 damaged by it, but what the ex parte relief does is  
14 maintain the status quo while the court has the power  
15 to have a hearing. They might ultimately have allowed  
16 this guy to go to India, they might ultimately have  
17 allowed this lady to go to Australia, but the fact was  
18 that they were using self-help and we would never have  
19 gotten them back. Please don't touch that.

20 I mentioned -- I'm skimming over because  
21 it's in my remarks and you can see it -- that I think  
22 that discovery is a critical part of Family Court.  
23 Most cases, one family member knows the finances and  
24 the other does not. I happen to be doing a book for  
25 Mickey Publications and I'm doing a chapter on

1 discovery. We are the only one of the 50 States that  
2 does not have discovery like in civil cases. What?  
3 Are we second-class citizens? Why don't we have  
4 discovery? Why isn't the dependent spouse entitled to  
5 know what the finances are? Why should the person in  
6 the superior position be able to hide it? Why should  
7 we have to go and beg and plead for what every civil  
8 litigant has? I mean, some judges say, why are we not  
9 more civil? Why are we not treated more civilly?  
10 Discovery is absolutely a must in every divorce case.

11 Let me talk about the two-year  
12 separation. I was on the task force of the Commission  
13 for Women in 1980 when we were negotiating the Divorce  
14 Code, and one of the things that we talked about was  
15 making divorce possible for the captive spouse to get  
16 out but making it fair for the dependent spouse. We  
17 negotiated a three-year separation, and I agree that  
18 three years is a long time to get your house in order,  
19 but two years is not too long. One year would enable  
20 the departing spouse to be out of there without any  
21 opportunity for fair negotiations and even for a chance  
22 of reconciliation. Two years is plenty of time, but  
23 it's also enough time to give both parties a chance to  
24 work out their problems, and I would implore you not to  
25 change or reduce that two-year separation period.

1 I heard my predecessor talk to you about  
2 bifurcated divorces. I would like to talk to you about  
3 bifurcated divorces. Bifurcated divorces, except as  
4 you suggested, Representative, unless they're by  
5 agreement, should not be imposed by the court. To get  
6 a bifurcated divorce and allow one person to get out of  
7 that marriage without making a fair settlement for the  
8 dependent spouse left behind is an indignity, prolongs  
9 the process, costs incalculable dollars. New Jersey  
10 had a commission appointed to look into Family Court  
11 matters, and after a lengthy study and a very, very  
12 well-reasoned opinion they decided that bifurcation was  
13 not for New Jersey. I respectfully suggest to you it  
14 is not for Pennsylvania either. There are two countries  
15 that I know that do it automatically. It is on the  
16 burden of the person who doesn't want it to come in to  
17 show why they would be damaged.

18 The Wolk vs. Wolk case, W-O-L-K vs.  
19 W-O-L-K, says that you have to balance the equities.  
20 And some judges say, well, the guy wants out. That's  
21 enough. Well, it isn't enough. He remarries,  
22 everything gets put into tenancy by the entireties, he  
23 dies, then we have wife one and wife two fighting over  
24 what should have been wife one's in the first place.  
25 Once he gets what he wants -- and it's not always "he,"



1 sometimes it's "she" -- there is no impetus to settle  
2 the case, provide discovery, show up at hearings. Get  
3 it over with, folks. There is no reason why you can't  
4 get this thing to conclusion. If you start a case and  
5 take it to completion in that two years, get it done,  
6 don't bifurcate. Unless there is an agreement or  
7 unless there are egregious circumstances. I mean, I  
8 just got a bifurcation for a guy who's been trying to  
9 get out of his marriage for six years. Six years. And  
10 every time we go to a hearing her lawyer would be ill,  
11 she would be ill, her child would be ill, her  
12 psychiatrist would be ill, and there was always a  
13 reason. We finally got scheduled in September, the  
14 judge couldn't make it. We got scheduled in November,  
15 the other lawyer said, I can't make it, and at that  
16 point I said, Judge, this is nonsense. We are willing  
17 to waive the Dead Man Statute. We are willing to get a  
18 prenuptial agreement. We are willing to agree there  
19 won't be a bankruptcy. We are willing to give her all  
20 the protections, but this is just a harassment, and if  
21 he wants to have this postponed, either finish it  
22 before the end of the year so he can get the tax  
23 benefits of remarriage or bifurcate. The judge then  
24 had the discretion to do it, but I don't think it ought  
25 to be automatic as it is in Allegheny County and

1 Delaware County, and I think it ought to be under very  
2 special circumstances.

3 Those are my remarks. Thank you for the  
4 opportunity to address you. I covered it more  
5 extensively in my testimony and I'm happy to answer any  
6 questions that you might have.

7 (Whereupon, Chairman Callagirone assumed  
8 the Chair.)

9 CHAIRMAN CALTAGIRONE: Any questions from  
10 any of the committee members?

11 Representative Heckler.

12 BY REPRESENTATIVE HECKLER: (Of Ms. Gold-Biken)

13 Q. You mentioned that 50 percent of the  
14 filings, civil filings, I presume, are of a domestic  
15 nature, whereas only 20 percent of the judicial  
16 resources are devoted there. Isn't that significantly  
17 attributable to the fact that a very substantial body,  
18 and again, at least from my perception of the practice  
19 in Bucks County, a very substantial portion of the  
20 various issues raised in Domestic Relations matters are  
21 resolved short of a judge?

22 A. Bucks County happens to be unique.  
23 You're going to hear from one of their very fine  
24 Masters today, Mrs. McFadden, and they have a unique  
25 system in that the Master's system, as you will hear

1 later, spends an enormous amount of time settling each  
2 case, more so than is attributable to any other county,  
3 and so I don't think -- you know, the problem of  
4 looking at this county by county is kind of like the  
5 blind men looking at the elephant. The one who got the  
6 legs thought it was a tree, and the one who got the  
7 tail thought it was a snake. You can't look at Bucks  
8 County as an example of what goes on across the  
9 country.

10 Chester County, for example, the Master  
11 system, you pay for and you immediately go into  
12 litigation. So, yes, it's true that Bucks County  
13 doesn't have that many that get on to the judges, but  
14 when they do you get on to the judges, you go stand on  
15 a list in Bucks County and the judge calls the list and  
16 then dismisses you to the hall, where you spend the  
17 rest of the day, and then you get a little bit of time  
18 and ultimately you get to the Master, but that can take  
19 you a year or two. You don't get an enormous quantity  
20 of time to deal with the little issues that you have.  
21 When you get to the Master, you have a full day where  
22 you are really encouraged to settle that case. But  
23 don't look at Bucks County as an example for the rest  
24 of the counties, because Chester County, for example,  
25 you litigate every step of the way, and when you

1 finally try to get to a judge, where it can take you 9  
2 to 18 months to get to that judge, they'll give you one  
3 day at a time, maybe two, but not enough time to finish  
4 your case if you need that amount of time.

5 Q. Well, it would seem to me that if indeed  
6 there are inadequate resources in many counties because  
7 of however those, you know, the set-up is structured or  
8 those resources are being allocated, that the emphasis  
9 should be on Masters, conciliators as opposed to  
10 additional judges, shouldn't it?

11 A. Well, let me say something to you about  
12 that, because I don't disagree that there ought to be  
13 some conciliation, but I am not convinced that the  
14 conciliators ought to be lawyers. For example, I give  
15 you the California system. The conciliation courts in  
16 California, where every potentially contested custody  
17 case must go into conciliation court. Hugh McIsaac  
18 heads it up, and I was interested in it because I think  
19 it's a great system and I spent some time out there  
20 looking at it. The conciliators are mental health  
21 professionals, and they do what Ms. McFadden will tell  
22 you she does, they sit with the family and they counsel  
23 that family, because many custody disputes have got  
24 nothing to do with the children, as you know; they have  
25 to do with the carrying over of the anger. But they've

1 got people who are trained in resolving things. We as  
2 lawyers are not trained with resolving things. We are  
3 trained in representing people, so that when you impose  
4 a lawyer, not to say that the conciliators that we have  
5 are not competent, and you heard from a very competent  
6 one this morning from Montgomery County, but they are  
7 not specifically trained in getting people to reach  
8 agreement, so if you're going to go into conciliation,  
9 again, this commission that I'm asking you to look  
10 into, have someone go out to that California system.  
11 Speak to Hugh McIsaac. Bring him in here. Go to  
12 Michigan. Go to Rhode Island, who has a Family Court.  
13 Take a look at some of the systems where it really  
14 works. In California, the figures that I recall were  
15 that 65 percent of the contested custody cases resolved  
16 in the conciliation court, and less than 10 percent of  
17 those that resolved ever came back in the system. But  
18 that's not a lawyer saying, okay, what's your problem  
19 here, what's your problem there. That's somebody who  
20 was trained to conciliate.

21 Q. Agreed. I mean, that makes sense to me,  
22 at any rate, but in any event, I think we can agree  
23 that judges are no better than Masters at bringing that  
24 kind of result about. It seems to me in all of these  
25 matters they are the last resort.

1           A.    Agreed.  However, I would like to point  
2           out to you that those cases that do not resolve in a  
3           conciliation court, the 35 percent of the cases that  
4           don't settle, these people are not going to settle  
5           unless you take a hammer, and that's what the judges  
6           got.  There are some times where you have to agree to  
7           disagree and let somebody else call it for you, because  
8           you are not going to get these two people to agree no  
9           matter what.  There are a lot of angry, angry people  
10          that come through the system.

11          Q.    Two other things I'd like to explore with  
12          you, and again, this isn't an area that I have much  
13          knowledge in.  It is my impression that there is some  
14          discovery available in domestic relations matters.

15          A.    By statute.  I'm sorry, by rule.  The  
16          only discovery that we are entitled to are  
17          interrogatories.  That is by right.  In order to get  
18          any other discovery, you must petition the court.  Now,  
19          I've done that recently and the judge said to me, read  
20          your interrogatories.  Thank you very much, Your Honor,  
21          I read my interrogatories.  If I had enough I wouldn't  
22          be back here, Your Honor.  But I now have to charge the  
23          client to come back to court to beg and plead to get  
24          what I ought to have anyway.

25          Q.    So you want depositions--

1           A. I want the right to have a motion for  
2 production of documents. I don't want to have to beg  
3 and plead to see tax returns, K-1s, whatever I need in  
4 terms of documents. I want the right to see those  
5 American Express cards where he's been charging  
6 everything through the business. If depositions are  
7 necessary, absolutely. I am not sure that I want to  
8 see that in custody cases because you could really use  
9 it as a harassment, although I will tell you that in  
10 States such as Ohio and in Connecticut people say to  
11 me, I wouldn't think of going into a custody case  
12 without depositions. I mean, that's trial by ambush,  
13 and it really is.

14           Q. Okay. The one other issue that I'd like  
15 to touch on, you mention, and I forget which State you  
16 referred to, all issues being heard at one time.  
17 Practically speaking, how would that work?

18           A. I don't know. I don't know,  
19 Representative. I don't know. I do know that in  
20 complicated cases that take a year and a half, many  
21 issues come up. I'd like to see a full divorce trial  
22 where support and alimony and property division and  
23 special relief petitions are heard at one time rather  
24 than having to go back for four petitions for special  
25 relief; three shots at support - the Domestic Relations

1 office, the Master, and the judge - two shots at  
2 custody - the conciliation court and the judge - a  
3 couple of more special reliefs; one spouse abuse; and  
4 then ultimately the equitable distribution hearing.  
5 That's a lot of hearings for one family in front of a  
6 lot of triers of fact. I don't know, but I would  
7 certainly like to see this magical commission that I  
8 have in my mind explore how other States are doing it,  
9 because I think other States may be doing it better  
10 than we are.

11 Q. Thank you.

12 BY CHAIRMAN CALTAGIRONE: (Of Ms. Gold-Biken)

13 Q. If I could just, this intrigued me,  
14 because one of the things that we've been, my staff has  
15 been looking at, and some of the things that you're  
16 hitting on, you know, are just ringing home because we  
17 have been looking at Maine and California, I guess the  
18 other one is Texas. We've been looking at the other  
19 States that have different systems. It was mentioned  
20 yesterday. One of the judges and one of the attorneys  
21 both have brought this system up during the testimony  
22 that maybe we ought to use the same principles in the  
23 Family Court that they use in criminal court and set  
24 guidelines and set time lines. Say the 180-day rule  
25 and things like that.



1                   I think one of the most frustrating  
2 things that I've heard from both men and women involved  
3 in these domestic relations issues is that it goes on  
4 forever. There's no finality to it. Everybody wants  
5 to get things over with so they can get on with their  
6 lives, and they need somebody to determine this is the  
7 beginning point and this is the ending point, and if we  
8 know where we're at, whether they like the decision or  
9 not, but at least there's some finality to it so that  
10 it isn't protracted and political high jinx or legal  
11 high jinx that go on either within the courtroom or the  
12 system. That they say, all right, here, the papers are  
13 filed and whether it's one year or two years, however  
14 that is going to happen, but that they don't continue  
15 to be drug back into court on one, two, three, four,  
16 five different issues, that information is accessible  
17 to all sides so that they can determine, you know, what  
18 the truth is. So that the attorneys representing  
19 either side can make some valid assumptions when they  
20 are before either the Master, the judge, or whatever  
21 the case may be.

22                   I think your proposition is well-taken  
23 and what I'd like to see if we couldn't do through the  
24 legislature is work through the Trial Lawyer's  
25 Association to see if we couldn't come up with some

1 sort of a commission, committee, whatever, make some  
2 comparisons. And I know what happens all too often  
3 with committees not only in the legislature but in  
4 almost any facet of life, they study something to death  
5 and nothing happens. They issue a report and nobody  
6 reads it. What I'd like to see happen is make some  
7 comparisons to some of these other States to see  
8 exactly where we're at. Maybe we just have to fine  
9 tune our system, maybe we have to overhaul it, and  
10 maybe some of the suggestions from some of the judges  
11 that said there should be a definite Family Court with  
12 family judges assigned, period, and that's what they  
13 do. And that should happen. Maybe there should be  
14 some intermediate type courts that we should look at.  
15 Maybe we should just look at a new page in our  
16 Constitution to see exactly what we have to do to have  
17 a fairer system for all parties involved.

18 A. If I can respond to some of the things  
19 that you've said, Georgia and Texas happen to have jury  
20 trial systems, so if you're going to adopt something, I  
21 would hope that you would not do it the Texas style.

22 Q. No, I'm just saying these were, you  
23 know--

24 A. Yeah. But New Jersey happens to have a  
25 superb Family Court, and perhaps one of the first

1 things you might do is get hold of their commission  
2 report, which I think is about five years old, and get  
3 a handle on how they did their commission report and  
4 what they did. I had a copy, I loaned it to someone  
5 and it's gone with the wind, but it really is  
6 excellent.

7 In terms of time periods, if you're going  
8 to impose a time period, I would hope that you would  
9 impose it on the judges handing down their opinions. I  
10 am waiting 12 months for a response from one judge on  
11 an emergency petition for exclusive possession on a  
12 house. Why the two people haven't killed each other at  
13 this point, I don't know. I mean, the war of the  
14 carnations. But in terms of time limits, it's  
15 wonderful if everybody adhered to the concept of full  
16 and fair disclosure, handing over papers. I'm not sure  
17 that you can impose a time limit, and unfortunately in  
18 family law it never ends. You know the old story about  
19 one life begins when the children go away and the dog  
20 dies? Well, Family Court ends when the children are  
21 married and you're not fighting over grandchildren  
22 anymore. You can get people legal divorces, you can't  
23 get them psychological divorces. And custody is always  
24 modifiable because changes of circumstances occur.  
25 Support is always modifiable because changes of

1 circumstances occur. Things happen. In this economy  
2 you're seeing people who made wonderful agreements that  
3 they were fully able to live up to two years ago who  
4 are now unemployed or bankrupt. Bankruptcy wipes out  
5 certain parts of your agreements. So I don't think  
6 that you can think about finality in family cases.

7 Q. But the courts have to be flexible too,  
8 because as you're saying, situations change, and I've  
9 heard all too often over these last several months  
10 where economics have changed but the courts or the  
11 domestic relations office is saying, we don't care, you  
12 come up with this, and some guys are ending up going to  
13 jail and they are saying, hey, I don't have the money  
14 to pay it, my situation is changed, I'm laid off, I'm  
15 not making what I was making if I were in sales.  
16 Here's my income. They don't want to know that, and  
17 you know, there's got to be some understanding from  
18 people that are in the system. The problem that I see  
19 also is that when you give somebody a little bit of  
20 power, and in some of these situations in some of these  
21 counties they are like tyrants, from what I'm told.

22 A. There's no question. No question.

23 Q. I mean, they've got to be bridled a  
24 little bit to say, hey, use some common sense. This is  
25 absolute nonsense that you're trying to pull on people.

1           A.    You're right.

2           Q.    And they're not serving any purpose.  
3 They're creating more trouble.

4           A.    You're hearing apocryphal stories again.

5           Q.    Yeah.

6           A.    On the whole, in the long run, the system  
7 works well, but on that bell curve that I talked about  
8 earlier, you're going to hear from the angry people. A  
9 lot of these guys who come before you and say, they  
10 didn't understand that my situation changed, don't tell  
11 you that they still have their Cadillac, their rent is  
12 paid or their mortgage is paid, they still take their  
13 vacations. You know, when you take a look--

14           Q.    But when they're supporting two families,  
15 and that gets to be a real burden sometimes because if  
16 a man has started a second family with another woman  
17 and he loves her and she loves him, blah, blah, blah,  
18 they have another child by the second marriage, or with  
19 the woman with another man, and that happens, it  
20 happens on both sides of the equation, then all of a  
21 sudden what you have is people are being exasperated  
22 and financially, you know, who's on first? Who's  
23 covering what?

24           A.    These are tight times. I don't know if  
25 you're aware of the fact that the American Law

1 Institute of the American Bar Association is drafting a  
2 restatement of family law. As they have done the  
3 restatement of torts, they are now doing a restatement  
4 of family law. I happen to be one of five lawyers in  
5 the country on that panel, and one of issues that we  
6 are struggling over in the support component of that is  
7 how to deal with second families. Which family comes  
8 first? It's a tough issue. You know, you could say to  
9 the second family, look people, you know you had those  
10 other children to support before you had these. That's  
11 one answer. On the other hand, you can't make these  
12 kids go back simply because you have no money. It is a  
13 problem, but it's not answered by making rigid answers.

14 Q. No, I agree. You're right.

15 A. You've got to have people who understand  
16 the system, which is why if you had a Family Court  
17 where you paid the people enough. I mean, the amount  
18 of money that is paid to the people who sit in the  
19 Montgomery County Domestic Relations Office is  
20 appalling. People leave to become waitresses.

21 Q. You're right.

22 REPRESENTATIVE REBER: More appalling  
23 what we pay the judges.

24 MS. GOLD-BIKEN: That also.

25 REPRESENTATIVE REBER: But this

1 legislature refuses to call it up for consideration.

2 MS. GOLD-BIKEN: It happens to be  
3 absolutely true. I mean, if you want fine people on  
4 the bench -- it's not enough to have competent people,  
5 you've got to have excellent people, and you've got to  
6 have people who are willing to do exactly what you say.  
7 Listen. But when you take people who can be tyrants at  
8 the domestic relations level and pay them \$11,000,  
9 \$12,000, when the bulk of the money is coming from the  
10 Federal government through Title IV and the money is  
11 available but it's tied up and not given out--

12 BY CHAIRMAN CALTAGIRONE: (Of Ms. Gold-Biken)

13 Q. But who's making those decisions of the  
14 pay levels at the county? It's the county  
15 commissioners, correct?

16 A. No question.

17 Q. I mean, they set the pay scales.

18 A. No question, but it is a problem. It is  
19 a problem.

20 Q. Well, that's where the unified judicial  
21 system comes in. At some point we'll be able to  
22 address some of these problems.

23 A. I'm not disagreeing with you. I agree.  
24 But it is a problem, and if you want competent people,  
25 you must pay them competently, as you must pay our

1 judges competently.

2 Q. I agree. I've said that all along  
3 because what we see happening, and people don't want to  
4 hear this in today's economic environment, but many of  
5 the better people in the systems at all levels of  
6 government are bailing out, in judiciary especially,  
7 leaving for other jobs, either returning to private  
8 practice and/or going on to the Federal bench. The  
9 Federal magistrates start out at I guess it's like what  
10 a district justice would be \$125,000 a year, and I know  
11 that sounds like a lot of money, but for somebody  
12 that's learned in law and spent eight, nine years just  
13 learning the profession and starting out and everything  
14 with several years of experience to sit on the bench  
15 and not being able to make the kind of money that many  
16 attorneys are making, it's not worth it. It's not  
17 worth the headaches.

18 A. Exactly right.

19 Q. The other thing that I was thinking about  
20 was sending maybe Ken and our two counsels here with us  
21 today, one to California and one to Maine to study it.  
22 They could flip a coin and see which one comes back--

23 A. Check out Rhode Island.

24 MR. SUTER: I want California.

25 MS. GOLD-BIKEN: He wants California.



1 Check out Rhode Island. Rhode Island has a Family  
2 Court system, Delaware has a Family Court system,  
3 Michigan has a friend of the court system appointed to  
4 take care of children. I can give you, if you call me,  
5 I can give you a list of the places that have some of  
6 these unified court systems that may be helpful as to  
7 where you want to vacation.

8 REPRESENTATIVE HAGARTY: Then can we vote  
9 on where we're going to, Mr. Chairman?

10 CHAIRMAN CALTAGIRONE: Take the purse  
11 with us. No problem.

12 Maine. What have you heard about Maine?

13 MS. GOLD-BIKEN: I don't know anything  
14 about Maine. That's the only one that you mentioned  
15 that I don't know. I'm familiar with Delaware and I'm  
16 familiar with California, and I'm familiar with  
17 Michigan.

18 REPRESENTATIVE HAGARTY: It's too cold.

19 MS. GOLD-BIKEN: Oh, there's a Family  
20 Court in Hawaii. Sorry.

21 CHAIRMAN CALTAGIRONE: From what we've  
22 been able to find out, they have been able to cut back  
23 their caseload 50 percent in the last 10 years since  
24 this has been instituted. Now, they always have the  
25 right to go into court, but for whatever reasons,

1 something is working at that level, basically using  
2 attorneys, and I think they also lean on the  
3 psychological with the professionals to come in and  
4 help with that, but they've been doing something, and  
5 we want to examine that a little further.

6 MS. GOLD-BIKFN: I think we need to look  
7 at other systems.

8 CHAIRMAN CALTAGIRONE: Are there some  
9 others?

10 MS. WOOLEY: I just have one question.

11 CHAIRMAN CALTAGIRONE: Mary.

12 BY MS. WOOLEY: (Of Ms. Gold-Biken)

13 Q. Lynne, you had mentioned the problem with  
14 time limits of judges taking much too long, and we've  
15 had a number of complaints from the people who have  
16 testified about Masters taking much too long to write  
17 their opinions in terms of equitable distribution, and  
18 judges taking 100 days, 200 days, 300 days to render  
19 decisions. Yesterday we asked several of the -- we had  
20 two Common Pleas judges testify, central Pennsylvania  
21 judges, and they said, oh, in our small counties it's  
22 really not a problem because we've got, you know, a  
23 couple Masters and if there's a problem the judge can  
24 call the Master and the judge holds the Masters  
25 accountable and we really don't have that problem, and

1 the judges really didn't address the question of  
2 judicial delay. And then the tone we got from lawyers  
3 who testified was those really aren't -- it's really  
4 not the common practice that delay occurs in all of  
5 these cases, it's really the exception, but we heard  
6 lots of testimony from litigants and I hear lots of  
7 complaints from practicing lawyers about the delays  
8 involved in getting decisions from judges.

9           The other thing that I've been told is  
10 that judges dominate the Family Law Rules Committee, so  
11 there would be a reluctance, I don't even know if it's  
12 ever been suggested at the Family Law Rules Committee  
13 to place some time caps on mandating judges to come  
14 down with their decisions, and I was wondering,  
15 obviously we can't do anything legislatively, and I was  
16 wondering what your thoughts were in terms of  
17 procedures?

18           A. It's interesting, the Family Court judges  
19 will tell you that the years they are on Family Court  
20 are the most stressful years that they have, especially  
21 when it comes down to doing custody work. Some of the  
22 judges are outstanding in getting their opinions done.  
23 I've even had judges who said to me, come back after  
24 lunch, and spent the entire lunch hour writing their  
25 opinions. I mean, I have seen that. One particular

1 judge in Montgomery County who is phenomenal made us  
2 sit there for 2 1/2 hours because he wanted to have the  
3 litigants hear his opinion and hear why he gave it. He  
4 is so caring, it was really beautiful to watch. There  
5 are a couple of judges who you know you will never get  
6 an opinion out of. So it isn't all the judges. It is  
7 a couple of judges who, I don't know whether they don't  
8 have the time, whether things just pile up and the  
9 higher the pile, the less likely they are to touch it,  
10 but it is a problem with some of the judges. And in  
11 most of our cases we'll say, look, we don't care what  
12 the answer is, just give us an answer so we know what  
13 we have to do. You know, tell me my client has got to  
14 live on the street, but at least he can start looking  
15 for the street corner. You know, just tell us  
16 something. So, yes, if we could have some time limits,  
17 it would be wonderful.

18 Q. I guess part of my frustration has been  
19 -- well, we haven't had a formal proposal, but I  
20 haven't seen the family law section come forward with a  
21 recommendation to the Family Law Rules Committee--

22 A. Would you like one? Let me make a note  
23 on it.

24 Q. --that those types of time periods could  
25 be adopted by the Family Law Rules Committee.

1           A.    Okay.

2                    REPRESENTATIVE HAGARTY:  Mr. Chairman, I  
3    have just one question on that note.

4    BY REPRESENTATIVE HAGARTY:  (Of Ms. Gold-Biken)

5            Q.    I haven't followed the Rules Committee's  
6    responses to family law recommendations and I'm just  
7    curious, having shared the experience of the courts  
8    striking down our efforts in the '88 amendments to put  
9    discovery in, have you made recommendations to the  
10   Rules Committee?  And if so, what has been the  
11   response?

12           A.    We have made recommendations to the Rules  
13   Committee when I was chairman of the PATLA Family  
14   Litigation Section, we attempted to get to the Justices  
15   in the hopes that we could get something done.  We have  
16   basically been told that civil lawyers have messed it  
17   up and the domestic relations lawyers are not going to  
18   be given the chance to do the same thing.  So to this  
19   point we have had our requests fall on deaf ears.

20           Q.    I have certainly considered, and will  
21   probably do it anyway, but at least making  
22   recommendations to the Rules Committee as a result of  
23   these hearings as to what changes we think should be  
24   made, since it's clear that we cannot accomplish  
25   statutorily what I think needs to be done.  Do you have

1 any reason to believe that that would be helpful or  
2 that it should be conjunction with the Family Law  
3 Section?

4 A. I think that your suggestion that it be  
5 done in conjunction with the Family Law Section is an  
6 excellent one. I think the American Academy of  
7 Matrimonial Lawyers, Pennsylvania Chapter, ought to do  
8 something; I think the Pennsylvania Bar Family Law  
9 Section ought to do something. I think requests ought  
10 to be made to the Rules Committee again. As you  
11 correctly pointed out, there are many judges on the  
12 Rules Committee. And I'm not sure that they want to  
13 see more -- I don't know what the problem is, but I  
14 think as many people as can come back, including the  
15 legislature, again, as a result of these hearings.  
16 Discovery is critical.

17 Q. You had indicated in terms of time  
18 limits, and we keep coming back to time limits because  
19 if there's been any consensus, and we've heard many  
20 different views on change, but if there's any consensus  
21 on which all of our attorneys and testifiers agree, it  
22 is that the time involved is detrimental to the family,  
23 and the time is too long. You were concerned about  
24 strict time limits, and in answer to Chairman  
25 Callagirone's comments, there's no finality, and I

1 wondered why you weren't comfortable with time limits  
2 with sanctions. I'm not suggesting that orders aren't  
3 modifiable, but time limits with sanctions for  
4 compelling discovery of documents, for example, so you  
5 don't have to ask five times and why we shouldn't, and  
6 you as a member of all of the various committees you're  
7 on, should be making these recommendations to the Rules  
8 Committee.

9           A. I agree that there ought to be time  
10 limits in some places. Time limits on how long a judge  
11 can sit with an opinion. Time limits on how long you  
12 have to hassle over discovery, but we already have time  
13 limits on that. I mean, you're supposed to answer your  
14 interrogatories in 30 days. If you don't answer your  
15 interrogatories, then you get to go file a motion for  
16 sanctions, which can take you four months to get on the  
17 list, and then you get to have an argument, which can  
18 take you three months to get on the list, and then the  
19 judge gets to decide after nine months of how long this  
20 person should have filed their interrogatories. The  
21 fact is, we have time limits, but these things only  
22 work for people who respect the time limits.  
23 Otherwise, you know, if somebody says to me, oh, I've  
24 got this order, wonderful. What if he doesn't pay?  
25 Oh, well, then I have to file a petition for contempt.

1 Oh, well, how long does that take? Well, that can take  
2 six weeks. Well, what if he doesn't pay then? Well,  
3 the judge is going to give him 30 days. You know, if  
4 you have people who respect the system, it works  
5 beautifully. The problem with the system is the leaks  
6 occur, the hemorrhages occur with the people who don't  
7 respect it.

8 Q. What kinds of sanctions are available? I  
9 take it they're not used, but what kinds are available?

10 A. Counsel fees, which ought to be imposed  
11 more than they are. The new proposed rules, the  
12 pre-conference memo rule specifically provides that you  
13 can be precluded from presenting evidence, which ought  
14 to be used more. Unfortunately, if you use it at the  
15 Master's level and the other side is precluded from  
16 introducing evidence, then they just file exceptions  
17 and you go up to the judge. That doesn't help you.  
18 But there ought to be sanctions for people who do not  
19 provide information. If you don't provide it and the  
20 divorce is final, you've got the right to impose a  
21 constructive trust, for example, on any  
22 after-discovered assets. If you had the discovery in  
23 the first place, you wouldn't have to have  
24 after-discovery assets.

25 Q. What do you think -- I guess what I'm



1 struck by is I always tell people when they come to me  
2 and tell me what changes we ought to make in family law  
3 that most of the problem, not to sound like I'm just  
4 blaming another branch of government, a great deal of  
5 it is judicial, and I'm curious, what do you think it  
6 is that causes this attitude of continuances and delay  
7 and acceptance of all of that seems so acceptable to  
8 everyone involved?

9 A. There are always good reasons for  
10 requests for continuances. Conflicts, for example,  
11 you know, what are you going to do? Somebody's  
12 vacation schedule. Many, many times the judges  
13 continue the case, either because another case flows  
14 over or because the judge is on vacation or the judge  
15 is ill. I recently had a case that I've been waiting  
16 for six months continued that morning because I got a  
17 call at 6:30, the other lawyer had the flu. I mean,  
18 there's nothing you can do about these things.

19 Q. You know, I read the testimony, I wasn't  
20 here yesterday, but one of the witnesses who testified  
21 yesterday said that we have much to learn from the  
22 criminal system, and coming from that system I'm struck  
23 by the fact that we can try cases in a timely manner  
24 because we have to do it.

25 A. Are they all well-trying?

1           Q.   Well, one of the things I'm hearing from  
2 you as a result would be better than the delay that's  
3 now occasioned.

4           A.   In most cases, but, you know, if you are  
5 the prosecutor in a criminal case and you don't try the  
6 case well, don't get sued by your malpractice carrier.  
7 One of the interesting things that happens in our  
8 profession, and the more I learn, the more work I do on  
9 every case, is that the more expertise you have, the  
10 higher standard you are held to. Most of the people  
11 that go through family law cases, divorce cases, are  
12 very, very angry people, and this is not anything that  
13 you're interested in but it's something that I'm  
14 interested in, if I don't do my work well and my client  
15 is not happy, I'm going to be sued, I'm not going to be  
16 paid. So I'm going to work very, very hard to make  
17 sure that my case is prepared as best as I can prepare  
18 it. And I may not be able to do that in one week or  
19 two weeks. And that's another problem. I mean, there  
20 are so many practical problems that cause these things  
21 to occur.

22                       For example, you have a support case in  
23 January. You want to know what the guy made last year  
24 but you know his accountant is not going to get you the  
25 tax returns until April. You don't want to go into

1 court in January, or maybe not even February, if you  
2 don't have those tax returns. So are you going to  
3 impose sanctions on the accountant because he says,  
4 look, I've got all these tax returns and I didn't get  
5 the K-1s and I can't get this thing out because I  
6 didn't get the information? And I say, well, I don't  
7 want a support based on '89 figures, I want that  
8 support based on '90 figures. So, Your Honor, I'm not  
9 prepared to go to trial because I don't have the  
10 information I need to show you what his income was last  
11 month, I only have it a year ago and I know it's  
12 different. I mean, these are the kinds of practical  
13 problems that I don't want to bore you with but I can  
14 tell you that can cause the delays that we--

15 Q. But we have to do better than these cases  
16 dragging out indeterminately.

17 A. No question. No question.

18 Q. Thank you.

19 MR. SUTER: I just want to clarify with  
20 when you said about ex parte orders. I don't think  
21 anybody has suggested that we should abolish ex parte  
22 orders in the types of situations that you described.  
23 There was concern raised that in the PFA area that in  
24 some cases the ex parte orders have been abused and we  
25 were concerned with that, but not in the situations

1 that you described. Just to clarify.

2 MS. GOLD-BIKEN: Let me talk to you about  
3 ex parte orders in PFA cases. I have had defendants  
4 call me up and say, I don't believe it, my wife got an  
5 ex parte order against me, I am out on the street. The  
6 fact is that some people take advantage of them. I  
7 mean, I used to speak about this and I would say, use  
8 them, don't abuse them, because we'll lose them. But  
9 there's nothing you can do to stop somebody from going  
10 into court and saying to the judge, I'm being abused,  
11 put him out of the house until I get to a hearing, and  
12 most judges are going to say, I can't take the risk to  
13 this poor little woman or poor little man or poor  
14 little kids, I have to do it, but it's a very limited  
15 time period. Those cases must come into court within  
16 10 days.

17 You know, when you're talking about an ex  
18 parte order that may extend for months, I agree with  
19 you, it would be unfortunate. These cases are  
20 occasionally being abused, but on the whole, in the  
21 long run, the cases get to court quickly. Statutorily  
22 they must be there within 10 days, and you can't take a  
23 chance. She may be telling the truth. And you don't  
24 want to put this guy back in the house. I mean, you've  
25 all read too many stories about abuse orders and then

1 finding the woman dead because nobody believed her, and  
2 they say, well, call me after he does something, and he  
3 does something and she can't use the phone anymore. So  
4 I'm not offended by the fact that occasionally some of  
5 my clients have to stay in a hotel for 10 days. It  
6 does happen.

7 MR. SUTER: And the other thing is you  
8 were suggesting that maybe some of these issues should  
9 be brought before the same judge or the same Master or  
10 whatever we would decide to do.

11 MS. GOLD-BIKEN: Yes.

12 MR. SUTER: We heard testimony to that  
13 effect yesterday, and in fact some situations I guess  
14 it's where the custody is decided by one judge but yet  
15 the divorce, the decree is issued by another judge and,  
16 you know, the judge in the second that issues the  
17 decree doesn't necessarily understand or know  
18 everything that has happened, so I thought your point  
19 was well-taken in that regard.

20 MS. GOLD-BIKEN: That happens all the  
21 time, and what happens is you also have to try  
22 different sections of your case over and over again  
23 because some of the same factors that you tried in the  
24 custody case are the same factors that you tried in the  
25 support case, which is heard by yet another judge, and

1 are tried again in the equitable distribution case,  
2 which costs the client money, and no wonder the clients  
3 are upset about it.

4 MR. SUTER: Thank you.

5 CHAIRMAN CALTAGIRONE: Representative  
6 Heckler.

7 REPRESENTATIVE HECKLER: Just if I could  
8 make an observation, Mr. Chairman. I think the  
9 criminal system is not a good analogy or a good  
10 comparison point for the domestic system because as a  
11 practical matter, the vast majority of the cases in the  
12 criminal system are handled by the employees of  
13 professional offices, either the public defender's  
14 office, the DA's office, and having lived in terror of  
15 the Bucks County trial list this year because I had a  
16 few matters hanging on and the heavy schedule we have,  
17 it's just much different when you're dealing with a  
18 relationship between an individual lawyer and an  
19 individual client who generally expects you, and I  
20 would suspect especially in domestic cases who expects  
21 you to handle that case when it comes up. Scheduling  
22 does represent a much more difficult problem than it  
23 does in a system that's fairly flexible, that says,  
24 hey, especially if a defendant is incarcerated, that  
25 person is going to trial, public defender's office, if

1 this one can't handle it, that person will handle it.  
2 The DA's office, you're up against a 120-day rule, I  
3 don't want to hear about, you know, the fact that, you  
4 know, ADA Heckler is scheduled to be in the Bahamas,  
5 get somebody in that courtroom to try the case. So it  
6 does -- the courts and lawyers are probably in some  
7 ways more tolerant than they should be of their  
8 respective conveniences, but it is also extremely  
9 difficult to deal with, especially litigators with a  
10 busy schedule where you've got two private lawyers who  
11 are tied to a case and you do have conflicts that just  
12 don't occur in the criminal system.

13 MS. GOLD-BIKEN: Thank you.

14 CHAIRMAN CALTAGIRONE: Thank you.

15 We'll hear from Sarah Morison Ford, from  
16 the firm of Ford and Narducci.

17 And I want to thank Representative Reber  
18 for standing in for me.

19 MS. FORD: Mr. Chairman, I'm an attorney  
20 and I've been practicing for 15 years in Montgomery  
21 County with emphasis in domestic relations and estate  
22 planning. I have some remarks, they were to be copied.  
23 I don't know if they were. Okay.

24 In assessing the effectiveness of the  
25 divorce law and the legal system in the handling of

1 family matters, it is important to step back and review  
2 the traditional role of the lawyer. We are trained to  
3 represent our clients zealously within ethical  
4 boundaries. We build a case by amassing documentary  
5 evidence, preparing witnesses, and finding experts to  
6 buttress our client's position. At the same time, we  
7 use all the tools in the arsenal to cast the adversary  
8 in the dimmest light by digging for weaknesses, whether  
9 factual, legal, or personal. Trials are intense and  
10 stressful affairs where we shine the light on our  
11 clients and try, by penetrating cross-examination, to  
12 find misrepresentations, inconsistencies, and untruths  
13 from the adversary.

14 I remember applying these skills in my  
15 first custody case that was headed for litigation. I  
16 met with the client and learned the litany of  
17 deficiencies in the husband. He had a short temper,  
18 erratic behavior, and rarely showed active interest in  
19 the children. They were afraid of him and did not want  
20 much contact with him. Our mission was to gain custody  
21 and minimize the traditional visitation schedule. To  
22 prepare for trial, I interviewed a neighbor who would  
23 attest to mom's caring and nurturing ways with the  
24 children. I spoke with a teacher who confirmed mom's  
25 diligent efforts regarding school activities. I



1 subpoenaed husband's employment records to try to  
2 confirm his alleged spotty employment history.  
3 Reluctantly, I spoke with the children to ratify what  
4 mom had told me they would say.

5           When the day for trial arrived, we were  
6 ready for battle against the uninvolved and  
7 overpowering father. As we approached the courtroom  
8 with witnesses flanking us, suddenly the children took  
9 off and ran off into dad's open arms and gave him a big  
10 hug. During the endless wait for our turn, the  
11 children moved easily back and forth between both  
12 parents. Finally we were called, and while the  
13 children waited outside in the corridor, mom and dad  
14 drew blood inside. After a day and a half of trial  
15 involving friends, relatives, neighbors, employers, and  
16 a psychologist or two, the judge rendered the  
17 compromised verdict: Primary physical custody with mom  
18 and liberal time with dad.

19           The judge lectured the parties, reciting  
20 the need for civility in their dealings with one  
21 another and directing them not to disparage one another  
22 in front of the children. However, because the  
23 negative and hurtful testimony had tumbled out in the  
24 courtroom, the chance of mom and dad maintaining  
25 civility was forever reduced.

1           I remember thinking at the time that  
2 there must be a better way to help families through  
3 this ordeal without the slash and burn of litigation.  
4 Everyone - family, friends, neighbors, employers,  
5 schools, and the community - loses except the lawyer.  
6 Perhaps even lawyers lose because the clients blame  
7 them for the dissatisfaction of a destructive conflict.

8           The Masters in custody and equitable  
9 distribution have been instrumental in contributing to  
10 the significant decline in litigation of the issues and  
11 resolving cases more expeditiously. However, I see  
12 that even with the ameliorated divorce proceedings,  
13 families are left in emotional and financial tatters.  
14 This is not the fault of clients, lawyers, judges, or  
15 the legal system alone. It is because the issues  
16 inherent in divorce involve more than dividing  
17 property, assessing tax consequences, determining  
18 spousal and child support, and establishing custodial  
19 arrangements. The emotional and psychological needs of  
20 the participants are critical factors in the overall  
21 resolution of the divorce. A lawyer sees a new  
22 domestic client generally at the client's emotional  
23 worst. He or she feels especially vulnerable and  
24 steeped in the full panoply of feelings including rage,  
25 panic, fear, rejection, hatred, revenge, sadness, and

1 anger.

2           During the divorce process a client,  
3 often without realizing it, is asking the lawyer to  
4 salve the emotional hurt through offensive legal  
5 proceedings. I won't pay a dime to her because she  
6 left me. He'll never see the kids because he was never  
7 home anyway. Sue her for adultery. Drag this out as  
8 much as possible and make him pay for his actions.  
9 She'll never get the house after all the work I've put  
10 into it. These are all statements that I've heard, and  
11 many, many people have heard who practice. Even with a  
12 miracle result in one courtroom where she is not  
13 entitled to support, and in another where he is awarded  
14 limited visitation, the children still need new shoes  
15 and parental love.

16           Over the years I have observed that the  
17 experience of divorce is often worse than the pain and  
18 sense of loss after death. The death of a loved one is  
19 usually an event over which the survivor has no control  
20 and from which he or she must bear the pain and move  
21 on. The direct ties to the decedent are memories,  
22 usually positive ones, which can be retrieved by demand  
23 and by choice. But in divorce, the constant ties to  
24 the failed relationship are often inescapable  
25 realities. There are the children with the

1 ever-changing custodial and vacation arrangements,  
2 medical emergencies, and family celebrations which  
3 require continual interaction.

4           It is not surprising that the public  
5 generally views the divorce process with anger,  
6 bitterness and dissatisfaction, while those acting  
7 within the system believe it to be basically adequate.  
8 The difference lies in expectations. Clients want  
9 emotional satisfaction and sometimes vindication, which  
10 is not the job of the lawyer or the legal system. The  
11 adversarial system is highly appropriate for commercial  
12 litigation, personal injury claims, contract disputes,  
13 civil rights actions and other factual differences. It  
14 is less well-suited to solving with grace and dignity  
15 the intensely emotional and intimate personal matters  
16 of divorce.

17           In an ideal world, the dissolution of a  
18 family should be handled in an arena where the personal  
19 needs of the parties can be met, and above all, the  
20 children can be protected. In my practice, I actively  
21 encourage a client to attend to his or her emotional  
22 needs, and often collaborate with a counselor or  
23 therapist. I have found that this blended approach  
24 greatly helps in structuring an emotionally and legally  
25 sound result.

1                   Today, the legal system is not  
2 structured, nor is it equipped, to handle the emotional  
3 aspects of divorce. However, with the ever-increasing  
4 rate of divorce and the general feeling of  
5 dissatisfaction with the process, the time is now to  
6 actively provide meaningful alternatives before parties  
7 must enter the court of last resort. One simple but  
8 effective approach that would fit nicely into this  
9 system would be to require one or more four-way  
10 meetings, including both lawyers and clients. I have  
11 used this technique extensively in my practice for many  
12 years and can attest to its success. Unless the  
13 opponent objects, such four-ways occur in almost every  
14 case. I might add that the cases ranged from  
15 multi-million dollar cases down to small cases where  
16 there's a house and a pension to divide. So it's  
17 effective in all arenas.

18                   In reviewing the results, I can say that  
19 only a small handful of cases have not settled at the  
20 table, and those that did not subsequently settled  
21 relatively easily with the aid of the Master and  
22 without litigation. The four-ways are successful for  
23 several reasons. First, the parties are directly  
24 involved in the negotiations and decisionmaking  
25 process, thus overcoming the prevalent sense of

1 powerlessness the system presently engenders. Having a  
2 sense of control greatly enhances one's ability to make  
3 a painful yet appropriate decision.

4 Second, a spouse often hears that the  
5 other party actually has a rational basis for making a  
6 request, rather than an emotionally driven motive, and  
7 therefore is able to be more accommodating.

8 Third, the ability to dissolve the  
9 marriage civilly at this level often yields better,  
10 long-term communication thereafter.

11 Fourth, and perhaps most importantly, it  
12 provides creativity. The parties can structure a  
13 settlement tailored to their own particular situation.

14 Procedurally, I suggest a requirement  
15 that the group hold one or more four-ways to accomplish  
16 three stated goals. First, to identify all issues to  
17 be addressed. Second, to disclose all assets,  
18 liabilities, income and expenses. And third, to make a  
19 good faith effort to the forge an agreement on all  
20 points. This approach contemplates a change in the  
21 goals and expectations in resolving divorce matters.  
22 Divorce should not be adversarial or a game of hide and  
23 seek. The usual procedural rules of discovery should  
24 be eliminated and disclosure should be the norm, with a  
25 penalty assessed for a failure to disclose. Those not

1 meeting deadlines for disclosure will be required to  
2 execute appropriate authorizations to obtain necessary  
3 documents.

4           There is a range of expected results in  
5 the resolution of divorce issues, of property  
6 distribution, custody, child and spousal support and  
7 alimony. And if a matter is not settled at the  
8 four-way level, the Master or judge should be empowered  
9 to assess a penalty for the lack of the negotiation in  
10 good faith. Possibly the non-offending spouse's  
11 attorney's fees incurred in the fruitless four-way  
12 meetings. This would hinder those obdurate individuals  
13 who, through inaction, can presently delay these  
14 matters interminably and without reason.

15           If a legal issue arises during the  
16 mandatory four-way period, such as whether certain  
17 trust provisions give rise to marital property  
18 interests, it should be submitted to the Master for  
19 determination by way of conference or hearing.  
20 Likewise, disputed factual issues could be submitted to  
21 the Master for guidance. All legal and factual  
22 differences should be identified and submitted at one  
23 time to avoid piecemeal submissions and delays.

24           In terms of when in the process of the  
25 divorce the four-ways should be held, they should begin

1 upon the agreement of the parties but no later than six  
2 months after the filing of the divorce complaint.  
3 There seems to be little value in waiting until the  
4 divorce phase is completed to begin property settlement  
5 issues. In contrast, addressing all the issues  
6 incident to the divorce at the same time often  
7 engenders a better and fairer overall settlement. In  
8 these situations where custody and child and spousal  
9 support are of immediate concern, the traditional  
10 procedures should prevail. However, if a party knows a  
11 four-way is looming in the near future, he or she may  
12 be more motivated to avoid that litigation and forge an  
13 agreement directly.

14           If despite a good faith effort after two  
15 or three four-ways no resolution is achieved, the  
16 attorneys should then meet with the appropriate Master  
17 for an initial impression and guidance. If no  
18 settlement occurs, a hearing would be scheduled and the  
19 case is then mainstreamed.

20           There will always be those spouses who  
21 want to pursue the "War of the Roses," and to  
22 accommodate that group, the four-way could be mandatory  
23 unless both parties want to waive this opportunity.  
24 Those who have the financial and emotional stomach for  
25 the fight can use the present system. Those wanting



1 another route would have an alternative option. The  
2 introduction of the four-way provides more flexibility  
3 and protection for those who enter the divorce process.  
4 The mandatory requirement of a four-way does not  
5 involve major overhaul of the system. However,  
6 instituting four-way meetings between the spouses and  
7 their attorneys would offer people an opportunity to  
8 solve their own problems of splitting the family and  
9 the assets instead of having a result imposed seemingly  
10 arbitrarily. It has long been my experience that those  
11 who forge their own settlements leave smaller ripples  
12 in the community and less acrimony in their heart.

13 I would only add that there's been some  
14 discussion of the two-year limit. I would not change  
15 that. I think the two-year limit is needed for some  
16 people to adjust and to accommodate the situation they  
17 find themselves in. However, if some of the ancillary  
18 issues are discussed during that two-year period, some  
19 finality and some definition or definite ending to the  
20 problem can occur somewhere close to the 2-year period  
21 and not drag on to the 3-, 3 1/2-, 4-year period as it  
22 does now. And I can only tell you that if I look at  
23 the numbers of my practice, I would say that in the  
24 divorce cases, 60 percent are concluded by way of these  
25 four-way meetings. Another 20 to 25 percent are even

1 three-way meetings where clients come in and say, my  
2 spouse does not want to get a lawyer, we know what we  
3 want to do, we don't want to get another lawyer, we  
4 don't want the thing to get ought of hand and get  
5 expensive and time-consuming, we know what we want.  
6 And in those occasions I will, in fact, see the other  
7 party, with the usual disclaimers that I can only  
8 represent one, they are here clearly on their own, they  
9 sign certain documents, but I have found through that  
10 process the people communicate with each other, they  
11 can find that there are some common goals and that they  
12 do not want to bury the entire length of the marriage  
13 as being a total lost cause.

14           One of the situations that I tried early  
15 on was to say to clients, you had something positive to  
16 this relationship. You fell in love, you probably had  
17 children, you made major decisions, and the legal  
18 system, through the court system and litigation, offers  
19 you the opportunity to try to slash and burn that and  
20 bury those good feelings, but you have to admit that  
21 you had some of them, so preserve some of those. The  
22 relationship has dissolved but put it aside and move  
23 forward. And I have visibly seen clients soften when  
24 they hear that and realize, yeah, as angry as I am or  
25 hurt or rejected, it's made a difference in their

1 ability to come to grips with some of the issues and  
2 resolve them.

3 I would be happy to answer any questions.

4 CHAIRMAN CALTAGIRONE: Representative  
5 Hagarty.

6 REPRESENTATIVE HAGARTY: Thanks.

7 BY REPRESENTATIVE HAGARTY: (Of Ms. Ford)

8 Q. What response do you receive from other  
9 attorneys when you insist on a four-way meeting?

10 A. I think in 15 1/2 years of practice at  
11 that request, one, two, three, a handful have said no.  
12 Only a handful. And I have resolved, I have been up  
13 with the very famous lawyers. I have been up with  
14 those who are nationally known. They will settle. All  
15 these cases I have done have settled, and in fact, one  
16 of the lawyers said, I've never done it this way, and  
17 we've settled it. And fairly large case. It was a  
18 senior partner of a law firm of about 40 people was my  
19 client, and represented by a very well-known lawyer and  
20 the lawyer said, I've never done this but I'll try it,  
21 and we resolved it in one meeting. Some of these  
22 meetings are three and four hours and you keep people  
23 together and say, this is the agenda. We do have to  
24 address these issues. There's no reason to hide assets  
25 because you have a common result to achieve and really

1 you can't overlook it for the children's sake because  
2 families, frankly, are our most precious product and  
3 they are being destroyed right and left, and if we're  
4 going to go through divorce, let's do it with some  
5 grace and not destroy all of the people in the  
6 community around us in the process.

7 Q. So do you think it's your attitude in  
8 doing this that makes a difference in your cases than  
9 in other attorney's experiences? I mean, it's your  
10 effort at attempting to do this?

11 A. Probably. Sure. I am very strong with  
12 my clients. I had a situation where I had a client who  
13 had an M.A. in some computer science and her husband  
14 had a third grade education and he was determined to  
15 use the system right down to the very end, and this was  
16 one of the four-ways that didn't settle. We had a  
17 four-way and the other lawyer and the client agreed to  
18 settle. He even agreed to draft the agreement. A  
19 month later the lawyer hadn't drafted the agreement, I  
20 drafted the agreement and they basically said, forget  
21 it, we're not settling. A year and a half later we  
22 finally settled it with the aid of the Master in  
23 equitable distribution. But during that time I said to  
24 the client, look, this is who your spouse is. The  
25 legal system isn't going to enforce anything that he's

1 doing. He was out of control. He was totally wild and  
2 irrational. The legal system isn't going to help you  
3 because, as I've said to many clients, the legal system  
4 is set up not to enforce but to kind of organize us.  
5 There are reasons there are red lights, so that we all  
6 don't end up in the intersection together, not to  
7 sanction those who go through the red lights. If we  
8 catch a few, so much the better. And in fact, those  
9 who want to thwart the system and drag it out five and  
10 six years can do it. So I had to say to her pretty  
11 toughly, look, if you want to get out of this marriage,  
12 you may have to pay to get out, but at least you won't  
13 be involved for three years with this fellow calling  
14 you and circling your house and badgering you and  
15 taking you back into court because he's lost his job on  
16 purpose to ask you for more support. Get rid of him,  
17 get it over with. So yes. I do a lot of that.

18 Q. You don't suggest then that it's a  
19 mediator that's necessary for this process? I mean,  
20 we've heard a lot about mediation, and that assumes a  
21 mediator sitting in with parties and attorneys. You  
22 don't see that function?

23 A. The pros of mediation are that they offer  
24 the same positive aspects that the four-way does.  
25 People are participating and a little bit in control.

1 So that I think it's another avenue that if people want  
2 to take, I have no problem with that. I don't think  
3 you necessarily need another party, although I have at  
4 times pulled in a psychologist with a husband and wife  
5 to sort of pick apart some of the emotional aspects so  
6 we can get to the ground zero and not the emotionally  
7 driven decisions. I forgot the exact thrust of your  
8 initial question. Did I do it?

9 Q. Yes, you've answered it. I had one other  
10 question. We heard testimony earlier, I don't recall  
11 if you were here, that the Women's Law Project, the  
12 woman who testified said she opposed mandatory  
13 mediation and her gravest concern was an abuse case  
14 where she felt it would be impossible for an equal -- I  
15 guess the emotions involved, I shouldn't say emotions,  
16 the leverage was too great and the disparity was too  
17 great for there to be able to be any real equal  
18 participation and referred me to testimony in the past,  
19 so I don't know whether or not abuse cases it was felt  
20 as compelling, but I've heard before from women's  
21 groups a sense that somehow women will be  
22 disadvantaged, I guess, because of superior positions  
23 of men in marriages through the mediation process and I  
24 wondered what your experience was with that?

25 A. Well, I have two ways of handling that.

1 One is, and I've seen it very clearly. You go in and  
2 you sit around the table and in the cases that I can  
3 remember, it tends to be more male to female, the man  
4 will try to visually lock eyes with the spouse and gain  
5 control, and I will say, this is going to happen, but  
6 we're here to try to achieve some things, look down at  
7 the table, don't look at him, and if you want to leave  
8 the room, you're free to leave the room. Sometimes  
9 they don't even come into the room to begin with. But  
10 if you have an agenda where you come here and he has to  
11 disclose and the idea is that you're going to forge an  
12 agreement, and if you don't, there is looming out there  
13 some kind of penalty, you can equalize the situation.  
14 There really are ways to do that. I mean, obviously  
15 I've encountered this many, many times, and it's my job  
16 to sort of beef up the client who's got the weak back  
17 and say, this is first of all what you're going to have  
18 to do in life anyway, so you might as well start now,  
19 and you're not going to be totally victimized in this  
20 situation because there are ways to keep her from being  
21 victimized. Now, I suppose in the most egregious cases  
22 where she's been absolutely physically beaten over and  
23 over and over again we could make exceptions. And  
24 sometimes I have a client who says I don't want to be  
25 in the same room with them and I will let them stay in

1 my office and then we'll go in and do some of the work,  
2 and then when they realize it's not as scary as they  
3 thought, some of them come in, some of them do not.

4 Q. Okay, thank you.

5 CHAIRMAN CALTAGIRONE: No further  
6 questions? Thank you. Enjoyed your testimony.

7 We'll take a 15-minute break and start  
8 right back up in 15 minutes, if you don't mind. She  
9 needs a rest and some of the members need a break.

10 (Whereupon, the proceedings were recessed  
11 at 12:30 p.m., and were resumed at 1:00 p.m.)

12 CHAIRMAN CALTAGIRONE: Rachel Munafa.

13 MS. MUNAFO: My name is Rachel Munafa. I  
14 am here as the Chairperson of the Family Law Section of  
15 the Philadelphia Bar Association. I am a senior  
16 associate at the lawfirm of Schnader, Harris, Segal and  
17 Lewis in Philadelphia in the family law department, and  
18 I am a member of the Board of Governors of the  
19 Philadelphia Bar Association. I am also a member of  
20 the Executive Council of the Family Law Section of the  
21 Pennsylvania Bar Association.

22 I did not prepare written remarks, so I'm  
23 going to speak from notes. But first I wanted to say  
24 that I'm disappointed that the Judiciary Committee  
25 didn't hold hearings in Philadelphia. I think that you



1 would have had the opportunity to hear many prominent  
2 attorneys and members of the bench from Philadelphia,  
3 and I'm sorry that you didn't come out to Philadelphia.

4 CHAIRMAN CALTAGIRONE: Well, if can, just  
5 on that note, we did tour the Family Court at the  
6 request of the judges and we spent a day, as a matter  
7 of fact I was kind of shocked at the combinations that  
8 the judges have to work with down there, Judge Abraham  
9 wasn't in at the time, and I was in her office, if you  
10 could call it that, which had half a petition and we  
11 had to get to another judge's office to get to her's  
12 and while we were talking we could hear him talking on  
13 the phone.

14 MS. MUNAFO: Well, then you got a good  
15 idea of the inadequate facilities that we have in  
16 Philadelphia.

17 CHAIRMAN CALTAGIRONE: It was during the  
18 summer and it got hot and they had to turn the air  
19 conditioners off and open windows in order to hear, and  
20 we spent the day with different judges that we were  
21 assigned to and I happened to be with her, and it was  
22 quite an eye opener. We are going down to Philadelphia  
23 to be with the Philadelphia Bar on the, I think it's  
24 the 9th, I believe, a Thursday. It's a Thursday.

25 MS. MUNAFO: January 9?

1 CHAIRMAN CALTAGIRONE: Yes. And we will  
2 be down there meeting with the Philadelphia Bar.

3 MS. MUNAFO: Meeting with the  
4 Philadelphia Bar Association?

5 CHAIRMAN CALTAGIRONE: Yes. And I'll be  
6 speaking to the Bar at 12:00 noon.

7 MS. MUNAFO: Is that right? Not the  
8 Family Law Section, just the entire association?

9 CHAIRMAN CALTAGIRONE: Yes. And we are  
10 also planning to spend a day, at the request of Judge  
11 Humer in Lancaster. We will take the committee down  
12 there. So we are going into the field, and I do hope  
13 to do some additional work in both Philadelphia and  
14 Pittsburgh on this issue, just exactly how we're going  
15 to handle that. I would like the members to get into  
16 the courtroom.

17 MS. MUNAFO: I think that's a good idea.

18 CHAIRMAN CALTAGIRONE: We're going to go  
19 to Lancaster and spend two or three hours hearing some  
20 of the cases that Judge Humer handles and just to get a  
21 real feel and to see firsthand what goes on in the  
22 courtroom, and we plan to do that, hopefully we would  
23 like to do that in Philadelphia and Pittsburgh. Seeing  
24 is believing.

25 MS. MUNAFO: I think that's very good.

1 You said you were with Judge Abraham?

2 CHAIRMAN CALTAGIRONE: Yes.

3 MS. MUNAFO: Well, she's in the criminal  
4 court, or now she's the district attorney.

5 CHAIRMAN CALTAGIRONE: Yes. I spent the  
6 day with her. Everybody was assigned a different  
7 judge, and I happened to be with her.

8 MS. MUNAFO: I see. So did you come to  
9 Family Court at all then?

10 CHAIRMAN CALTAGIRONE: Oh, yes. Yeah.  
11 As a matter of fact, I sat in her courtroom while she  
12 was handling a case, and every member that had been  
13 present that day was assigned to a different judge, and  
14 I think we had at least seven, eight, nine members that  
15 were there.

16 MS. MUNAFO: Oh. When was that?

17 CHAIRMAN CALTAGIRONE: That was this past  
18 summer.

19 MR. SUTER: I think it was early fall,  
20 actually.

21 CHAIRMAN CALTAGIRONE: It was still warm.

22 MS. MUNAFO: Okay, you visited the Family  
23 Court then. Did you go to 34 South 11th Street? Is  
24 that what you remember?

25 CHAIRMAN CALTAGIRONE: Well, it was their

1 building where they hold court, and I was in her office  
2 and in her courtroom and it was not luxurious or plush  
3 by any standards. No stretch. I mean, they lead a  
4 very Spartan existence in that area.

5 MS. MUNAFO: And I think that that's one  
6 of the problems. It seems to me that a courthouse  
7 should be almost like a cathedral so that when people  
8 enter it they have a feeling of respect for the law,  
9 and when you have facilities as we have in Philadelphia  
10 that are just terrible, right in the facility itself  
11 people don't have the respect because they are so  
12 uncomfortable.

13 CHAIRMAN CALTAGIRONE: Well, we toured  
14 traffic court and I was tremendously impressed with  
15 traffic court and Judge Tardy and what we saw there,  
16 and I realize it was a reconditioned building, and they  
17 really did, I think, a marvelous job with what I saw  
18 there, it was very impressive. Comparing it to Family  
19 Court, it was like night and day.

20 MS. MUNAFO: Well, that proves one of the  
21 points that I wanted to make today, namely that the  
22 Family Court has been the stepchild of the court  
23 system. Now, what priorities, what values does it show  
24 in our court system when you have a traffic court that  
25 is a luxurious building and you go into the Family

1 Court and you see it's a run down, broken down  
2 building? I mean, where are the values there?  
3 Certainly the Family Court is the court that more of  
4 the public has exposure to than any other division of  
5 the court system, and yet the Family Court is the one  
6 that is given the least of the resources of the court  
7 system. So I would say that as legislators, that  
8 should be a focus of your attention, asking why that  
9 is. Why is the Family Court the stepchild of the court  
10 system? Why isn't it given its fair share of the  
11 resources?

12 And on that point, I could tell you in  
13 Philadelphia the court has allocated 20 judges to the  
14 Family Court. That is a number that has been around  
15 for a long time. In fact, as the Chairperson of the  
16 Family Law Section, I am going to do a little  
17 investigation of my own to find out when that number 20  
18 as an assignment of judges to Family Court started. My  
19 guess is it was at least 20 years ago. Now, the  
20 caseload of the Family Court has expanded dramatically.  
21 Even in the past few years. As you know, abuse court  
22 is really a new phenomenon as a result of the new  
23 legislation that came out from Protection From Abuse.  
24 Now we have two judges sitting in abuse court and  
25 that's not enough to handle all the abuse cases. Well,

1 if two judges are sitting in abuse court and there  
2 wasn't any abuse court a few years ago, where are those  
3 two judges being taken from?

4 The other areas of the courts dealing  
5 with equitable distribution, custody, support, all need  
6 their adequate number of judges and they are not  
7 getting it. With the passage of the Divorce Code and  
8 the rights to equitable distribution and alimony that  
9 were created with the Divorce Code, that opened up a  
10 whole new area of law that didn't even exist in  
11 Pennsylvania before the Divorce Code came into  
12 existence.

13 CHAIRMAN CALTAGIRONE: When I ran the  
14 judgeship bill out of this committee and created these  
15 additional judges around the State, and that was while  
16 Jim Manderino was still alive and Speaker of the House,  
17 did Philadelphia put in -- do you recall how many new  
18 judges Philadelphia got at the time?

19 MS. MUNAFO: You mean when the  
20 Constitution was changed, or what year was that?

21 CHAIRMAN CALTAGIRONE: No, that was just  
22 two years ago.

23 MR. SUTER: Yes, last session we  
24 allocated additional judges to Philadelphia. I don't  
25 know that the Family Court section received additional

1 judges, but there were additional judges that we  
2 allocated for.

3 MS. MUNAFO: Did you? Well, we may have  
4 gotten a few additional judges, but again--

5 CHAIRMAN CALTAGIRONE: Not Family Court  
6 though?

7 MS. MUNAFO: Family Court, I don't  
8 recall. All I know is we have never really had the  
9 full contingent of 20 commission judges on the Family  
10 Court, except for this year. In this incoming year we  
11 are now getting our full 20 commission judges. In the  
12 past we've had less than that and then they filled in  
13 the balance with senior judges. Now, as you probably  
14 know, the Supreme Court is cutting back on senior  
15 judges and that's going to impact heavily on the Family  
16 Court because the Family Court has a lot of senior  
17 judges and in the past has had a lot of senior judges.  
18 Now we're getting one senior judge, but according to  
19 what Justice Cappy tells me and Judge Zaleski tells me,  
20 we're getting our full contingent of 20 judges. Mind  
21 you, again, this 20 number, as far as I'm concerned, is  
22 totally inadequate.

23 CHAIRMAN CALTAGIRONE: What's the  
24 caseload then? Do you have the full figure?

25 MS. MUNAFO: I have some statistics.





1 anybody operates independently from one another.

2 MS. MUNAFO: I agree.

3 CHAIRMAN CALTAGIRONE: And we all are  
4 supposedly equal branches under the Constitution, or  
5 State Constitution at least, and I think that there's  
6 got to be some accountability on if a certain judge is  
7 processing 20, 30, 50, 100 cases a year and another one  
8 is grinding out 400 or 500, you've got to say to  
9 yourself, well, what is that judge doing that the other  
10 one isn't?

11 MS. MUNAFO: I couldn't agree with you  
12 more, and in fact, the city of Philadelphia, I don't  
13 know if you read, the Inquirer came ought with some  
14 statistics on some of the judges who comprise the  
15 Shepherd Commission who did, prepared a report on  
16 increasing the efficient operation of Philadelphia  
17 court in general, not the Family Court. They came up  
18 with a measure to measure the productivity of the  
19 judges, the individual judges on the court, and from my  
20 inquiry, and I haven't seen what the measure is, they  
21 have some kind of a weighted measure as to kinds of  
22 cases that each judge has, because it's difficult. You  
23 can't just get numbers of cases and then say that  
24 judges, one judge is productive over another. You have  
25 to put weights on these different kinds of cases

1 because some cases are easier to dispose of than  
2 others.

3           So they did this, and they've come up  
4 with a measure which is a pretty good measure of the  
5 productivity of the judges and what they've done.  
6 They've published the statistics in the Philadelphia  
7 Inquirer naming the judges who are the most productive  
8 and the judges who are not so productive. And I  
9 wholeheartedly approve of that. Now, that has not been  
10 done in the Family Court in Philadelphia, and I  
11 wholeheartedly approve of that being done only because,  
12 quite frankly, I think the judges on the Family Court  
13 work very hard. They are really overloaded with the  
14 caseload and they don't have enough of the resources  
15 and facilities, and if it shows anything it will show  
16 how hardworking the judges are. And so I endorse  
17 having that measure of productivity enacted there in  
18 the Family Court. Now, I don't have control over that,  
19 I am just a member of the Bar, but I certainly endorse  
20 it.

21           CHAIRMAN CALTAGIRONE: But we're all part  
22 of the system, and you certainly work in the system,  
23 you practice in the system, so you have a stake in it  
24 just like everybody else.

25           MS. MUNAFO: Well, personally, I don't

1 see how the court can improve its operations without  
2 having that knowledge of who's productive, who's not  
3 productive. And not even the judge itself or himself  
4 who is productive, but what kinds of cases take longer  
5 and what can you do to speed up those cases? I mean  
6 really a study of the system and the case flow and the  
7 paper flow of the court system. That really needs to  
8 be done.

9 CHAIRMAN CALTAGIRONE: Well, you know,  
10 this is one of the things that I had suggested earlier  
11 with a previous speaker is that we need to form a --  
12 she had mentioned a commission, I believe, of the  
13 various interested parties from different areas of  
14 government to do just that so that some of the  
15 paperwork can be modified. We hope computerization,  
16 which happens to have been my piece of legislation  
17 that's now law that sets aside \$80 million to totally  
18 computerize the courts in this State. Some courts are  
19 completed and they are pretty well into the district  
20 justices now and the next phase will be the Common  
21 Pleas Court. That may help, but I do think that in  
22 this particular area that we've been working on over  
23 the last several months, the domestic relations area,  
24 that I think there is an awful lot of paperwork, I  
25 think there is an awful lot of time wasted with all

1 types of motions and delays, and I think things can be  
2 consolidated. I think instead of having three or four  
3 or five different hearings on different type issues  
4 involving family relations issues that they could be  
5 consolidated somehow.

6 MS. MUNAFO: Yes. May I suggest  
7 something in that regard? As you know, there are  
8 different phases in a divorce case - custody, support,  
9 and motions, interim motions. They often go before  
10 different judges.

11 CHAIRMAN CALTAGIRONE: Um-hum. That's  
12 another problem.

13 MS. MUNAFO: That only delays matters and  
14 it also increases counsel fees for the parties. I  
15 suggest, and the Family Law Section of the Philadelphia  
16 Bar Association wholeheartedly endorses a system  
17 whereby there would be one judge assigned to a case so  
18 that one judge will have the initial intervention of  
19 the case, get to know the case. It will decrease the  
20 number of frivolous petitions that are filed because if  
21 you have one judge who knows the case, knows the  
22 parties and understands matters, that judge won't let  
23 the parties get away with the frivolous petitions. But  
24 if you go before a new judge, the judge doesn't know  
25 the parties, doesn't know the facts of the case, it's

1 much more difficult to show the judge that there's a  
2 pattern here, that this is a frivolous matter. It's  
3 difficult for the judges. I mean, I'm not putting  
4 blame on the judges, but the system should be such that  
5 if one judge takes control over a case, you would be  
6 surprised how quickly a case could get settled or at  
7 least get resolved quicker.

8 MR. SUTER: We've heard that in testimony  
9 over and over again that it should be one judge.

10 MS. MUNAFO: Why don't we have it?

11 MR. SUTER: And I don't know that it's  
12 something that we can legislate, but I think that we've  
13 agreed that we're going to work with the Bar to try and  
14 urge the Supreme Court to adopt something in rule or  
15 whatever they feel best to address that issue.

16 The only thing I wanted to say is your  
17 initial point with the number of judges in the Family  
18 Court is again something that I don't know that we can  
19 legislate. I mean, it probably would be ruled  
20 unconstitutional. We're probably not likely to  
21 increase the number of judges anywhere at this time  
22 with the budget situation and taking into consideration  
23 that last session we increased the number of judges in  
24 many of the counties.

25 MS. MUNAFO: Maybe you could put some

1 statement when you increase the number saying to make  
2 sure that the Family Court gets its fair share. Can  
3 you do that?

4 MR. SUTER: I guess we can put a  
5 statement in but what the court will do, and that could  
6 be held unconstitutional. We've left it up to each  
7 local court to decide where the judges are needed  
8 because we feel that -- well, first of all, it would  
9 probably be unconstitutional, but secondly, they should  
10 know where the need is the greatest. So I think that  
11 that's something that you should definitely work  
12 through with your local bench/Bar, because frankly, I  
13 just don't know that there's anything we can do about  
14 it except increase the number of judges everywhere,  
15 which is not something that realistically can be done  
16 at this time. And even then, there's no guarantee that  
17 you're going to get more family law judges.

18 MS. MUNAFO: Yes. Well, the legislature  
19 could appropriate more money for the court system, and  
20 especially the Family Court system.

21 CHAIRMAN CALTAGIRONE: Well, that was one  
22 of the things that I was going to suggest, that we  
23 could actually designate money as a line item in their  
24 court budget.

25 MR. SUTER: For court personnel?

1                   CHAIRMAN CALTAGIRONE: For court  
2 personnel and some other areas that would address their  
3 concerns. I've always used the approach that if you  
4 work with people, and we have taken tours of the  
5 Commonwealth Court right under our very noses here and  
6 met with the president judge, he escorted us through  
7 and gave us a very good briefing. Just a week or so  
8 ago we met here with President Judge Rowley from the  
9 Superior Court had the same type of briefing, and we  
10 plan to go down while they are in session either in  
11 Pittsburgh or Philadelphia to see their operation. And  
12 we are doing the same thing with the counties. I feel  
13 that, and I've told all the judges this, we've had  
14 unprecedented meetings with president judges down here  
15 from across the State, that we've got to do more of  
16 this talking and communicating to find out what each  
17 other's problems are. It's not that we are trying to  
18 encroach on their turf or their area. That's not the  
19 point at all. What we're saying is the system is  
20 failing. It's failing everybody, and we are all party  
21 to it. And they alone cannot solve the problems. We  
22 alone cannot solve the problems. And we certainly are  
23 not trying to dictate to them as to how they should run  
24 their area of government, but they certainly need us  
25 when it comes to the finances of running their

1 operation. We do certainly control the legislative  
2 part of the agenda, we certainly do control the making  
3 of constitutional amendments to the Judicial Inquiry  
4 and Review Board. We are going to be attacking that  
5 again, and the Constable's fee bill. We're going to  
6 hopefully deal with that some time in the new year.  
7 Those types of issues we do deal with. We add more  
8 judges. I mean, we have a very active committee and I  
9 am proud of the members that serve on this committee  
10 because they work very hard and they are very diligent  
11 about what they do and we are trying to work out the  
12 problems and trying to come up with solutions. I would  
13 hope, under those circumstances, that the courts would  
14 take it in the same vein that I think this committee  
15 has in trying to address these problems and not trying  
16 to dictate to them or interfere with their processes  
17 but to say, hey, look, we're all partners in this. We  
18 play a role. We want to help you and facilitate  
19 whatever needs to be done to address these problems.  
20 But if it's left untouched or undone, the system is  
21 going to fail us.

22 MS. MUNAFO: Yeah.

23 CHAIRMAN CALTAGIRONE: Now, the way I see  
24 it failing us already is that, and I don't know what  
25 your caseload is or the backlog, and I think you have



1 the stats there, the same holds true in the criminal  
2 area. Now, if this continues to bog us down, and we're  
3 party to this because of some of the mandatories and  
4 the other things that we do, and if we do get into  
5 changing the area of the Divorce Code and get into,  
6 say, the mediation area as some of the other States,  
7 either we're going to help or hurt, and I don't think  
8 anybody wants to compound the situation any more than  
9 it already is. We need some of the best minds in this  
10 State from the legal community, from the Bar and the  
11 courts to try to resolve some of these issues, and I  
12 think they can be resolved if people sit down and try  
13 to examine what the problems are, and we certainly are  
14 hearing problems from one end of the State to the  
15 other. Everybody says, don't fix it, it's not broken,  
16 there's nothing wrong. That's baloney. I mean, if  
17 you're hearing from all of your clients like we've been  
18 hearing from them and the Bar and even judges, both  
19 active and senior judges, there's problems. And  
20 somebody's got to look at them, and this is an  
21 appropriate forum in which to do it. We're not trying  
22 to hang anybody or put their hide out, we're saying  
23 that there's problems that need to be addressed and  
24 we're looking for those solutions, and I know that  
25 you're going to make some recommendations.

1 MS. MUNAFO: Yes.

2 CHAIRMAN CALTAGIRONE: But go ahead.

3 MS. MUNAFO: All right. Well, let me go  
4 through what I had prepared here, just an outline of  
5 suggestions, and I also want to pick up on the  
6 computerization issue that you mentioned, especially  
7 with regard to an issue that you're going to hear from  
8 Jack Stuff, if he's here, on the IV-D program and the  
9 Federal funding program, so I want to get into that  
10 too.

11 But just generally let me just say that  
12 the Governor appointed a commission, as you know,  
13 headed by Judge Beck who made recommendations on  
14 fundamental changes in the entire court system, not  
15 just the Family Court system, and I think that the  
16 legislature should do something about those  
17 recommendations. I wholeheartedly, and the Bar  
18 Association wholeheartedly supports the recommendations  
19 for changes set forth in the Beck Commission Report.  
20 One of those would be the merit selection of judges.  
21 We wholeheartedly support the merit selection of  
22 judges. The election of judges has caused some  
23 problems, and especially with regard to funding of  
24 campaigns by lawyers, and I'm sure that the complaints  
25 that you have heard from various constituents may

1 involve this relationship between lawyers and judges, a  
2 part of which may be caused by the whole system of the  
3 election of judges. So perhaps the legislature should  
4 take a serious look at merit selection of judges.

5 Secondly, the Beck Commission Report  
6 advocates the change in the judicial discipline system,  
7 and you just mentioned that you are looking at that and  
8 that is an important part of the judicial system that  
9 should be changed.

10 Third is the funding of the court system.  
11 As you know, the Beck Commission Report and our Supreme  
12 Court have both come out and said that we should have  
13 statewide funding of the courts. We should eliminate  
14 the local funding of the court system. The State  
15 hasn't bitten the bullet yet on that one and I  
16 understand that that is difficult to work the  
17 complexities of that out, but that will help, I think,  
18 with the efficient operation of the court system.

19 And fourth, the administration of the  
20 court system with the statewide computerization, which  
21 you're already working on, that is a major component in  
22 making the court operate efficiently. I can tell you  
23 that on that, the Family Court in Philadelphia is going  
24 to attempt to computerize its own system while waiting  
25 for the statewide computerization system because it

1 can't wait any longer to not have computerization.  
2 It's too inefficient. We don't even have a docketing  
3 system in Philadelphia Family Court. I mean, it is a  
4 manual system. If you want to take an appeal, you have  
5 to call somebody and a clerk makes up a manual docket  
6 to be submitted to the appellate court. Well, that's  
7 so inefficient. It takes so long. It delays appellate  
8 review. It's crazy. If you had a docketing system  
9 that was computerized from day one you wouldn't have to  
10 have such delays in the system.

11 We don't have, if you computerized  
12 scheduling it would eliminate delays in the system  
13 because the courts would have the schedules of lawyers  
14 who submit to the court that they are on vacation for  
15 this block of time so that they are not scheduled for  
16 anything in that block of time and they don't have to  
17 ask for continuances, which takes up court time and it  
18 delays matters. If things are properly scheduled, the  
19 system works more smoothly and efficiently. And case  
20 management. Needless to say, we need a computerized  
21 case management system. None of that is in effect  
22 right now in Philadelphia in the Family Court in any  
23 way in Philadelphia. So we need that desperately.

24 We talked about the one-judge-one-case  
25 system. That's absolutely a must in order to eliminate

1 delay and have a better form of justice. You'll have  
2 more satisfied people with -- the people will be  
3 satisfied with the resolutions more because the system  
4 will work quicker and they will feel that a judge at  
5 least understood what was happening in their case.  
6 When you go before five or six different judges in  
7 their case, you get the feeling that nobody really  
8 understands what's going on. So that's very important.

9           We need adequate facilities, as you know.  
10 The Family Court facilities are outmoded. Recently,  
11 the Family Court facility was consolidated into an  
12 older building that was remodeled. Prior to the  
13 consolidation in 1991, the Family Court was located in  
14 three different locations. Now, that makes for great  
15 inefficiency because you have records in three  
16 different buildings, you have duplication of effort in  
17 three different buildings, and you have confusion  
18 because no one knows what the right hand is doing.  
19 It's really an inefficient system. Now we've got  
20 consolidation. We've already outgrown the facility.  
21 Now that we have 20 judges operating, we need more  
22 courtrooms, we need more chambers, and there's not  
23 enough room. So there are these problems.

24           We need better training. Judges need to  
25 be trained better, and the court officers need to be

1       trained better. We have hearing officers that really  
2       don't understand how to handle a custody matter, and  
3       yet custody being such a delicate subject, hearing  
4       officers have no training whatsoever. We need hearing  
5       officers who know what's going on.

6                       The Family Law Section of the  
7       Philadelphia Bar Association is advocating a change in  
8       the hearing of custody cases by having what the system  
9       similar to Montgomery County and some of the outlying  
10      counties, a custody conciliator system. I think you  
11      heard from Logan Bullett this morning. Logan Bullett  
12      is a custody conciliator in Montgomery County. That  
13      system works pretty efficiently in Montgomery County.  
14      Of course it's a small county, it's different than  
15      Philadelphia, but we would advocate a system like that.  
16      At least Logan Bullett is a lawyer, he understands the  
17      law in custody matters, he can make recommendations  
18      that will expedite a custody case. The system we have  
19      in Philadelphia just seems to drag on from custody  
20      officer to judge and hearing, and it just drags on for  
21      a long period of time. So we need some reform in that  
22      system too.

23                      Then there's a problem in Philadelphia, I  
24      don't know what the legislature can do about that, but  
25      that is procurement. We have a system whereby the

1 court has to ask the city of Philadelphia for an  
2 allocation of every pencil and piece of paper that they  
3 use, and that bureaucracy is so difficult to get  
4 through. That makes it difficult for the Family Court  
5 to operate properly. And you may know that the Supreme  
6 Court recently tried to eliminate that problem by  
7 asking the AOPC, the Administrative Office of  
8 Pennsylvania Courts, to handle all of the purchasing of  
9 supplies for the courts, but they didn't do it for the  
10 Family Court. And the reason for that is Family Court  
11 gets Federal moneys, IV-D funds, and there's a lot of  
12 regulations on how to handle those IV-D funds and the  
13 AOPC doesn't want to handle that money, so now we're  
14 going to try to work out some system whereby we can  
15 overcome that hurdle so that AOPC can also get the  
16 supplies for the Family Court and alleviate that  
17 problem that's causing delays and inefficiency.

18 On the issue of IV-D money, as you  
19 probably know, the Federal government has put in money  
20 to the local courts to try to increase the collection  
21 of child support payments, and these are called IV-D  
22 funds. And what is happening is that the Federal  
23 government is requiring that there be statewide  
24 computerization of these domestic relations branches  
25 which collect the child support money, and then of

1 course the State legislature is now having a statewide  
2 computerization of its own court system. Now we have  
3 two separate statewide computerization systems - one  
4 for the Family Court, or a portion of Family Court, and  
5 the other for the rest of the court system. My concern  
6 is, and I hope maybe Jack Stuff can answer this, that  
7 these two systems have to be integrated. They must be  
8 integrated. You cannot have a unified court system  
9 with two separate computer systems. So I would ask  
10 that the legislature just monitor that situation.  
11 That's another foreseeable problem, and hopefully Jack  
12 Stuff will say that it's not going to be a problem.

13 CHAIRMAN CALTAGIRONE: I sit on the  
14 committee with the AOPC in the computerization and  
15 that's only one of the areas. There are some counties  
16 that already have up and going systems that are not  
17 going to be compatible with the State system and there  
18 are problems that have to be worked out, but we have  
19 been meeting and there are a number of committees that  
20 are meeting on the systems that are being set up, but  
21 you're right.

22 MS. MUNAFO: Okay. The other thing with  
23 regard to the IV-D money is IV-D money is earmarked for  
24 improving the collection of child support enforcement.  
25 So therefore, that money has to be earmarked for that



1 portion of the court so that if this IV-D money is  
2 sitting there and we want to use that money for, say,  
3 establishing a custody mediation program, which is  
4 badly needed, we have to get the approval of Mr. Stuff  
5 to allow us to do, set aside those funds for that  
6 purpose because that's not the purpose that the IV-D  
7 funds were intended for. Now, Jack Stuff has, in fact,  
8 approved a number of these programs including a custody  
9 mediation program in Philadelphia and an abuse court  
10 program in Philadelphia, which is very helpful, and  
11 also with regard to a Master program, the divorce  
12 Master. I think you've heard from Gordon Mair. He's a  
13 divorce Master in Montgomery County, but Philadelphia  
14 now has divorce Masters as well. That program is being  
15 paid for in Philadelphia with IV-D money. There is the  
16 possibility that that money is going to be cut off  
17 because that's not a proper purpose for the use of IV-D  
18 money. That would be a disaster. And what would be  
19 awful is that the city won't pick that up and then we  
20 will lose our divorce Master system.

21 So we're caught in all kinds of, you  
22 know, city, IV-D, State funding of these programs and  
23 it seems as though, you know, these programs can't go  
24 on continuing, even though they are working fine,  
25 because there are those problems about say one person

1 saying, well, we're going to cut off funds for this,  
2 and another one saying we're not going to pick it up,  
3 we're not going to pay for it. And, you know, the city  
4 of Philadelphia is getting a real bargain here because  
5 the IV-D money pays for a lot of the Family Court  
6 operation. And the city of Philadelphia doesn't have  
7 to pay for the Family Court operation. They only pay  
8 for a very, very small part of the Family Court  
9 operation. And they are unwilling to even pay for  
10 that. So again, we're getting down to resources  
11 allocated to the Family Court. We need more attention  
12 and resources paid to the Family Court. We need more  
13 judges, we need this divorce Master system to continue,  
14 we need computerization, and we need a  
15 one-judge-one-case system, and we need the resources to  
16 do that, and at the present time, I don't know who's  
17 going to give us those resources. It seems like  
18 everybody is turning a deaf ear to the court system in  
19 general, and to the Family Court system in particular.

20 That's all I have to say. I can just  
21 tell you if you want some statistics here on  
22 Philadelphia court--

23 CHAIRMAN CALTAGIRONE: Yeah, I would  
24 appreciate it.

25 MS. MUNAFO: --Domestic Relations.

1 Petitions filed in 1990 of support, support petitions  
2 totaled 47,158. We had paternity cases, 5,121. We  
3 had, let's see, cases disposed of in support area and  
4 custody area, 37,692. In divorce we had 6,031 cases  
5 started and 4,941 divorces granted. And then there are  
6 a whole bunch of statistics for the medical branch  
7 which I won't bore you with my testifying to them but I  
8 will submit them with my written report.

9 Thank you very much.

10 CHAIRMAN CALTAGIRONE: Thank you.

11 MS. MUNAFO: If you have any other  
12 questions, I would be glad to answer them.

13 CHAIRMAN CALTAGIRONE: You were very  
14 good.

15 MS. MUNAFO: Thank you.

16 CHAIRMAN CALTAGIRONE: Thank you.

17 Gordon Mair, divorce Master of Montgomery  
18 County.

19 MR. MAIR: Good afternoon. My name is  
20 Gordon Mair. I'm one of the two equitable distribution  
21 conciliators, we're called, in Montgomery County. By  
22 way of some background on myself, I have been an  
23 attorney for 18 years, and for 14 of those years  
24 following my clerkship I have practiced family law in a  
25 total of 14 different counties in this Commonwealth.

1 For the last 4 1/2 years I have been be equitable  
2 distribution conciliator in Montgomery County. My  
3 position is a part-time position. I sit three days a  
4 week, and I also practice family law in other counties  
5 than Montgomery, so I do have some familiarity with  
6 some of the other systems that are in effect in the  
7 Commonwealth for disposing of economic issues in  
8 divorce cases.

9 I am here to speak this afternoon on a  
10 very limited area of family law, and that is the  
11 procedures in Montgomery County for resolving issues of  
12 equitable distribution, alimony, and counsel fees and  
13 costs. I am here to recount a story of success. We  
14 feel we have a very successful working program in  
15 Montgomery County, and we have had a system in effect  
16 for the past 9 1/2 years which we, and by "we" I mean  
17 the bench, the Bar, the government in Montgomery  
18 County, and the conciliators, have forged into a  
19 process for resolving these economic issues which works  
20 very well. And in support of that you'll note in my  
21 written submission to you the statistics that have been  
22 prepared from 1987, that's one-half of 1987 from when I  
23 started, through 1991 to date, and those are my  
24 personal statistics. They indicate an overall  
25 settlement rate of 95.7 percent over 4 1/2 years. The

1 settlement percentage is a reflection of those cases  
2 that are either settled at the conciliator's level or  
3 from which there has been a report and recommendation  
4 filed and no exceptions to the court taken thereto.

5 I believe that the fact that the system  
6 does work so well and resolved so many cases confirms  
7 with me that the system is fair. And if it were not,  
8 certainly the attorneys and the litigators, the  
9 clients, would challenge that system and we would not  
10 have those high percentages. One might initially be  
11 tempted to think that the issues that we deal with are  
12 the most difficult to resolve. Clients perceive them  
13 as affecting the rest of their lives in an economic  
14 sense. In fact, of course, they don't. But the fact  
15 that they are so perceived underscores how successful  
16 our program of resolving cases really is. I'm  
17 convinced that to have a successful program you need  
18 expertise and continuity, and I have heard continuity  
19 referred to throughout these proceedings in terms of  
20 one-judge-one-family. I absolutely agree with that.  
21 In fact, in equitable distribution, of course, we do  
22 have one conciliator, one family. It couldn't be done  
23 otherwise.

24 I will tell you from my experience that  
25 the key element in resolving an equitable distribution

1 case is time. It takes time spent analyzing each case,  
2 discussing the case with attorneys, discussing the case  
3 with the litigants personally, hearing the case, if  
4 necessary. It takes all that input to achieve quality  
5 results and resolution and respect for the system. And  
6 time is the one thing that is starting to affect our  
7 system in Montgomery County. For a long time, actually  
8 up until about six months ago there was only one  
9 equitable distribution conciliator sitting three days a  
10 week. Now our County Commissioners and court have  
11 addressed that situation by adding another conciliator.  
12 We're fully staffed for five days a week, but I must  
13 tell you that I'm envious of my colleagues in Bucks  
14 County. I believe there's three conciliators there  
15 sitting five days a week.

16           The situation that results from the  
17 limited time that we have is a backlog, and you'll hear  
18 that referred to by litigators like Lynn Gold-Biken who  
19 often complain about the backlog and the time that it  
20 takes to get to the Master's courtroom and the time  
21 that it takes to complete a case once it does reach  
22 there. My record so far is 11 days of hearing. That  
23 11 days took approximately one year. And in that 11  
24 days, on an average I could probably have resolved  
25 between 20 to 40 other cases. But that case that went

1 11 days resulted in a report and recommendation that  
2 was not accepted to and obviously saved the court a  
3 couple of weeks of trial time. However, it did result  
4 in other litigants having to wait longer to get to the  
5 equitable distribution system.

6 If there's any one thing that the  
7 legislature can do to improve the system it's to  
8 provide us with the resources to permit us the time to  
9 address and resolve these cases. If we have the time  
10 to do it, we can do a good job, as we have been doing  
11 so far. If the system continues to snowball in terms  
12 of the number of cases coming into it and we still are  
13 left with the same time constraints that we have, I  
14 predict that our results will not be as great and that  
15 will also cause an additional burden to the courts in  
16 having to hear additional cases. It's a snowballing  
17 situation.

18 In summary, I would tell you that the  
19 format and criteria that you have given us I think has  
20 proven that it can be the basis of a fair and workable  
21 system. I would suggest a uniform statewide system  
22 based on the procedures that are employed in Montgomery  
23 and Bucks and Philadelphia Counties. I have, as I  
24 said, practiced law in a number of counties. I have  
25 been to the counties where we are required to pay for a

1 Master. I have always considered that an affront as a  
2 litigant. I have been to the counties where a Master  
3 is selected at random from the Bar. He may or may not  
4 be, or she may not be a family law trained attorney.  
5 And there is no consistency. I've handled in the 4 1/2  
6 years I've been in Montgomery County approximately  
7 1,150 cases, and right or wrong, at least I'm  
8 consistent, and I think consistency is something that  
9 litigants and lawyers deserve. It makes an  
10 understanding of the system easier, perhaps it doesn't  
11 make an acceptance of what happens any easier, but it  
12 makes an understanding easier. And I think an  
13 understanding goes a long way toward a resolution of  
14 the cases, and I think that's reflected in those  
15 figures.

16 The actual procedures that we use and  
17 utilize I've set forth in my written submission in more  
18 detail. I would be happy to answer any questions the  
19 panel may have.

20 CHAIRMAN CALTAGIRONE: Thank you.

21 REPRESENTATIVE HECKLER: Thank you, Mr.  
22 Chairman.

23 BY REPRESENTATIVE HECKLER: (Of Mr. Mair)

24 Q. This is probably more of an observation  
25 than a question, but I'm sure you're aware that one of



1 the things we have a marked shortage of in these parts  
2 is resources, which, you know, the Governor is holding  
3 up on funds that have been appropriated this year, I  
4 think that there has even, when times were good  
5 financially in this State the legislature drew  
6 something of a line in the sand with, and I addressed  
7 the previous witness's comments with regards to the  
8 funding of the unified judicial system. I am wondering  
9 if there is any advocacy taking place, and of course  
10 you just had a changeover of commissioners in  
11 Montgomery County, I know periodically in Bucks County  
12 we have spats between our court and the commissioners,  
13 and the commissioners ultimately conclude that they  
14 don't necessarily want to be sued in what I think one  
15 of our commissioners discusses that process as going to  
16 your mother-in-law to ask her about your wife's  
17 allowance, or whatever.

18 But I just wonder, because what you say  
19 makes tremendous amount of sense, and you are saving,  
20 you are providing a service that's badly needed by  
21 those in the public who receive it and you are saving  
22 the taxpayers ultimately a very substantial amount of  
23 money in terms of what they'd have to spend on the  
24 overall court process, whether there is any act of  
25 advocacy aside from the president judge handing the

1 commissioners a budget to recognize the need for  
2 expansion, for instance in Montgomery County of the  
3 services you provide?

4 A. If there is, I'm not aware of it. I am  
5 aware of certain debates going on about space  
6 constrictions inside the courthouse and the thought of  
7 putting all the Masters together in a separate  
8 building. I can tell you that I frankly don't favor  
9 that. I feel that there's a tremendous psychological  
10 impact of walking up those marble steps into that  
11 courthouse and walking into an office into the  
12 courthouse to have a case resolved. If our system were  
13 viewed as simply another domestic relations office  
14 conference, I don't think that we would have the  
15 success that we have. I know in other counties, and  
16 I'm thinking of Bucks County, it is handled differently  
17 that way and it's very successful, so maybe my fears  
18 are unfounded. But I am not certain of other than a  
19 conversation that I had with the president judge about  
20 thinking of additional Masters down the road, I don't  
21 know of any specific lobbying in that regard. It may  
22 come to that. If the increase of cases continues at  
23 the present rate, we're simply going to fall too far  
24 behind to be effective, and once you lose the  
25 effectiveness and cases that were previously settling

1 have to be tried, we could be a year or two behind in  
2 no time, and that, frankly, concerns me.

3 Q. As well it should. Again, Mr. Chairman,  
4 I don't know that this bears on anything that we can  
5 do. I obviously feel very strongly against the funding  
6 of a unified judiciary, but I think that the public,  
7 who little appreciates the important service which all  
8 of the branches of the judiciary, but particularly in  
9 this day and age domestic relations offices and the  
10 domestic relations court provide to the public, provide  
11 to people, whether it's just a question of your kids  
12 are in school with kids who are in families who are  
13 going through this turmoil and the better they get  
14 through it the better a setting we're all in really is  
15 a service that I don't think is comprehended as a  
16 service to the extent it's thought about at all. So I  
17 don't know what we can ever do at this level to promote  
18 that understanding, but I think it is one that people  
19 need to think about it.

20 CHAIRMAN CALTAGIRONE: Ken.

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

22 Q. We've been hearing testimony the last two  
23 days about reducing the time period necessary for  
24 living separate and apart from two years to one year.  
25 Do you have any thoughts on that?

1           A.    I do, and let me speak as a conciliator  
2 and Master and not as a litigant, because my thoughts  
3 may differ depending on which hat I was wearing. I  
4 feel that as a conciliator, a year is certainly enough  
5 time to figure out whether your marriage is going to  
6 work or not and to prepare yourself for a final  
7 resolution of the economic issues in your case. I  
8 think two years is too long. I have seen some  
9 injustices done, rights that are very hard to remedy.  
10 The payment of support or alimony pendente lite for too  
11 long a period of time where it really can't be  
12 recaptured. I admit those cases are rare, but one of  
13 them is enough to bother me. And I have seen too  
14 often, and a support Master could tell you this more  
15 than I, but I have seen too often the use of the  
16 separation period as leverage in a domestic relations  
17 case, and I happen to think that that's wrong. That's  
18 not why it was enacted. That's not the intention of  
19 it, but that is primarily how it's used and utilized,  
20 and I think cutting it in half to a year would  
21 eliminate that. As a trial lawyer in a specific case,  
22 I might feel differently.

23           Q.    Can you give me an idea of what the  
24 percentage of the cases are that are appealed or  
25 exceptions are filed from your decision?

1           A.    Sure.  4 1/2 years I have written 120  
2 reports and recommendations after full hearing; 49 of  
3 those made it to the court.  And of those 49, 2 of  
4 them, I believe, are now in Superior Court, and I can  
5 tell you from my perspective they were insignificant  
6 cases in terms of legal issues.  They were not large  
7 cases or complex cases by anyone's definition.  The  
8 judges have disposed of the remaining cases I think  
9 fairly quickly, actually.

10           Q.    When we were in Pittsburgh we heard some  
11 testimony that judges should have the authority to  
12 direct appropriate divorce cases, as they called it, to  
13 binding arbitration.  Do you have any thoughts on that?

14           A.    As a conciliator/Master, I would be a  
15 little in favor of that because I happen to believe in  
16 the process.  As a trial lawyer, I don't know that I  
17 would want to give up some of my options to proceed  
18 through the system by having binding arbitration forced  
19 on me.  I have seen a few cases over the past 4 1/2  
20 years since I've been a conciliator where I was asked  
21 to arbitrate a case and have my decision be binding,  
22 but it's a very small percentage.  I would, personally,  
23 as a litigant, I would not feel comfortable having that  
24 dictated to me.  I'm not sure that it's necessary.  
25 Considering the settlement percentage rate that we

1 have, I don't think that binding arbitration is  
2 necessary, and I think that good lawyers sometimes, and  
3 I'm talking about the top lawyers in the field,  
4 recognizing that a particular case has particularly  
5 difficult issues that might go either way, they often  
6 work to move their clients into a binding arbitration  
7 agreement. But, again, it's a rarity.

8 Q. Thank you.

9 CHAIRMAN CALTAGIRONE: Thank you.

10 MR. MAIR: Thank you very much.

11 CHAIRMAN CALTAGIRONE: Next testifant is  
12 Patricia Shang, Director of the Women's Advocacy  
13 Project.

14 MS. SHANG: Good afternoon, Chairman and  
15 members of the committee. I'd like to start out by  
16 giving you some background on the Women's Center. For  
17 the past 16 years the Women's Center of Montgomery  
18 County has offered programs and services geared to the  
19 goal of helping women gain control of their lives and  
20 working to effect social change for the betterment of  
21 women. Changes accomplished through counseling  
22 services, legal advocacy, information and education  
23 programs, through work on county task forces, policy  
24 boards and coalition building with community groups.

25 Organizationaly, the Women's Center has

1 changed in 16 years. In February, 1976, seed money  
2 from the American Association of University Women, the  
3 first center in the county was founded in Abington.  
4 Domestic violence and emergency housing for abused  
5 women made up the majority of calls received by the  
6 hotline in the early years. Because of this need,  
7 members of the center founded Laurel House in 1981, the  
8 only shelter for abused women in the county. For six  
9 years the center was a totally volunteer-run  
10 organization. Today there are three offices, the main  
11 headquarters in Jenkintown. In order to assist women  
12 through the court system, we opened an office in  
13 Norristown in 1986 that's located directly across the  
14 street from the courthouse. A third office was opened  
15 in Pottstown in 1988.

16 The center is still continued to be  
17 primarily staffed by volunteers. We have 150  
18 volunteers today and a paid staff of 3 full-time and 6  
19 part-time employees. Programs offered fall under three  
20 categories: Counseling services, information and  
21 education, and legal advocacy. Counseling services  
22 include telephone counseling, peer counseling, domestic  
23 violence counseling, counseling which includes a  
24 24-hour a day completely volunteered staffed hotline,  
25 transition support groups for women going through

1 separation and divorce, a Korean women's support  
2 committee and support groups for abused women.

3 We are a multi-service center. We try to  
4 look at a holistic viewpoint in helping women get back  
5 on their feet. All women who provide any of our  
6 counseling services must take a 40-hour training.

7 Domestic violence hotline is, for many  
8 women, the first step in attempting to eliminate the  
9 violence in their own and their children's lives. In  
10 the early years we received 60 to 80 calls a month  
11 dealing with abuses. Today we take over 300 calls a  
12 month. In the fiscal year '90-'91, 3,940 calls were  
13 made on the hotline. Last year we provided services to  
14 34 men who called about their own abuse or the abuse  
15 experienced by a daughter or sister. A weekly support  
16 group provides ongoing support for abused women and  
17 breaks the isolation in their lives.

18 The Women's Advocacy Project, located in  
19 Norristown and Pottstown, was begun in 1986 because we  
20 realized abused women were having trouble getting into  
21 the legal system. In 1986, about four to five women a  
22 week were getting protection orders. Today it ranges  
23 from 20 to 30 a week. We have focused our energies on  
24 assisting abused women in getting protection from the  
25 abuse in their lives. One of our goals is to assist



1 women in seeking relief through the courts so that they  
2 and their children can stay safely in their own homes.  
3 I've been director of the Project since 1988. I've  
4 been directly involved in providing services to abused  
5 women, along with my paid staff and volunteers. I  
6 might add that because we're so shortstaffed at the  
7 Women's Center that all of us who are paid staff do  
8 wear many hats. We do whatever is necessary to get the  
9 services out to women in crisis.

10           Until recently, we are providing services  
11 out of two small rooms in Norristown but have moved to  
12 a larger space because of demand. Between 1987 and '88  
13 -- that's wrong. The written testimony says '87 and  
14 '88, but it's '88 and '89. It's after the passage of  
15 the amendments -- our demand for services increased by  
16 735 percent as a result of the amendment.

17           We also have at the center counseling  
18 services for Korean women. This is the only Korean  
19 women's counseling service between New York and  
20 Washington, D.C. Last year the Korean hotline, which  
21 is opened 5 days a week, served 1,622 women, of whom  
22 the majority were abused. A single mother's group and  
23 English classes are regular programs. Problems also  
24 addressed deal with language barriers as well as  
25 differences between Korean and American cultures.

1           We are continuously seeking ways to  
2 better women's lives. Additions include a TDD, a  
3 telecommunications device for the deaf, which was  
4 opened this year.

5           We found it is true that no one exists  
6 alone. This is particularly true for a nonprofit  
7 women's agency located in a politically conservative  
8 county with a strong anti-women's group in the area.  
9 The Women's Center is no longer alone in its support of  
10 abused women. It is with the support of individuals  
11 and other community groups that direct services for  
12 abused women, education and advocacy are carried out.  
13 The Women's Center represents women's issues on  
14 advisory boards, committees, and task forces. We work  
15 closely with Laurel House, victims services, family and  
16 youth programs, Northeast Branch of AAUW, National  
17 Council of Jewish Women, the YWCA of Pottstown. Staff  
18 members serve on District Attorneys Victim/Witness  
19 Policy Board, the Pennsylvania Coalition Against  
20 Domestic Violence, Coalition for Women, Anti-Violence  
21 Task Force in Pottstown, and I might add the Domestic  
22 Violence Legal Network of Montgomery County, which I  
23 chair.

24           We all keep in mind that we are not here  
25 to work miracles but to empower ourselves and other

1 women, to discover our strengths and to prove that with  
2 support women can help themselves and take  
3 responsibility for changing their lives.

4           It has come to our attention that there  
5 has been an accusation against the Women's Center of  
6 Montgomery County that we are coaching women to lie in  
7 order to get protection orders. The philosophy of the  
8 center since 1976 has been to assist women to discover  
9 their strengths through a self-help model. Our  
10 counselors and advocates are trained according to the  
11 law to provide peer support. We do not employ  
12 professional therapists or attorneys, although we seek  
13 their advice on occasion and provide referrals when  
14 necessary. It is our belief that when a woman is given  
15 the information and support she needs, she will begin  
16 to make decisions outside the realm of fear and  
17 oppression in which she has been trapped. Indeed, she  
18 has made momentous decisions all along in order to  
19 survive the abuse. For us to subvert a system we have  
20 dedicated more than a decade and a half to establish  
21 flies in the face of common sense and goes against our  
22 most deeply held values. No one at the center would  
23 presume to tell a woman what is best for her. We are  
24 taught to listen non-judgmentally and support her in  
25 her decision, whether we agree with it or not. Only

1 she is capable of navigating the dangerous waters in  
2 which she sails. With our assistance, she may be able  
3 to chart a clearer course.

4 This philosophy of empowerment and peer  
5 support was further bolstered by our entrance into the  
6 court system in 1986 when we expanded our program to  
7 include the legal advocacy component. We've made it  
8 our practice for 10 years not to judge. We leave that  
9 to the judges on the bench in Montgomery County, and we  
10 have every confidence in their ability to do so. Our  
11 accusers insult the intelligence of the bench by  
12 presuming that they are unable to uncover a falsehood  
13 through the course of litigation. Each defendant is  
14 guaranteed the opportunity to rebut allegations  
15 contained in the petition at a full hearing. It has  
16 been my experience over the past 3 1/2 years and over  
17 4,000 cases that when confronted with the facts of  
18 their violent behavior in a court of law, the defendant  
19 is in fact the one who has everything to gain by lying  
20 or denying the abuse, and in fact many do. Given the  
21 low rate of dismissals in Montgomery County, we might  
22 conclude that it is in fact the women who are telling  
23 the truth.

24 I find it particularly cruel that in May  
25 of 1990, on the heels of seven domestic violence

1 related deaths within a three-week period in the same  
2 area of our county, the Pottstown area, that members of  
3 a local father's rights group would seize that  
4 opportunity to harass and threaten one of my  
5 co-workers. While under the additional stress of  
6 responding to the community outcry over the deaths, she  
7 appeared at a public forum and was approached by a man  
8 carrying a FACE newsletter. Throughout the event he  
9 continued to harass her. He called attention to  
10 himself by his combative means and accusations against  
11 the center. Shortly thereafter she received three  
12 phone calls. The first was the sound of a gun clicking  
13 in the phone. The second she recognized the voice of  
14 the man at the public forum, and the third one was a  
15 threat, "I'm going to take care of you." She reported  
16 the calls to the police. Our board spent precious time  
17 and resources bolstering the security in our Pottstown  
18 office. Our board president contacted the FACE  
19 president with a formal complaint, and in addition, my  
20 co-worker recognized this man in the supermarket and  
21 when she confronted him he smirked and did not deny his  
22 actions. In addition, a report was made to one of our  
23 major funders that we were coaching women to lie. More  
24 precious time was spent responding to that accusation.

25 I believe that these are the acts of

1 cowards, and we are outraged that in the midst of  
2 responding to women in crisis we are faced with a drain  
3 on precious time and resources to defend our work, work  
4 that the legislature has provided for in the Protection  
5 From Abuse Act. I present the following illustration  
6 in an attempt to help you understand the struggle and  
7 courage of battered women. Leaving an abusive  
8 relationship is a process. It takes on the average  
9 four to six attempts for a battered woman to leave the  
10 violent home. Before she comes to us she has made  
11 numerous attempts to stop the violence. She has  
12 complied with the abuser's demands, cut herself off  
13 from friends and family, she has gone to work, quit  
14 work, been fired due to excessive absences directly  
15 related to abuse. She has sought the counsel of  
16 friends, family, clergy, co-workers, bosses in an  
17 attempt to find the solution. She may have called the  
18 police, and somewhere along the line someone has  
19 referred her to the center. She is most likely at the  
20 end of her rope by the time she has called us. She has  
21 already tried everything she knows.

22 One of our telephone counselors speaks  
23 with a woman and begins to present her with a full  
24 range of options. The woman determines that a  
25 protection order may be in her best interest, she is

1 referred to our legal advocacy office. An advocate  
2 will further discuss her options, the risks involved,  
3 careful safety planning, an explanation of the  
4 Protection From Abuse Act, its definitions, the relief  
5 available and its limitations. An appointment is made,  
6 at which time there is at least another hour further  
7 reviewing the dynamics of abuse, options available and  
8 the services of the center. It is at this point that  
9 after three contacts with her that the final decision  
10 is made about whether or not to get a protection order.

11 We then begin the painful task of  
12 recounting the abusive incidents. Each woman must find  
13 the courage to relive the nightmare she has worked so  
14 hard to forget. Many women break down at this point  
15 and must return at another day to complete the process.  
16 When all the paperwork is done, we proceed to the  
17 courthouse where each case is numbered. After review  
18 by the Family Court signing judge, whom we may have had  
19 to wait an hour for, we proceed to the court  
20 administrator, who schedules the case for final  
21 hearing, and the last stop is at the sheriff's office  
22 to assure service of the order and petition on the  
23 defendant. If the order provides for temporary  
24 support, we make a trip to domestic relations, and if  
25 there is any time left we go to Legal Aid. This

1 process can take from three hours to an entire day

2           Between the issuance of the temporary  
3 order and the hearing for a final order we contact her  
4 by phone to provide further support and information.  
5 We are present at the final hearing. We contact her at  
6 three- and nine-month intervals to determine whether or  
7 not the order is working and if not, why not. We again  
8 recommend services that the center provides and explain  
9 how the order works, because many women still do not  
10 understand that if a violation occurs, the police must  
11 be called.

12           Most women resist taking any action that  
13 might result in the batterer's arrest. They fear  
14 increased violence and retaliation, or they fear the  
15 loss of support if he's incarcerated. When a hearing  
16 for indirect criminal contempt is scheduled, we are  
17 also present, supporting and informing her about the  
18 process. We cooperate with prosecutors, we are present  
19 at preliminary hearings and resulting trials. Each  
20 time another proceeding occurs she believes the  
21 violence will stop and must relive another nightmare.

22           The role of the advocate as I see it is  
23 to provide a bridge of understanding between battered  
24 women and the court system. Through counseling and  
25 advocacy, we educate her about the system. Through



1 contact with the system we share the experiences of  
2 women we serve to illuminate and inform the work of the  
3 court.

4           Regarding abuses of the Protection From  
5 Abuse Act, my perception is that this concern might  
6 most likely arise out of a legally trained mind. I  
7 believe lawyers are there to win, and in trying to win  
8 will use available resources. However, I am aware that  
9 to date no complaints have even been filed regarding  
10 attorneys abusing the Protection From Abuse Act. Let  
11 me assure you, battered women do not think this way.  
12 Their objective is peace, a cessation of violence, and  
13 nothing more. They are terrified of being in court.  
14 They are only there because they have heard that this  
15 might stop the violence against them and their  
16 children. Going to court for a battered woman is an  
17 act of desperation and one still colored with so much  
18 emotion that thoughts about future litigation and what  
19 impact a protection order would have does not cross her  
20 mind. In fact, any future litigation of any kind would  
21 not be likely to cross her mind. When and if it does,  
22 the cost is generally prohibitive for a battered woman  
23 struggling to survive on one income and little or no  
24 child support.

25           Battered women obtain protection orders

1 at tremendous personal risk. Research shows us that  
2 violence often escalates after a separation. Quote,  
3 "Women are most likely to be murdered when attempting  
4 to report abuse or leave an abusive relationship," end  
5 quote. (Sonkin et al, 1985, Browne 1987.) She may  
6 also be putting her children, her family, other family  
7 members, friends and co-workers at risk, since much of  
8 the harassment and abuse is done at work. She risks  
9 alienation also by the abuser's family, who may have  
10 been her only source of protection. When faced with  
11 the choice of staying in a violent relationship or  
12 leaving and the possibility of violence escalating,  
13 women do not see the protection order as the  
14 acquisition of an advantage but rather hope only for  
15 the cessation of violence. In addition, legal  
16 advocates doing this work are prohibited from doing so,  
17 attempting to gain an advantage, because it would be  
18 practicing law and would jeopardize the loss of  
19 everything we believe in.

20           Regarding the act in Pennsylvania today,  
21 the legislature, I believe, has provided battered women  
22 of Pennsylvania with an extremely effective vehicle  
23 through which they have the opportunity to end violence  
24 in their lives. Not all counties have a pro se system  
25 in place. However, in Montgomery County, I believe

1 because of the cooperation of the courts, the police,  
2 and the Women's Center, we have one of the best pro se  
3 systems in Pennsylvania today. This legislature has  
4 displayed uncompromising courage and uncommon vision in  
5 its passage of the Protection From Abuse Act and  
6 subsequent amendments. The current complaints are due  
7 to the tremendous success of the statute. Our accusers  
8 would have the legislature take domestic violence from  
9 the light of day in open court to the darkness of a  
10 violent home where the abuser is all powerful. I  
11 encourage and support the work of the legislature to  
12 continue their commitment to the equal protection of  
13 all citizens of this Commonwealth.

14 Briefly, my recommendations: I would  
15 encourage a provision for protection order that would  
16 last longer than one year. California today has a  
17 three-year protection order. Many women return to us  
18 saying that the only way they know they are safe is  
19 through the existence of the protection order, and what  
20 happens is the order expires, another incident occurs  
21 and then they must come through the entire system  
22 again.

23 There is also confusion about when a  
24 violation hearing occurs about extending the current  
25 order or issuing a new one. This has been an ongoing

1 discussion in Montgomery County for about three years  
2 now. Perhaps an expansion of the definition of abuse  
3 to incorporate the terrorism which goes beyond physical  
4 abuse and includes stalking, property destruction and  
5 break-ins, interference with work and violation of a  
6 current order. And lastly, because the requirement in  
7 the act for police training has done such a tremendous  
8 job of educating and informing the police, we have seen  
9 in the last five years such a radical change in the way  
10 the police respond to domestic violence calls. I would  
11 call for a training of the court in general.

12           There were a couple of other remarks made  
13 earlier today that I wanted to respond to also. I  
14 would say that I am opposed to mediation of any kind.  
15 I believe that -- in our counseling we use a thing  
16 called the power and control wheel, and this is a  
17 graphic depiction of the dynamics of abuse. And when  
18 an abuser is prohibited from actually physically  
19 hurting his partner, he will very often use the  
20 children through custody proceedings and use the courts  
21 in general to further these dynamics of abuse, of which  
22 power and control are the underlying issues.

23           And I thank you for the opportunity to  
24 come here today, and I'm ready to answer any questions.

25 BY REPRESENTATIVE HECKLER: (Of Ms. Shang)

1           Q.    Let me just follow up on the last point  
2 you've made, which is your perception that abusers in  
3 particular will, if you will, abuse the legal process  
4 as a means of pursuing their psychological goals. The  
5 fact is we have disputes that have to be resolved.

6           A.    Um-hum.

7           Q.    Why -- I can understand a concern or  
8 reluctance about improperly structured mediation,  
9 situations in which, and especially an inadequately  
10 represented or improperly supported victim may be  
11 confronted with his or her abuser, but we have to get  
12 these matters resolved. Why, for instance, and again,  
13 I worry that we're maybe talking about different  
14 things. If not a mediation system, I assume you're  
15 familiar with the Master's system which is prevalent in  
16 a number of counties where there is an authority  
17 figure, if you will, present but the parties meet  
18 face-to-face and in a less than entirely formal  
19 litigation, you feel that that's inappropriate?

20          A.    Okay, I'm not a psychiatrist but I have  
21 had six years' experience working in the battered  
22 women's movement, working directly with battered women.  
23 My experience teaches me that what this whole thing is  
24 about is power and control, and that any agent  
25 available to achieve that power and control will be

1 used, whether it be the abuser's attorney or the  
2 courts, if possible. Because he -- and I'm going to  
3 use the "he" and "she" because about more than 99  
4 percent of our cases the women are the ones who are  
5 battered. Because the abuser has perpetrated such  
6 complete physical and psychological abuse upon her, and  
7 even for some battered women to learn to think for  
8 themselves is a long struggle, a long process. Because  
9 of the fear of retaliation of some sort, and we all  
10 know that the existence of a protection order is not a  
11 magic wand. It does not protect everybody. So if  
12 there is real fear there of retaliation, she will not  
13 assert what are her rights there. I don't believe  
14 she's able to at that point. Possibly 10 years later,  
15 but you don't want to wait 10 years to resolve an issue  
16 like that.

17 Q. Well, but I suppose I still don't know if  
18 you've answered my question because the problem is, I  
19 mean, part of what I'm hearing is that maybe there  
20 needs to be a period of learning of self-development,  
21 of empowerment or whatever, but, you know, in some  
22 cases, in many cases we have immediate issues of  
23 support, immediate issues of custody, and we can't, the  
24 court system cannot, even if there's an extremely  
25 well-founded abuse order, you know, a judge has found

1 that there has been abuse and has entered an order, you  
2 can't just say, well, we're going to wait to resolve  
3 this case for a year. I mean, in many cases it would  
4 be the abused spouse who would be particularly harmed  
5 economically by, you know, just a hiatus in the  
6 resolution of some of the more practical aspects, and  
7 the alternative has her confronting her husband's  
8 lawyer or her husband in a courtroom in front of a  
9 judge. You know, if we don't do mediation, it either  
10 has the whole thing jammed up where nobody gets an  
11 issue resolved because the resources aren't there or it  
12 has her confronting somebody in a more adversarial,  
13 more confrontational way?

14 A. However, in dealing with an abuser, there  
15 must be someone there with a great-deal more power than  
16 an abuser has in order to convey the idea that this is  
17 serious, this order means business. You must obey this  
18 order. Very often in Montgomery County the judges will  
19 give a short speech to the abuser regarding what it  
20 means to violate an order, that kind of thing. A lot  
21 of the times that-works. Do you understand what I  
22 mean? Because--

23 Q. If I may, now I think maybe I'm  
24 understanding. When you say you object to mediation,  
25 and my understanding is that we've been talking about

1 mediation or some relative thereof primarily in dealing  
2 with the economic issues or custody issues. I  
3 certainly would agree that a Protection From Abuse  
4 order and the enforcement of those orders should come  
5 from a strong authority figure, a judge in robes on the  
6 bench. But when we're talking about trying to hammer  
7 out how much the support order will be or at least  
8 attempt to get at a custody arrangement, are you  
9 suggesting that for those same reasons that has to  
10 occur before a judge?

11 A. Yes.

12 Q. Thank you. I disagree. Thanks.

13 A. Okay. We'll agree to disagree.

14 CHAIRMAN CALTAGIRONE: Thank you.

15 We will next move to John Stuff, Director  
16 of the Bureau of Child Support Enforcement of the  
17 Pennsylvania Department of Public Welfare.

18 MR. STUFF: Good afternoon. I am John F.  
19 Stuff, Director of the Bureau of Child Support  
20 Enforcement of the Office of Fraud and Abuse  
21 Investigation and Recovery of the Department of Public  
22 Welfare. My thanks to Committee Chairman the Honorable  
23 Thomas Callagirono for the invitation to testify about  
24 House Resolution 8 of 1991.

25 Pennsylvania's child support program is a



1 joint effort by Federal, State, and county government  
2 to establish and enforce the support obligations owed  
3 by absent parents to the children. As child support  
4 director, my primary responsibility is to see that  
5 money is collected for children and to oversee the  
6 direction of the Commonwealth's Child Support  
7 Enforcement Program. In 1975, Title IV-D of the  
8 Federal Social Security Act mandated that all States  
9 enact legislation to address the serious problem of  
10 non-support of children by deserting parents.  
11 Pennsylvania implemented the 1975 Title IV-D law by  
12 contracting with 66 of the 67 counties to provide child  
13 support services at the local level. Our contracts  
14 still in place today were signed by the department, the  
15 county commissioners, and the President Judge of the  
16 Court of Common Pleas.

17 From 1980 to 1985, Pennsylvania led the  
18 nation in child support collections. During 1986 to  
19 1990, we were second in the nation in these  
20 collections. Our most recent State fiscal year,  
21 1990-91, child support collections were \$688 million,  
22 \$111 million of which was used to reimburse the  
23 department for costs paid out in Aid to Families with  
24 Dependent Children, AFDC assistance. The remaining  
25 \$577 million was paid directly to families to keep them

1 independent of the welfare system. Just this week we  
2 have been notified by the Department of Health and  
3 Human Services that based on their most recent  
4 statistics, Pennsylvania is once again number one in  
5 child support collections.

6 The department's responsibility under the  
7 law are to monitor and evaluate the child support  
8 services and to collect money for children. Our  
9 collection record for the past 10 years demonstrates  
10 our commitment to the children and the taxpayers of  
11 this Commonwealth.

12 House Resolution 8 addresses violations  
13 of due process in domestic relations cases. I am not  
14 sure what type of domestic relations cases the  
15 resolution is addressing. Does this resolution refer  
16 to child support, divorce, custody, visitation or  
17 equitable distribution? The Federal Title IV-D law and  
18 State Act 202 of 1976 and amendments thereto charge the  
19 department with directing and monitoring domestic  
20 relations section activities related to child support  
21 and the establishment and collection. Federal and  
22 State statute guiding the bureau do not include  
23 responsibility beyond child support. Our relationship  
24 with the Court of Common Pleas judges have resulted in  
25 me visiting 62 counties to discuss local issues with

1 domestic relations directors. Other members of our  
2 staff are stationed in or visit each county at least  
3 weekly. I cannot address the clandestine settlements  
4 mentioned in House Resolution 8 because I do not  
5 understand the connection of child support. If the  
6 committee would provide me with further information, I  
7 will be more than happy to respond to those issues  
8 specific to child support. Also, I do not feel that I  
9 am the appropriate person to respond to the issue of  
10 the general status of the family law system in  
11 Pennsylvania. I would like to say, however, that from  
12 the department's perspective the child support system  
13 is an excellent help and delivers Federally and State  
14 required services in a cost-efficient and effective  
15 manner, and very effective manner.

16           Additionally, the committee asked for  
17 recommendations that can be addressed legislatively.  
18 In this regard I would like to comment about two bills  
19 pending before the General Assembly that the department  
20 supports. House Bill 354 amends Title 23 to provide  
21 for a lottery prize intercept in relation to delinquent  
22 support obligors. A similar bill, Senate Bill 402 has  
23 already passed the Senate. The enactment of this  
24 legislation, already in place in 22 other States, could  
25 result in the collection of an additional \$4 million in

1 child support.

2 House Bill 1397, counterpart to Senate  
3 Bill 266, also amends Title 23 authorizing the Courts  
4 of Common Pleas to include the child's and mother's  
5 birthing expenses as part of the court order for  
6 support. This would have the effect of the absent  
7 parent paying the cost of the hospital, doctor costs  
8 associated with childbirth.

9 Finally, in 1992, we would like to see  
10 amendments offered which would strengthen current law  
11 regarding the liability of the absent parent for the  
12 health insurance coverage of his other children.

13 In summary, the department is ready to  
14 assist the committee in those areas that fall under our  
15 responsibility. We concur that a member of the task  
16 force be from the Department of Public Welfare and join  
17 with the other members recommended in House Resolution  
18 8.

19 Thank you for the opportunity to comment  
20 on this resolution.

21 CHAIRMAN CALTAGIRONE: Thank you.

22 Ken.

23 BY MR. SUTER: (Of Mr. Stuff)

24 Q. Jack, were you here earlier when the  
25 question came up about the computerization? Do you

1 know what I'm talking about? Can you address that  
2 question?

3 A. Starting approximately four years ago, I  
4 was appointed by the Administrative Office of the  
5 Pennsylvania Court to serve on Justice Zappala's  
6 statewide committee. Subsequent to that, I have been  
7 appointed to subcommittees now involved with the Court  
8 of Common Pleas, knowing that there has to be an  
9 integration between the child support system mandated  
10 by the Federal government, which is limited to child  
11 support services, and the statewide court system that  
12 the AOPC wants to develop. This has been discussed  
13 with Nancy Sabolovitch, Court Administrator, and also  
14 with the County Commissioners Association in that we  
15 know and both organizations are planning to a linkage  
16 so that our system will integrate with the statewide  
17 court system so that we only need one terminal on  
18 everybody's desk or bench and flip back and forth and  
19 access the needed information that the court wants,  
20 whether it's for the child support system or the rest  
21 of the statewide system.

22 Q. Just to clarify with House Resolution 8,  
23 it's not drafted very well. When it says domestic  
24 relations, I think that the intent of the sponsor is  
25 family law in general with child support and support

1 being a part of that, and that's why we're interested  
2 in having you testify before our committee.

3 A. Thank you for clarification.

4 CHAIRMAN CALTAGIRONE: Thank you, John.  
5 We appreciate your testimony.

6 Catherine McFadden, family Master in  
7 Bucks County.

8 MS. McFADDEN: Good afternoon. I'm  
9 Catherine McFadden. I've been a family Master in Bucks  
10 County for seven years, and for two years before that I  
11 worked for the domestic relations section. I have  
12 submitted some information that describes the duties of  
13 the family Masters in Bucks County and provides some  
14 information about caseloads, scheduling timeframes and  
15 how decisions are made.

16 There are three full-time family Masters.  
17 We have a system for equitable distribution which is  
18 similar to that in Montgomery and Philadelphia  
19 Counties. In addition to doing the equitable  
20 distribution work, we have a variety of other duties as  
21 well. We conference custody cases, we do all of the  
22 fault divorce hearings, we do alimony modification  
23 cases, we do file review before a divorce decree is  
24 entered, we do a pleading review before orders are  
25 entered on miscellaneous pleadings, and my office is

1 responsible for all of the Family Court scheduling.

2           As to the materials, I would like simply  
3 to point out that people who want to move a family  
4 dispute to decision in Bucks County can do so without  
5 unnecessary or unwarranted delay caused by the court  
6 system. In equitable distribution, for instance, it is  
7 possible to have a Master's hearing within six weeks  
8 from the date of application. So in other words, a  
9 divorce complaint could be filed on January 1. The  
10 consents could be filed on about April 1, which would  
11 be the earliest point in time allowed by the Divorce  
12 Code, and the parties could be in the Master's office  
13 by mid-May. They could settle at that point. If they  
14 don't settle, a Master's report will be written within  
15 the following four weeks. If one of them objected to  
16 the recommendation in that report, they could be in  
17 court six weeks later, or about 10 weeks from the date  
18 of the Master's hearing, still in the same year period.  
19 At this point in time, there are 63 cases pending  
20 before the court in Bucks County in equitable  
21 distribution. Fifty-seven of those cases were in the  
22 Master's office in 1991. The remaining cases are one  
23 from 1988, and the balance from 1989 and 1990. There  
24 are cases in that small group which the parties are not  
25 moving. Those cases could be moved. There's no reason

1 that they couldn't be moved. They are not discovery  
2 disputes. The parties simply aren't moving those  
3 cases.

4           Despite the ability which exists in Bucks  
5 County to move with real rapidity, however, over 40  
6 percent of the cases which appear in the Master's  
7 office for equitable distribution are three years old  
8 or older, and only 4 percent are less than one year  
9 old. A case may move slowly for a number of reasons  
10 which has nothing to do with discovery disputes  
11 necessarily or with the court system. A case may move  
12 slowly simply because grounds for divorce or annulment  
13 haven't been established yet and you can't enter an  
14 equitable distribution order until there are grounds  
15 for divorce. A case may move slowly because although a  
16 complaint has been filed, the parties aren't yet  
17 certain that they really want to be divorced. A case  
18 may move slowly because one or both parties may be  
19 having difficulty getting the information which they  
20 need to process the case, and it may not be the fault  
21 of either of them. Sometimes it is very difficult to  
22 get the information about a pension that is needed to  
23 complete an equitable distribution, for instance. A  
24 case may move slowly because the work which needs to be  
25 done to complete it is difficult, complicated, and



1 time-consuming. Some cases involve a business or  
2 several businesses. And the information gathering and  
3 the work that needs to be done with that information  
4 can easily consume a year's time.

5           A case can move slowly because one party  
6 is delaying it, either as an emotional retaliation or  
7 for financial reasons. In Bucks County, if the case is  
8 moving slowly because of discovery problems, our bench  
9 will enter an order for answering interrogatories,  
10 producing documents, depositions of a party, and many  
11 other sorts of discovery on motion without a hearing.  
12 It is only the sort of discovery where you want to  
13 depose a third party, someone who is not a party to the  
14 case, where it may be more difficult to get a court  
15 order permitting that discovery. If the order for  
16 discovery is not complied with or if there's a dispute  
17 about that order, the case can be before the judge  
18 within four weeks. And if, you know, again, if it  
19 needs to come back again because there continues to be  
20 noncompliance, you can be before your judge within four  
21 weeks.

22           The Bucks County Court is in the process  
23 of amending its rules to bring them into conformance  
24 with the recent State rule amendments, and one of the  
25 modifications to the local rules will provide for a

1 guaranteed 6- to 10-week delay between the date of  
2 application for equitable distribution conference and  
3 the conference itself. That built-in delay was  
4 requested by the Bucks County Bar Association's Family  
5 Law Section. The members felt that anything less than  
6 a six-week period between the date of application and  
7 the date of conference did not provide enough time to  
8 pull together the final bits of information which are  
9 needed to proceed through the conference.

10 I would also like to point out that to my  
11 knowledge, the Bucks County divorce Master's office is  
12 the only Master's office in the State which hands out a  
13 package of information for parties and their attorneys  
14 about how it makes its decisions in equitable  
15 distribution and alimony. A copy of this package,  
16 which is called, "The Policies of the Bucks County  
17 Divorce Master's Office," is part of the materials.  
18 The Master's office has been distributing this  
19 statement since 1985, with annual revisions which  
20 result from significant developments in the case law or  
21 from new thoughts or logic motivated by working through  
22 specific cases in the office during the year.

23 The Divorce Code, as laws go, is really  
24 very new. There is not a lot of case law that people  
25 can rely on when they want an answer to a specific

1 question about their financial rights and their  
2 financial obligations in divorce. The policy statement  
3 provides some predictability for the parties, and it  
4 provides a setting in which the Masters meet at least  
5 once a year to discuss and consciously think through  
6 how various situations should be handled, because there  
7 is no case law that tells us how to handle them. This  
8 helps us to prevent ourselves from making off-the-cuff  
9 decisions and from having a significant variation from  
10 case to case, or from Master to Master in  
11 decisionmaking.

12           Finally, I have a specific suggestion to  
13 make to the committee to help address one area of  
14 difficulty and expense, and sometimes unfairness  
15 suffered by both parties to some divorce cases. You  
16 may be aware that on May 31 this year the Commonwealth  
17 Court affirmed a contempt of court judgment against the  
18 Pennsylvania State Retirement System. In connection  
19 with a Family Court matter called Millick vs. Millick.  
20 It's my suggestion that we initiate action to see to it  
21 that neither the State retirement system nor any  
22 married couple which owns a pension administered by  
23 that system ever again is placed into the position of  
24 having to litigate a matter which should be simple,  
25 straightforward, and clear. The problem in the Millick

1 case, and similar problems in other cases, comes from  
2 the fact that there's no legislation in Pennsylvania  
3 which tells the parties to a Family Court case and  
4 tells the State retirement system how to effectuate the  
5 pension rights which were created by the Divorce Code  
6 of 1980. There is Federal law on this point which  
7 deals with the Federal pension plans, and there is  
8 Federal law which is called the Retirement Equity Act  
9 which deals with almost all other sorts of plans. The  
10 odd plans out, the ones which are not addressed by the  
11 Federal law are IRAs, tax shelter annuities, and the  
12 State retirement system.

13 In the Millick case, the retirement  
14 system had been ordered to freeze some moneys payable  
15 to Mr. Millick because he was in arrears in support and  
16 there was evidence suggesting that there was a risk  
17 that he would spend or waste the money if it was paid  
18 to him prior to the completion of the equitable  
19 distribution. The retirement system did not comply  
20 with this order, and the retirement system is in a bind  
21 because it's administering money that doesn't belong to  
22 it, it belongs to the members of the system and there's  
23 a State law which says these moneys can't be attached,  
24 and the retirement system doesn't want to do the wrong  
25 thing, but nevertheless, it not comply with the order

1 and it paid \$29,587 to Mr. Millick.

2           The system's defense had two prongs. One  
3 was the State statute which specifically prohibits  
4 attachment, and the other was that the wrong procedure  
5 had been followed in the attempt to obtain the  
6 attachment. At the Commonwealth Court level at least  
7 these defenses failed. And the retirement system now  
8 is exposed to making a payment to Mrs. Millick, having  
9 already made a payment to Mr. Millick. The trial  
10 court's order freezing the Millick pension was entered  
11 on February 7, 1989. That pension remains in  
12 litigation now, nearly three years later, with a  
13 petition for allowance of appeal pending before the  
14 State Supreme Court filed on September 5, 1991 by the  
15 retirement board pending decision.

16           The Millick case is not the only recent  
17 incident of litigation involving the State retirement  
18 system. In July 1990, the State Superior Court held in  
19 Graham vs. Graham that Mr. Graham's school teacher  
20 pension could be attached in equitable distribution,  
21 again, despite the statutory language. The State is a  
22 large employer in Pennsylvania. It's not only the  
23 people who work here in Harrisburg who are affected by  
24 the current status of the law. There is a large number  
25 of people across the State, including school teachers

1 and their spouses, such as in the Millick and Graham  
2 case, who are affected by this law.

3 The legislation I propose benefits both  
4 men and women and it discriminates against neither. It  
5 helps them process their case without unnecessary  
6 delay, complication, and uncertainty. The proposal  
7 would not add any additional rights that do not already  
8 exist. The proposal is simply for a sort of "how to"  
9 type of legislation similar either to the Federal  
10 Retirement Equity Act or to the Federal act which deals  
11 with civil service pensions so that we can divide  
12 pensions without unnecessary expense, delay,  
13 uncertainty, and difficulty.

14 I would be happy to answer any questions  
15 that you have.

16 CHAIRMAN CALTAGIRONE: Thanks for your  
17 report here. It's very thorough. You did an excellent  
18 job.

19 MS. McFADDEN: Thank you.

20 REPRESENTATIVE HECKLER: If I may, Mr.  
21 Chairman, just a comment maybe to take the opportunity  
22 to crow just a little bit. You hear me periodically  
23 fulminate about at least my view that I don't want the  
24 State Supreme Court to have any role whatsoever in the  
25 conduct of the courts of Bucks County aside from the

1 proper rulemaking they obviously have the right to do.  
2 I think you have some flavor of why we feel we have a  
3 good system that provides the folks in Bucks County  
4 with a prompt and fair opportunity to obtain justice,  
5 and I am, frankly, confident that that system would not  
6 persist under a unified judicial system. We  
7 undoubtedly need to address funding issues, although,  
8 again, you know, we have those differences between  
9 various counties and particularly the two big urban  
10 counties in this State throughout.

11 I do want to thank Ms. McFadden  
12 particularly for coming in relation to the pension  
13 issue which she addressed last in her testimony. As I  
14 had mentioned to you, I had been made aware of this  
15 situation and was then advised of the article which she  
16 wrote on the subject. I do propose to introduce  
17 legislation along the lines she has described. I know  
18 that the pension systems for the State will be  
19 supportive of that legislation for the reasons the  
20 witness described. They are just stuck in a completely  
21 untenable position with a judge making a just order on  
22 one side and directing them to do things which they  
23 feel probably to some extent or very clearly  
24 legitimately things that we've told them that they  
25 can't do, which just results in a crazy situation which

1 involves a lot more lawyering and wasting of time and  
2 money than it does anything else, so I will hope to  
3 have that legislation together by the time we  
4 reconvene, and I'll certainly be sharing it with you  
5 and the other members of the committee.

6 CHAIRMAN CALTAGIRONE: Thank you.

7 Thank you very much for your testimony.

8 MS. McFADDEN: Thank you.

9 CHAIRMAN CALTAGIRONE: We will adjourn  
10 today's hearing. Thank you.

11 (Whereupon, the proceedings were  
12 concluded at 2:45 p.m.)

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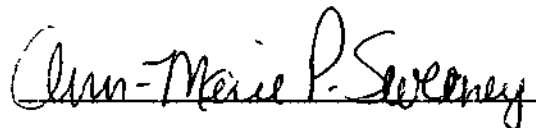
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1 I hereby certify that the proceedings  
2 and evidence are contained fully and accurately in the  
3 notes taken by me during the hearing of the within  
4 cause, and that this is a true and correct transcript  
5 of the same.

6 

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8 ANN-MARIE P. SWEENEY

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