

Public Meeting

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1994

of

COMMISSION TO STUDY THE LAW OF DIVORCE

LOCATION: Room 319
State House
Trenton, New Jersey

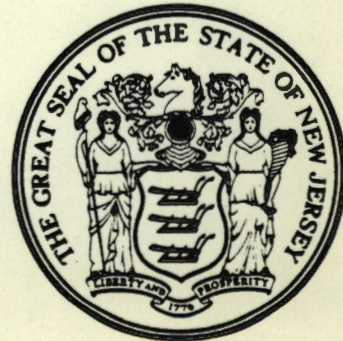
DATE: March 31, 1994
2:00 p.m.

MEMBERS OF COMMISSION PRESENT:

Assemblyman Walter J. Kavanaugh, Chairman
Douglas K. Schoenberg, Esq., Vice-Chairman
Nancy J. Benz
Robert P. Broderick
Sara Flohr
Irene Von Seydewitz
Frank A. Louis, Esq.
Jeffrey S. Blitz, Esq.

ALSO PRESENT:

Patricia K. Nagle
Office of Legislative Services
Aide, Commission to Study the
Law of Divorce



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M E E T I N G N O T I C E

TO: Members of the Commission to Study the Law of Divorce
FROM: Assemblyman Walter J. Kavanaugh
DATE: March 21, 1994
SUBJECT: MEETING DATE

A meeting of the Commission to Study the Law of Divorce will be held on Thursday, March 31, 1994 at 2:00 P.M. in Room 319 of the State House, Trenton, New Jersey.

The chairman wishes to note that persons permitted to testify will be limited to ten (10) minutes for their oral presentation.

The public may address comments and questions to Patricia K. Nagle, Committee Aide and persons wishing to testify should contact Karen M. DeMarco, secretary, or Elaine Fennelli, secretary, at (609) 292-5526. Those persons presenting written testimony should provide 15 copies to the committee on the day of the hearing.

Issued 3/21/94

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ASSEMBLYMAN WALTER J. KAVANAUGH (Chairman): Everyone, if I could have your attention, please-- We have a number of people to hear from this afternoon. I would like to set forth the ground rules before we begin on how we are going to proceed.

We have approximately 18 people who have called ahead and requested an opportunity to testify. We certainly want to accommodate everyone, but I am going to be very strict on the time limits. We have discussed it before. I am going to ask you to keep your oral testimony as brief as possible, with a maximum of 10 minutes. If you exceed the 10 minutes, I will have to shut you down.

Remember, the Commission will be happy to accept any additional testimony in writing from you, either today or at any time in the future. The members have packets. We have some of the written testimony which was received recently. We have a follow-up letter from Mr. Bill Lawler, who addressed us in December, in addition to letters from persons who have not testified previously.

We are now, as I mentioned with the time-- There will be at least six persons per hour at a minimum, and I emphasize "minimum." If everyone takes their full 10 minutes, it is going to back up the schedule. As you can see, that would be well over three hours. So please be brief.

The members and I realize that you have done much at a personal sacrifice to be here, traveling a distance, some even taking time off from work. We appreciate your efforts. If you have not filled out a slip or called prior to this meeting, if you will check in with either Elaine or Karen (secretaries to the Commission) with your name, address, and phone number, so we can contact you for further information or speak to you on a one-to-one basis.

We are extremely interested in hearing what you have to say, but in fairness, we have to give everyone an

opportunity to highlight their concerns. I do not want to cut you off, but it is the only thing we will be able to do. So put it in writing if you have more than you can say in a 10-minute period.

I intend to have a couple of brief breaks in deference to the court reporters who are here joining us to provide the simultaneous transcription for Mr. Gregg, and of course, for Legislative Services hearing reporter, Susan, as well as for everyone else.

If you have to leave before you have an opportunity, we understand and will make every effort to give you a priority at a future meeting. I am going down the list in the order we received your requests. It is impossible to make all of you first, but we will assume that we will be fair.

We had discussed at our previous meeting in Somerset County the list that was going to be broken down. I broke it down into three subcommittees and asked for the choices. Nancy Benz asked to serve on two subcommittees, so I placed her -- and Doug and Frank two subcommittees. The subcommittees are broken down into jurisdiction and causes of action. That is really, as far as in lay terms, the basis for divorce, why -- cruelty, adultery, and what have you. I named Frank Louis as the State Bar representative as the Chair, along with Jeff Blitz, Doug Schoenberg, and also Irene Von Seydewitz.

This subcommittee is one that will certainly make many contributions to the panel. The custody and visitation, as you all know -- in lay terms once again -- the joint custody, physical custody, and all is broken down. I asked Rob Broderick, who is the noncustodian parent representative of the group to Chair that panel, along with Nancy Benz, Doug Schoenberg, and Irene Von Seydewitz.

The largest subcommittee is the financial aspects of divorce. I named Sara Flohr, who is the financial planning representative, to Chair that panel, along with Nancy Benz, Carol Bishop, who could not be with us today, Frank Louis, and

Marianne Espinosa Murphy. Certainly Judge Murphy will provide an expertise in these areas.

At this time, I would like to particularly thank Frank Louis for the correspondence you have received. It is before you and it is dated February 23 regarding the limited duration alimony. Frank, we appreciate it. I just wonder if we want to take a few moments to see if there are any comments on Frank's correspondence from any of the Commissioners. (no response) If not, thank you very much, Frank.

MR. LOUIS: Does that mean it was that boring, or that confusing?

ASSEMBLYMAN KAVANAUGH: There is also the question of future meetings with presiding judges and an administrative officer of the courts. So we can work on that for future meetings to bring that to fruition.

MR. SCHOENBERG: Mr. Chairman?

ASSEMBLYMAN KAVANAUGH: Yes, Vice-Chairman Schoenberg?

MR. SCHOENBERG: I would like to thank Frank for sending us that article. I think it is a very important issue for the Commission to pay attention to. I think the vast majority of practitioners and judges in the State believe that the courts should be authorized to provide for term alimony. Right now, the law says they can't do it. So I think it is an important thing that the people in the trenches know there is a need for.

ASSEMBLYMAN KAVANAUGH: Thank you, Mr. Vice-Chairman.

At this time, we have met the requirements of the Open Public Meetings Act. Notices have been given of the meeting, and newspapers have received them, so we are in compliance as the roll call of the Commission is called at this time.

MS. NAGLE (Commission Aide): Mr. Blitz?

MR. BLITZ: Here.

MS. NAGLE: Mr. Louis?

MR. LOUIS: Present.

MS. NAGLE: Ms. Von Seydewitz?

MS. VON SEYDEWITZ: Here.

MS. NAGLE: Mr. Schoenberg?

MR. SCHOENBERG: Here.

MS. NAGLE: Ms. Flohr?

MS. FLOHR: Here.

MS. NAGLE: Mr. Broderick?

MR. BRODERICK: Here.

MS. NAGLE: Ms. Benz?

MS. BENZ: Here.

MS. NAGLE: Assemblyman Kavanaugh?

ASSEMBLYMAN KAVANAUGH: Here.

Having a quorum, I declare this meeting open -- the Commission to Study the Law of Divorce.

The first witness--

MR. BRODERICK: Mr. Chairman?

ASSEMBLYMAN KAVANAUGH: Yes, Rob?

MR. BRODERICK: May I raise one question? Is Senator Cafiero still a member of the Commission, or not?

ASSEMBLYMAN KAVANAUGH: No. To bring you up to date, I spoke to Senate President DiFrancesco less than an hour ago. Senator Cafiero has found that with changes in his duties as a Senator and in his law practice that he will not be able to fulfill the commitment. The Senate President has spoken to two other Senators. I have to talk to both of them to see, one being an attorney, and the other just a member of the Senate. I don't know exactly what his private capacity is. But the member who is a Professor of Law who is in the Senate, is going to see if he can rearrange his schedule so he can participate. It is about 95 percent sure that he will be the one the President will appoint. So then we will be up to full capacity.

MR. BRODERICK: Thank you.

ASSEMBLYMAN KAVANAUGH: Are there any other questions? (no response) If not, are you ready now, as far as taping? (affirmative response)

The first witness will be Bonnie Parker, from Ocean County Probation. Is Bonnie here? (affirmative response from audience) It is now 14:21, Barney -- Bonnie. I was watching Barney last night on TV. My granddaughter loves Barney.

B O N N I E P A R K E R: I have never done this before, so I do not know what the procedure is.

My name is Bonnie Parker. I am a Senior Probation Officer with Ocean County Probation. I work in the Family Court system in the Dispute Resolution Unit as a mediator. I am also a Mediation Specialist for the Municipal Mediation Programs in Ocean County.

I wrote this proposal, which I believe you may have copies of on the table, in response to a feeling after doing mediation for awhile, and having been a single parent for a number of years--

MS. FLOHR: Excuse me. I can't find my copy.

ASSEMBLYMAN KAVANAUGH: If you can hold on for one second, Bonnie?

MS. PARKER: Sure. (brief discussion regarding copies of Ms. Parker's proposal)

ASSEMBLYMAN KAVANAUGH: Okay, thank you.

MS. PARKER: This was in response to several thoughts I have had on the situation as a mediator, as an investigator of custody disputes, in conversations with our judges, with other parents, and with other people in the justice system. I felt it was really important to underscore the nature of the continued responsibility of parents to their children when they are no longer together. I felt, as a Sociology major, that if you change the language, you can change the way people think. If you change the way people think, you can change the way they

behave. I felt it was important to look at the language we are using in the court system and how it affects the situation of parenting.

So I wrote this as a proposal to our legislators to change those words "custody" and "visitation" to really reflect what the meaning is and the intent of the law under the legal background. The Legislature has stated that it is in the public policy of the State to assure minor children of divorced or separated parents frequent and continuing contact with both parents, and that it is in the public interest to encourage parents to share the rights and responsibilities of child rearing in order to effect this policy.

I just became aware very quickly that when you assign the word "visitation visitor" to one of the parents, you are taking away a lot of their parental power. Whether it is intentional or not, it is implied. The custodian of the children tends to have the power, real or implied. I felt that in order to balance the power-- As a mediator, that is one of my jobs, to learn to balance the power in a situation where there is a conflict. I felt if we could break down the terms to "parenting time," "parenting responsibility," instead of who owns the children, because no one really owns children, that it would equalize the power bases and it would have parents think in those terms of their continued responsibility.

I do parenting and mediation workshops twice a month in Ocean County with all the people who have filed complaints for divorce and have had them answered -- anyone who comes into the system -- to educate them about what is going to happen when they come into the system and what is going to happen to them as parents. As a mediator, I take care of the parenting issues. That is all I do in the divorce issue, and I talk to them about their continued responsibility in this area. Also, that they should consider themselves the parents, no matter how

much time they have with their children. It is important to think in those terms.

I also worked in the Child Support Division for a number of years. I did not do a scientific study on it, but there is definitely a correlation between problems in seeing children and the term "visitation," and the problems with payment of support. I really do think, and I have heard it time and time again, mostly from fathers, "I pay my money. Why can't I see my kids?" Or from mothers most of the time -- not all of the time, of course -- "He doesn't pay me anything. Why should he see his children?" Those two issues, as much as we say they have to be separate, people put them together. It sometimes appears that the visiting parent -- the visitor -- just feels that that is the only power they have, to use their economic power; withhold support. Sometimes the custodian can turn it around and withhold the visitation if the support is not there.

But that is not the only reason. I do feel in my heart -- and I wrote this from my heart, not from my head -- that we have to get back to the essence of what the law wants us to do in taking care of children and stress that with parents. If it can begin with the first contact the parents have with their attorneys, that we are talking about parenting time, that that is one area of your relationship that is going to have to continue; that you cannot continue to be adversaries in this area, because your children will suffer because of it.

I wrote this. I use the terms now in my work, in writing the mediation agreements and the memorandums to the judges. Our judges in Ocean County have been very receptive to this. They all tend to use "parenting time" quite a bit, not all the time. It is hard to make that transition. But they do use it. They talk about it a lot, and they really do think in terms of sharing the parental responsibility and working at better communication between the parents.

ASSEMBLYMAN KAVANAUGH: Thank you very much, Bonnie.
Commissioner?

MR. LOUIS: Bonnie?

MS. PARKER: Oh, I'm sorry.

MR. LOUIS: You mentioned some of the other programs we have in Ocean County. Could you just briefly, for the benefit of the other members of the Commission, talk about what happens; how a case is treated from the standpoint -- the custody aspects, the mediation, and the education of the parent?

MS. PARKER: Sure. The first time a divorce complaint is brought into the system and the answer has been filed, we get the names of all the people who have children under the age of 18. We send them a notice to attend a mediation workshop. We call it a "Premediation Workshop," because before they get into mediation-- It looks quite compelling, because it is written the same as a subpoena, but it is not as binding.

However, we get between 30 and 35 parents at two meetings every month, one in the evening, one in the afternoon. We bring them in and we talk to them, as I said before, about what mediation is, how it can help them, how it benefits them, and some of the things they need to look at as parents.

We are in the process of remodeling that program to be more inclusive. We are going to extend it. It is going to include some education on parental responsibilities, things that parents need to be aware of that children go through when their parents are separating and divorcing, and some of the things parents themselves can expect to go through; also, some of the feelings they have and some of the ways they can learn to communicate and separate all other issues away from the parenting issues, and just focus on that for the best interests of their children. That is what is in the process now.

We also have groups for separated and divorced people. They are run usually on a quarterly basis, four or

five meetings at a time, and then the subject matter might change a little bit. They might focus on the effects after divorce, some of the effects before divorce. That is a continuing program also.

We do mediation on a regular basis. When I first came into the department, you had to have an order from the judge to do mediation. The judge would require people to go into it. Now, it is a voluntary thing. If people call up, we can just go ahead and make an appointment and see them. Oftentimes, we stem problems before they become really bad. So those are two of the programs we have now.

MR. SCHOENBERG: Mr. Chairman?

ASSEMBLYMAN KAVANAUGH: Yes?

MR. SCHOENBERG: First of all, Ms. Parker, I would like to applaud the program that you are describing in Ocean County. It sound wonderful. I know that programs like that are supposed to be happening in counties, in all the vicinages. My experience with them in other counties has been that they have been woefully inadequate. I don't think a lot of people attend these educational seminars that are made available, or if they do, they are done with a large number of people, a single time.

Are you finding these educational things that you do with these divorcing parents to be effective and having an impact on them in getting them to see parenting time, rather than possession and custody?

MS. PARKER: Yes, I am. I often get people who come up to me after the workshop, who say, "I am really glad you said that. It makes me feel like I am still going to be a parent in this whole process. How do I get into mediation?" I say, "Well, both of you have to agree to come in to mediation." Our judges are so much in favor of it that they really make it very compelling for them to at least try it as a method of conflict resolution.

MR. SCHOENBERG: I am very interested in what the program is like in Ocean County. I can contact you outside of here about that.

I guess my question is: "How do we bottle you and ship you off to the other vicinages to make the programs more successful there?"

MS. PARKER: We have some great people in our department. We would be willing to talk to anyone at all about it. We will go to the different counties. I am sure our judges and the Division Manager would all be in favor of that. We don't want to keep it for ourselves. We think it is something that everyone should partake of, and we would be glad to share it.

We have learned from other counties, too. There are some counties that have some good programs, at least I have seen them on paper. I have not been to them personally. But we borrowed from other counties; we borrowed from other states. I mean, this is not an original idea by any means. It is not my idea. It is the idea of a lot of people. We would just like to see it happen to make things better for the kids in New Jersey, and all over.

MR. SCHOENBERG: Thank you very much for coming here to tell us about it.

ASSEMBLYMAN KAVANAUGH: Commissioner Broderick?

MR. BRODERICK: Thank you.

Would you say the program started and has developed so well because you and a few other people in your department have a personal interest?

MS. PARKER: I can't speak for the other people in my department, but I will say, yes, I have a personal interest in it. As I mentioned before, I was a single mother for a number of years. When I first got into that department, a lot of issues came up for me personally that I had to take a look at. I feel very lucky. A lot of the situations that a lot of the

people I see are experiencing now-- I was able to work through them. I have a good ex-husband. There are not too many people, I guess, who can say that. But we did have our difficulties.

I knew that it was so important for children -- for my children, and I knew for other children in the same situation -- to have a continued relationship with their father. Some absent parents -- and I don't like to use that term either -- but some parents are absent from the children's lives. That really makes a very big impact on them. The more they can be encouraged to be a part of their lives, the better the kids do.

I was a teacher for awhile, and I know that when parents are involved -- at least one parent is involved in their children's school work, the children tend to do better in school. That has been proven. So the kids will tend to do better when they know that both parents are keeping an eye on them.

MR. BRODERICK: Do the county probation officers have their own State association?

MS. PARKER: We have an association in the county, and we are under the Probation Association of New Jersey.

MR. BRODERICK: Are there workshops on this so that other county probation departments that have an interest in this can go to a place and learn about this?

MS. PARKER: There haven't been up to this point, but that would be a good example for the next convention, yes.

MR. BRODERICK: Thank you.

ASSEMBLYMAN KAVANAUGH: Thank you.

I want to remind the Commissioners when they are speaking, the lower mike is live, or the silver mike, if you move the button forward when you want to speak and then return it to the off position when you are through -- the one up on top.

One question asked here, by one of the Commissioners possibly, on custody -- parenting responsibility and visitation to parenting time-- Is that something that changed-- Would that be a legislative change or an administrative change?

MR. BRODERICK: I think it would have to be statutory.

MR. SCHOENBERG: I think the first step would be to change the language in the statute so that we could legislate it.

ASSEMBLYMAN KAVANAUGH: Okay. Thank you. Thank you very much, Ms. Parker.

Next will be John Grace. Is John Grace here? (affirmative response from audience) I believe we have written testimony in our packets from Mr. Grace. Thank you, Mr. Grace. You're starting at 12:36 -- 14:36 -- 10 minutes maximum.

J O H N G R A C E: How are you? This is my first time ever down here.

ASSEMBLYMAN KAVANAUGH: You have been very lucky in your life. (laughter)

MR. GRACE: I was going to begin by reading my letter out loud, but I don't think I have to do that.

ASSEMBLYMAN KAVANAUGH: Will you see if that button is up, on the top? Towards you.

MR. GRACE: It is towards me.

ASSEMBLYMAN KAVANAUGH: There you go. Please move it a little closer towards you.

MR. GRACE: I was going to begin by reading my letter out loud, but I don't think I have to do that. Everyone has a copy.

I feel, after hearing the first lady speak, that I don't fall in either category as far as being a divorced parent or being given the opportunity of at least having the right to have custody, or anything like that. That is the reason I wrote the letter. However, I do believe there is a need for a change in the way things are at the present time.

I will be going back to court, after a year's time of clearing my head. I will do the best I can to make things as equal as possible. My goal has been, in writing this letter, to -- excuse the word -- "equalize" the treatment of both parties involved.

That is basically all I have to say.

ASSEMBLYMAN KAVANAUGH: Are there any questions from any member of the Commission? (no response)

Your letter will be made a part of the record, so that when it is published copies will be available both to Commission members and to the general public.

Commissioner Broderick?

MR. BRODERICK: Can we assume that you -- that what you have written here is your own personal experience with the system?

MR. GRACE: Yes.

MR. BRODERICK: All right. Thank you.

ASSEMBLYMAN KAVANAUGH: Thank you, Mr. Grace. Do you have anything further you would like to add?

MR. GRACE: I would just like to remain abreast of the process that is occurring, and hope for the best.

ASSEMBLYMAN KAVANAUGH: You will be on our mailing list. I would just like to mention that all who testify who leave your telephone numbers and addresses, you will be included on the mailing list.

Thank you very much.

MR. GRACE: Thank you.

ASSEMBLYMAN KAVANAUGH: I will call next, Veronica Ferrett. You are starting at 12:39. Thank you very much for coming.

V E R O N I C A F E R R E T T: Good afternoon. Thank you for the opportunity to speak about family law reform, and to offer solutions that would correct the deplorable situation in the divorce courts.

We must first begin by recognizing the problem for what it is. Divorce is a lucrative, billion-dollar industry and has nothing to do with justice. Lawyer created, New Jersey style divorce is devastating financially, emotionally, and physically for families. The public has been brainwashed into accepting this horrible and widely abused area of law as if it were a necessary evil of our society.

Lawyers and courts escalate the misery of families already in crisis to unnecessarily complicated procedures and endless delays, purposely engendering hostility between the couples, while separating them from their money. Judges are responsible for this abusive scheme, because they do nothing to move cases to conclusion, permitting their brethren lawyers to file endless motions, employ wilfill, dragged out discovery, and engage in interrogatory battles which are designed primarily to promote fee churning.

Couples seeking divorce in New Jersey will face the most predatory system anyone could imagine. Families are caught in destructive, adversarial litigation which they are unprepared for, or do not understand until it is too late. This wrenching ordeal has taught me, and most divorcing couples, that the family law system is severely flawed.

I, like many others, face the tragic prospect of losing my home to satisfy lawyers' inflated fees. When clients complain about the damage and abuse caused by divorce lawyers, the matrimonial bar characterizes complainants as "sore losers," "cranks," and "crazies," who simply hate lawyers. While this flies in the face of ample evidence that most complaints are legitimate, this characterization benefits lawyers by promoting the image of divorce lawyers as good guys harassed by unreasonable, complaining clients.

Lawyers will argue that so-called unhappy divorce clients transfer bad feelings toward their partners on to lawyers. This is not true, and must be seen only as smoke. It

is the greedy, sadistic lawyers who fan the flames of resentment and hostility between couples.

Divorce laws need to be cleaner and less antagonistic. Good information, positive reinforcement for couples who are trying to cooperate, and free, public, nonlawyer mediation of disputes should be the hallmarks of any new system. Nonlawyer mediation, combined with counseling, would help divorcing parties identify their true needs and, most importantly, the needs of their children. This nonadversarial environment would permit couples to see the wisdom in compromise, and would reduce the incidence of domestic violence.

It is crucial to the well-being of children that divorcing couples be informed and encouraged to be reasonable and responsible. To make the divorce process more fair and predictable, lawmakers must standardize rules for property division, child support, and spousal support; widely publicize them and stick to them doggedly. In addition to simplifying procedures, provision should be made to ensure that people know and understand the basics of divorce law, the rules that govern property division, alimony, child support, and custody. They could go a long way toward doing this by distributing free pamphlets in plain English that clearly and concisely explain the law of divorce. Even important questions that often accompany divorce such as how to divide property, determine child custody and maintenance do not require a complicated court-controlled process.

I am aware of lawyer-operated and court-administered divorce early settlement panels. However, the courthouse door is too late for ADR methods, in most cases, to be successful in family law, because divorcing couples have already been lost in the quicksand of adversarial lawyers as their only leaders. If people did not rely on aggressive lawyers to fight for what

often become misguided views and vicious allegations, I believe they would have to approach divorce resolved to settle their own problems more humanely.

Another way to shorten prolonged court fights would be to have one well-trained arbitrator or judge to handle all aspects of a divorce. That way people would not be so likely to dredge up the same issues and allegations over and over. In addition, procedures should be easy enough to make hiring a lawyer a truly discretionary decision. Families need protection against the tragedy of lawyers ending up with the lion's share of hard-earned marital assets. Clients are often abandoned by their lawyers when they can no longer pay lawyers who charge more per hour than most clients make in a day, or even a week. Clients are then left with no alternative but to represent themselves. They soon discover a bias against self-representation.

Family courts remain a stronghold of resistance to the defining ideal that all Americans are entitled to equal treatment. A person who appears on her behalf, or his behalf, is routinely treated like a third-class citizen by lawyers and judges who seem to forget that courts are not their private preserve. Lack of respect for anyone who is not a card-carrying member of the legal industry is obvious from the moment you enter the courthouse.

I have often observed court clerks providing confused lawyers with step-by-step guidance to wrangling rules of filing or scheduling cases, while rejecting the far more basic questions of nonlawyers. This mean-spirited attitude toward the public is also reflected when a nonlawyer finally does get a chance to have a word in court. The judge is all too likely to greet her with a patronizing attitude and a closed mind. For example, someone who asked that an impenetrable hunk of legal jargon be translated to plain English makes a small, easily corrected mistake, or even hesitates a second too long,

is accused of clogging the court's busy schedule and told to get a lawyer. Family court judges often defend the way they treat nonlawyers by claiming that they do their best under difficult circumstances. Nonsense.

The court system, the legal industry, especially those trafficking in the divorce trade, hides both substandard law and legal procedure, while judges then lecture nonlawyers for being ignorant of both. That is pathetic. Judges must be made to understand how badly they treat the public. Recent newspaper articles in The Star-Ledger warned of the disturbing and frightening situation of potential violence in family courts. As one Essex County family court judge stated, "Unless something is done soon to reduce hostility" -- he believes, "it is not a case of if it will happen, but when it will happen."

Continuing court battles instigated by lawyers are designed to waste time, money, and resources that could be better spent on children. When moneys are diverted from the families to pay never-ending, outrageous lawyer fees, unreasonable behavior is not unexpected. Adversarial proceedings in the contentious environment of a courtroom heighten tension and increase hostility between couples. It is when the litigants see how they are being abused by lawyers who generate fees that they turn on the lawyers and the judges who permit the abuse.

Lawyers are clearly the major problem and should be held directly responsible for any violence that erupts in the family courts. Clients are seriously damaged and exhausted, and at the end of their ropes after unnecessary delay and cost during years of court and lawyer abuse.

Proposals like the one I have suggested would avert violence in family courts much more effectively than metal detectors and X-ray equipment, which are a waste of money and are an additional burden on the taxpayer. No doubt lawyers will resist reform that threatens their abilities to milk

clients of cash cows. But lawyers and judges would have no one else to blame for violence but themselves, if the available remedies are not implemented.

Finally, if this Commission is truly committed to revising laws so that they protect the welfare of families going through divorce, then it is imperative that lawyers be excluded from the process, or at least minimize their role. Litigation should be the last step, not the first step, in dissolving marriages. We should be concentrating on families going forward with their lives, instead of torturing them with unnecessary litigation.

We must seek and support legislative change that would remove divorce from the adversarial environment of a courtroom often callous and indifferent to families and put it into a more sane and civilized nonlawyer administrative agency that would employ mediation and counseling type services.

Thank you. (applause)

ASSEMBLYMAN KAVANAUGH: Thank you very much, Ms. Ferrett.

Do you have a copy of your testimony?

MS. FERRETT: Yes, I do.

ASSEMBLYMAN KAVANAUGH: Could you make sure that staff receives it, so that it can be disseminated?

Yes, Commissioner Flohr?

MS. FLOHR: I wanted to point out that I didn't get a copy, and I didn't even get your name. Could you give me your name again?

MS. FERRETT: My name is Veronica Ferrett.

MS. FLOHR: Ferrett, okay. Thank you very much.

ASSEMBLYMAN KAVANAUGH: That's F-E-R-R-E-T-T.

MS. FLOHR: I wish I had the money to put you in charge of everything you described.

MS. FERRETT: Well, it has been a decade of what should have started as a simple divorce, and was certainly escalated by the lawyers. That is my experience.

ASSEMBLYMAN KAVANAUGH: Thank you very much.

MS. FERRETT: Thank you.

ASSEMBLYMAN KAVANAUGH: Next will be Malcolm Sanders. You had what, a two-hour ride, Malcolm?

M A L C O L M S A N D E R S: Yes, sir. My name is Malcolm Sanders. At the present time, I live in Egg Harbor, New Jersey. I have been involved in legal proceedings on and off for the past 10 years. Some 10 years ago, me and my former wife owned our home free and clear. We had well-adjusted children, money in the bank, you know, so forth and so on.

In 1984, my former wife accused me of one incident of domestic violence. The incident of domestic violence changed each time we went to court. One time it was one thing, one time it was another. Clearly orchestrated lies, but the court system-- Nobody seemed to care. I spent over \$14,000 in legal fees. I have been pro se. I think the lady earlier mentioned about being in domestic court and attempting to represent yourself being a frightening experience. It is almost an impossibility. I have been in U.S. District Court representing myself as a pro se. I was before then Senior Judge of the U.S. District Court in Camden, Judge Cohen. You know, he allowed me to speak. The whole thing is just like an unending nightmare.

At the present time, I have a boy who is 21 years old. When my former wife carried him she had toxemia. He has some minimal brain dysfunction. He is retarded; I am not saying he isn't, but he is trainable. I went to court to emancipate my youngest son and my oldest son. The judge, back in June of '93, emancipated my youngest son because he is not in school and, frankly, the boy is very, well, I guess, disorganized, not working, unhappy, seeing a psychiatrist, the whole nine yards.

The judge said that my former wife and my son would cooperate with all attempts to find him job training. I went and met with a lady at Vocational Rehab in Atlantic City. She

said my son, Roger, was, in her opinion, minimal and, you know, could certainly be trained. My former wife refused to sign the papers -- she is the custodian parent -- so he could get job training.

We went back to court to have her do this so he could get job training. There is also an issue-- It states here about a mortgage on the property that I have been living out of for 10 years. I am supposed to get my money in '95. That motion was filed in the court in Atlantic City -- in the domestic court in October of 1993. Nobody knows where it is. There has been no answering. I spoke to my attorney yesterday, the one who is representing me at the present time, and he said, "You know, I just can't get an answer out of them, but I will find out for you."

But it is just-- I mean, I have been accused of not paying child support, when it was paid. You know, you have to go to court and get a lawyer. I think a lady earlier mentioned about mediation. We went to mediation and we worked certain issues out. I was granted co-custody. It was then, at the time of the divorce, taken away by the divorce judge, because that is what he wanted to do.

My oldest son, who I said has some retardation, had been beaten up by my former wife's live-in boyfriend. DYFS didn't care; the court didn't care; nobody cared. He beat him up again, I guess in 1991, and nobody cared because I am a man. I am the father, you know. I just exaggerated. I mean, I submitted hospital reports, photographs to the court, the whole nine yards, but nobody cared. There just has to be a better system, because this is just criminal.

My daughter, who was 17 yesterday, is about to be a high school dropout. She is seeing a psychiatrist. My former wife decided 10 years ago that she had mystic powers. She was going around telling people that she was a witch and had occult

powers. She was in the Psychiatric Unit at Hahnemann Hospital in Philadelphia. Again, nobody cared.

You know, I have been divorced from the lady for 10 years. What she does with herself is her business, but we have some pretty messed up kids here. It just seems like they want me to pay for the rest of my life for something I virtually had no say in. I mean, I am willing to help my children in every way I can, help them to be citizens. But somewhere along the line, you know, they have to take some responsibility for themselves; go take job training.

These unending allegations of not paying support, not paying medical bills, when the medical bills were paid, when insurance was provided. You make a complaint to the Bar Association or the Judicial Review Board and it just comes back, "Well, it is a misunderstanding. You don't understand." But, you know, a lot of people would say, "Well, that's 10 years ago. Go on with your life." Well, at this point I am trying to go on with my life, and nobody will let me. Although they emancipated my one son, they raised the child support up on the other two and took the tax deductions away from me. I mean, it is kind of like you are never allowed to get over this thing or get it behind you, because you offended the system, or offended the judges, or whatever. I never set out to do that. All I tried to do was defend my children and my constitutional rights to be a citizen.

So, without getting on a soapbox, I think everyone in this room would agree that the system is flawed and something has to be done. There has to be-- How can the court tell you, "Well, we don't know where your motion is"? How can that be? Somebody has to have an answer. You see these incidences of people being accused of domestic violence, this, that, and the other thing. People are taken away in handcuffs. You know, I don't say that's right, but again, going back, if I beat the lady up, I only could have beat her up one way. I could not

have beaten her up three completely separate ways. But it doesn't matter. It doesn't matter what is said by the other side.

I know she has paid huge legal bills part of the time that we have been going through this. I have been pro se. But nobody should have to go through this. You shouldn't have children being dragged through these kinds of things and told that their father is just no good, or their mother is no good, or whatever. There just has to be a better system.

I have given you folks, I believe, a capsule of what has transpired from the beginning to the end. I mean, there is so much that I couldn't possibly include it all, but it is just a horrendous, horrendous system.

I don't want to take too much of anybody's time or point fingers at anybody. I just think there has to be a better way. This is just destroying too many lives -- women, men, the children. You know, it is just a horrendous system.

ASSEMBLYMAN KAVANAUGH: Mr. Sanders, we are hoping the results of this Study Commission will be beneficial to all of the citizens of New Jersey. We want to thank you for taking the time and for coming this long distance to testify here this afternoon.

Are there any comments from any Commission members? Commissioner Broderick?

MR. BRODERICK: Just a question: How old are your children?

MR. SANDERS: My oldest boy is 21. He receives partial Social Security Disability. He is a high school graduate. The other two are not, strangely enough. He graduated from the Winchell School, and he also has a degree from Absegaeomy (phonetic spelling). In fact, Social Security says he should have job training. He needs something to help him have a future in life. He's a smart boy.

My younger son is a high school dropout, and unfortunately, I am afraid my daughter is about to be a dropout.

MR. BRODERICK: How old is the younger son?

MR. SANDERS: The younger son is 18, and my daughter was 17 yesterday.

MR. BRODERICK: The younger boy was emancipated?

MR. SANDERS: The younger boy was emancipated because he was not in school, because he was defiant, and because he refused to do anything to help himself. But my former wife said that my oldest son is -- if you read her motion, he is a vegetable, he can't wipe his own nose, he's this, he's that. The judge then said she would have to prove or that I would have to prove that he could or he couldn't. But nobody will make anybody do anything. I don't want to battle with her for the rest of my life in court. I know my son is trainable. Voc-Rehab knows he is trainable. ARC knows he is trainable. I just think the judge should move and instruct her to do what has to be done so he can get some job training and we can stop all this nonsense. It is just counterproductive to everybody.

MR. BRODERICK: Thank you.

ASSEMBLYMAN KAVANAUGH: Thank you.

Commissioner Flohr?

MS. FLOHR: Does your older son require continuous care? Who is with him during the day?

MR. SANDERS: No, he does not; he doesn't. In fact, if you met him -- a lot of people in this room -- you might not know he is retarded. On a good day, you know, he is very active in sports. I usually see him on Saturday. I will probably see him tonight. I am in the midst of a move. I have seen my children religiously on Thursday and Saturday. He has very good eye-to-hand coordination. He can play baseball. He'll play pool; he'll play hockey. He just needs to direct some of that energy towards a job.

A month ago I took him around to find a job. He went to Super Fresh in Northfield. He was really excited. He was going to be a cart boy and have some extra money. She said that was too far to go; they couldn't drive the four miles to take him to work. He was evaluated at the University of Pennsylvania. I can't remember the neurosurgeon's name any longer, but he said that Roger is behind, but with training and guidance he could probably come up to the point-- You know, the retardation will not go away, but he certainly is trainable and capable of taking care of himself. Now I am told that I could do this, but nothing is happening here.

In addition to what I am going through, Roger needs to be a whole person and take care of himself as much as possible. I mean, if you read what was submitted to the court, he can't wipe his own nose. He shouldn't be let out without a keeper. That is just not the case. My understanding from what the judge has said is that if I can prove that he is capable-- When I went over to Voc-Rehab, they said, "She will have to sign papers so he can get the training he is entitled to," and she would not sign them. So when we filed the motion in court, we asked that she be given one more chance to sign the proper papers. And if she didn't sign them, let the court give me permission to sign the necessary papers.

The judge did say that I could have him evaluated, but this is very expensive. There is no longer any medical coverage on him. My company will not cover him because he is over 18. He does have Medicaid, I believe. He was completely evaluated by the Child Study Team at Winchell School. He did have some behavior-- He has lived in a very -- what is the word I want to use? -- a household that is different, I guess, and so forth and so on. But the boy is trainable, and that could be proven. It would be to his best benefit to get this training and stop all this, but I don't know. It just seems

like we are going to go to court and fight each other forever. That just serves nobody.

ASSEMBLYMAN KAVANAUGH: Thank you.

Commissioner Louis?

MR. LOUIS: How would you want the judge to resolve the situation where one parent is saying black and the other parent is saying white, short of having a hearing?

MR. SANDERS: Well, sir, I would like the judge to do what he said he was going to do. I would like him to order her to have him evaluated. I would like him to order her to cooperate with what his order was. He was the one who said we could have him evaluated. He said that Roger would cooperate with all job training. She won't sign the papers so he can't get the job training. Well, technically, Roger is not cooperating, but he can't get the training because Voc-Rehab said she has to sign the papers. I would expect the judge to act in a manner to do what he instructed her to do, and her attorney, not just this unending game where we are going to go back and forth.

MR. LOUIS: Is that your motion, that there is a law to enforce that order?

MR. SANDERS: Yes, sir, that is part of it. There is also a motion in there to obtaining a mortgage on this house I haven't lived in for 10 years.

MR. LOUIS: Did someone send a photocopy of the--

MR. SANDERS: I don't know. I talked to my attorney yesterday. He said he called the court and they are supposed to have an answer for me tomorrow. Actually, that was in October.

MR. LOUIS: I would suggest that you send another copy.

MR. SANDERS: All right, sir.

ASSEMBLYMAN KAVANAUGH: Thank you.

Commissioner Broderick, do you have another short--

MR. BRODERICK: One more question: Roger is the 21-year-old, correct?

MR. SANDERS: Yes, sir.

MR. BRODERICK: You said in your submission to us that he has told Voc-Rehab that he doesn't want their help. Is that part of the--

MR. SANDERS: That is what he said, but I believe he said that in an--

MR. BRODERICK: So your wife is refusing to sign the papers because she doesn't want them involved, and he is telling them that he doesn't want them involved either?

MR. SANDERS: At the present time, she has not signed the papers to have him evaluated. He had told the lady at Voc-Rehab that he did not want their help. But I really believe that is frustration because he can't get it anyway.

ASSEMBLYMAN KAVANAUGH: Thank you, Mr. Sanders. Thank you for appearing here.

MR. SANDERS: Thank you.

ASSEMBLYMAN KAVANAUGH: Myra Terry?

M Y R A T E R R Y: Do I get to pick which one? Does it matter?

ASSEMBLYMAN KAVANAUGH: It should. Congratulations.

MS. TERRY: On?

ASSEMBLYMAN KAVANAUGH: On the direction you took.

MR. LOUIS: For picking the right microphone.

MS. TERRY: I'm sorry?

MR. LOUIS: For picking the right microphone.

MS. TERRY: Oh, okay. I thought maybe you knew something I didn't know.

MR. BRODERICK: Do we have a copy of your-- (no response)

ASSEMBLYMAN KAVANAUGH: Okay, it's 15:05, and Myra Terry is up. Thank you.

MS. TERRY: I'm having trouble hearing you. I think that is part of the problem.

ASSEMBLYMAN KAVANAUGH: I say it is 15:05 -- the 10 minute max, unless you are questioned by Commissioners.

MS. TERRY: Fine.

My name is Myra Terry. I am President of the National Organization for Women of New Jersey, now representing 12,000 members throughout New Jersey in every county in the State.

Before I begin, NOW-New Jersey would like to go on record to request that this Commission meet in various, easily accessible locations at various times of the day and evening, and that the hearings be announced at least one month in advance. Because many people who could contribute relevant testimony are often burdened with work and child care responsibilities, we ask that everyone be given ample time to free their schedules. If you are going to be sensitive to the issues that affect women, the first step would be to make these hearings other than at 2:00 p.m. in the afternoon, which is the most difficult time for women with school-age children to attend.

The other issue is -- which I was not going to bring up today -- I have a front row behind me of people who are hostile to me personally because I am a women's rights advocate just for that purpose. I am a reasonable person who advocates for women, and I would like the same respect given to me that I give to them. I do not hiss at them. I do not walk into hearings and talk behind their backs and make statements, and I would like to be protected from this kind of behavior. I would like them to be removed if there are any comments while I am speaking.

ASSEMBLYMAN KAVANAUGH: You deserve that respect. I hope your comment will be taken as spoken, and that you will show respect not only for Ms. Terry, but for the others who are testifying here today.

MS. TERRY: What that also shows is that something I haven't even said yet is something they are not going to be open to hearing. I find that really disturbing and upsetting. It is very difficult to go on when I am being harassed personally. I will go on now.

ASSEMBLYMAN KAVANAUGH: I have 18 years in politics, and your shoulders get broader. But, go ahead.

MS. TERRY: Okay. I have spent 25 years being a women's rights advocate. I do this because I believe we need to do something for women to bring us into equality with men.

ASSEMBLYMAN KAVANAUGH: Just one moment: In your second paragraph where you spoke about meetings at other times, we have planned evening sessions. We have formulated, we have met at counties, but we certainly intend to meet in the evening so it will be more easily accessible for individuals who wish to testify.

MS. TERRY: Terrific. Thank you.

I am really pleased to be able to address this Commission. This is the first meeting I was aware of. I certainly would have been here previously if I had known about other meetings. So thank you for sending me a notice.

Before becoming President of NOW-New Jersey, I worked as a divorce mediator and a divorce counselor for over 10 years. All too often, I saw families emotionally and financially devastated by breakups. Prompted by what I saw firsthand, I also became head of NOW's Divorce Reform Task Force. NOW's primary focus today is to establish a wide range of goals for this Commission. We believe its agenda should be identifying ways the divorce system can be made fair and equitable for everyone involved, including, but not limited to noncustodian parents -- but it must include that, also.

We ask for wide range respect for all issues having to do with divorce. Women and children, especially those in single-parent households are the fastest growing segment of our

population in poverty. Female heads of families in the U.S. are four times as likely to be poor as male-headed or couple-headed families. At the present rate, by the year 2000, the poor will be made up almost entirely of women and children. NOW refers to this phenomenon as the "feminization of poverty." One reason for this is that women's contribution to their families have not been financially valued and compensated. Time spent in the home, rather than in the job market prevents equal access to education, work experience, pay parity, seniority, promotions, pension, Social Security benefits, and health insurance.

This, coupled with other social ills, such as being mommy tracked, juggling career, child care, and elder care, battling harassment and discrimination in the workplace, results in New Jersey's working women earning 52 cents for every dollar a man earns. Divorce often results in a steep drop in income for the ex-wife and a rise in income for the ex-husband. The economic change in children's lives often alienates the affection for the poorer parent and creates artificial value and admiration for the parent who can provide more. Many women drop to the poverty level and below due to the failure of the court system to award women a full share of the disposable income. Even if they are awarded their fair share, they are not guaranteed to ever see it.

Alimony is equally vital to the survival of women and children after divorce. Therefore, the State must enforce alimony awards as rigidly as it enforces child support awards. Many pieces of legislation which have attempted to correct the problem of child support enforcement have ignored the enforcement of alimony orders. Any attempt to improve enforcement such as garnishing, tax refund intercepts, and liens on property must address both child support and alimony as equally valid and crucial to the survival of women and children after divorce.

New Jersey should also study the example of states like New York to find ways to make enforcement more efficient by cutting through bureaucracy and making one agency more accountable -- or all thoroughly accountable.

Popular music often reflects what is going on in the world around us. One of our current top country and western songs really describes the reality for women's experience after divorce. It is a Mary Chapin Carpenter song, and some of the words go like this: When she was 21, she wore her mother's lace. At 29, she delivered number three. At 36, she met him at the door. She said she doesn't love him anymore. Now she is in the typing pool at minimum wage.

This Commission and the Legislature must be fair, honest, and thorough in understanding the short- and long-term needs of families going through a divorce, and make awards that are livable and just for all. The feminization of poverty must be addressed here. With your fairness and help we can make New Jersey a more equitable place to live.

Thank you very much.

ASSEMBLYMAN KAVANAUGH: Thank you, Myra.

Commissioner Louis?

MR. LOUIS: You mentioned what New York did in streamlining their bureaucracy. Is there some report that you could provide to us?

MS. TERRY: I couldn't do that right now, but I certainly could do it. Absolutely. The Commission on Sex Discrimination in the Statutes can do that.

MR. LOUIS: What statutory changes would you suggest there be to equalize the enforcement of alimony and child support? One I can think of, and that is the modifiability of past due support. There is a difference between alimony and child support. What are the other differences?

MS. TERRY: Any time that child support -- that there is any directive, any law that comes into effect to garnish

wages for child support, that should also be available -- that should also be automatic for alimony, and as you know, it isn't. I mentioned the areas it covers. When you are talking about garnishment, unless the husband agrees, you cannot garnish for alimony. You can only garnish for child support, and it is just as needed by the whole family.

MR. LOUIS: I am not aware of that.

MS. TERRY: Well, it is absolutely true. I think if you look at the law, it is absolutely true. I spent my whole time testifying on that issue, because it is one of the primary reasons why women and children are in poverty.

MR. LOUIS: Can you send us something on that, what statute you feel the deficiency is in?

MS. TERRY: Sure, absolutely. Yes, sure.

ASSEMBLYMAN KAVANAUGH: If you could get that to Pat Nagle, we would appreciate it, Ms. Terry.

MS. TERRY: Sure, absolutely.

MR. SCHOENBERG: Mr. Chairman?

ASSEMBLYMAN KAVANAUGH: Yes, Mr. Vice-Chairman?

MR. SCHOENBERG: Hi, Ms. Terry.

MS. TERRY: Hi.

MR. SCHOENBERG: I don't know if you were here at the beginning of the meeting when we were discussing a paper that Frank was kind enough to do for us on term alimony. Are you aware of that issue about how the courts are not authorized to award term alimony? I was wondering if NOW has a position on that.

MS. TERRY: We will, certainly by the next time I come back to testify.

MR. SCHOENBERG: Meaning you will have a position, but you do not have one currently?

MS. TERRY: I don't have anything I can testify on today.

ASSEMBLYMAN KAVANAUGH: Yes, Commissioner Von Seydewitz?

MS. VON SEYDEWITZ: I just wanted to thank you, Myra, for bringing to the attention of the Commission the need to have more scheduled evening hearings. I know that right now we have been talking about having three. I am having a problem in terms of having people come out, because they cannot afford the luxury of taking a day off to come down. They have children to support. So I just wanted to thank you.

MS. TERRY: You're welcome.

MS. FLOHR: I would like to say that that is even a problem for me as a Commissioner.

But I wanted to ask you a question, Myra: Because finances seem to be the issue here with women and children in poverty, do you think that financial ability to provide for a child should be a consideration in determining where the child resides?

MS. TERRY: That is a 20-minute answer. The reality is, in most cases, because of the way society exists now with a lack of feelings and opportunity for women, most men earn more than women in most couples. There certainly are exceptions to that rule, and we all know them. If that were so-- I don't think parenting has anything to do with the ability to pay. I do believe that we can equalize disposable income for both families, so that it isn't, "Well, sorry, we're done with our marriage now. I don't care how you live. I don't care about my children anymore. I don't care about the quality of life they will have when they are with you."

I am hearing noises behind my back again. Not only do I find it destructive, but I am not going to do that to the people behind me. I really find this very disrespectful.

ASSEMBLYMAN KAVANAUGH: I'm sorry. It didn't sound like anything up here.

C L E M L I O S: (speaking from audience) She is overplaying the part, sir.

ASSEMBLYMAN KAVANAUGH: No, please; please.

E V E L Y N S. D R U M: (speaking from audience) I'm sorry. The people right here are talking, and I am having trouble hearing Ms. Terry.

ASSEMBLYMAN KAVANAUGH: Please, you all have mutual respect for one another. I didn't hear anything up here, but if Ms. Terry or anyone else who is testifying-- If you would please keep your comments to yourself-- If you have to talk about it, go out in the hall and talk about it. But let's be respectful to one another. Maybe that is one of the reasons why one out of two get divorced.

MS. TERRY: We all know that women earn 52 cents for every dollar a man earns; that we earn less. I don't think that is at issue here. The issue is really a problem: What do we do after divorce when women automatically are disadvantaged? What do we do to help women raise their income so that they not only can-- Most often, women are the ones with custody, so if they are the ones with custody most often, what do we do for the entire family so that the woman can then live comfortably with her children and not fall into poverty, which the statistics show us?

In "U.S. News and World Report" this week, the cover story is the "War Against Women of Violence, Poverty, and Abuse. Women are falling further behind in country after country, and their men like it that way." That is what the title is. I didn't write this. That's what it says; that's what it is about.

We need protection and we need help. I am not asking to take away the rights of men. I am just asking that we have the same rights as men.

ASSEMBLYMAN KAVANAUGH: Thank you very much.
Commissioner Broderick?

MR. BRODERICK: Let's take a hypothetical situation. If a woman files for divorce from a husband who does not want the divorce -- okay? -- and the husband makes more, as in most cases, and the husband contests the divorce-- The divorce is granted. This is sort of an emotional question: Why should the husband feel obligated to bring the wife up to any level?

MS. TERRY: I think the issue of divorce has nothing to do with who chooses to have the divorce. It is not about-- You never know who is at fault. That is why there is such a thing as "no fault."

MR. BRODERICK: We may not know who is at fault, but we know who chose to opt for divorce in the first place.

MS. TERRY: Okay, but she may have chosen that divorce because of abuse, any kind of abuse, or she may have chosen it because--

MR. BRODERICK: She does not love him anymore.

MS. TERRY: Right. Well, what does that mean, she doesn't love him anymore? I don't think we need to get into that. I think what we need to get into is that this is a society that is supposed to be fair and just. If we expect our women to bear our children, and there was a time when two people really did love each other and care about each other, there has to be some way of taking care of our women and children as a unit for as long as is needed. Society has to do something, or the State has to do something, to help women -- and I hate the word "rehabilitate" because it is an awful word -- to help women to have better career tracking. In a society that treats women not equal to men in opportunity, I think we have to make up for that, and we also have to look at the fact that women spend time at home. There has to be some kind of remuneration for the time she has been out of the job market.

MR. BRODERICK: I agree with everything you have written here. I agree that women's contributions to their families have not been financially valued and compensated.

Their time spent in the home prevents equal access to education, work experience, pay parity, seniority, Social Security, etc. I agree with that.

The question of how society values a woman's contributions to her family is something I am not sure is within the power of this Commission to recommend changes on. That is a larger issue. But there are instances in which wives have chosen to divorce husbands; the husbands have opposed that; and then the women have demanded that the husbands bring their incomes up. There are many husbands who do not feel that is fair -- period.

MS. TERRY: I understand why husbands would not think that is fair. I think there is a lot to be worked out there. You can't just put a woman out in the street and say, because she wants a divorce, "Too bad." I have also heard husbands say that they were going to quit their jobs, if a wife wants a divorce.

What I am saying to you is, this is a very complicated situation. We must take care of our women; we must take care of our children. And not only women, we must take care of the parent who is less able to have a career, to earn money in our society. There has to be some way of compensating. I don't think it has to do with who is at fault or who is asking for the divorce.

ASSEMBLYMAN KAVANAUGH: Commissioner Louis?

MR. LOUIS: Would you make a distinction between these two scenarios: A relatively short-term marriage where the wife, for example, has the same job she had when she entered the marriage, no children, gets her fair share of the assets acquired, and is in no way economically disadvantaged by the marriage. That is Example A.

Example B: The marriage is of the same length, but where she sacrifices her career, has children, and let's assume for the purposes of my question, she is the custodial parent.

And for the future, her ability to earn money is diminished by virtue of her custodial responsibilities and loss of development of her career. Could you make a distinction between those two scenarios?

MS. TERRY: Absolutely.

MR. LOUIS: In one there might not be alimony; in the other there would.

MS. TERRY: Absolutely, yes.

MR. LOUIS: Does it logically follow then that the question of alimony flows not necessarily from the marriage license, but from what happened during the marriage?

MS. TERRY: What happens during the marriage, and also the ability of-- There could also be situations where a man and woman are married for 20 years, and the wife does not have children. She may work as a secretary or at a job that pays under \$20,000 a year, let's say. He may be earning \$100,000 or \$200,000 a year. After 10 years, or after-- I mean, the guidelines would have to take--

MR. LOUIS: In a marriage of longer duration, wouldn't you want a court to look at the degree to which the marital partnership permitted the person who had more money, regardless of sex-- Why does that person have that capability? Did they contribute to it? So it is a very fact-sensitive kind of thing.

MS. TERRY: I think it is twofold. I think it has to do with a time limit; not only a time limit, contribution to the partnership, the marriage, and also ability, because you don't want-- We don't want women to go on welfare, and we don't want to send them out into poverty. We don't want to do that.

MR. LOUIS: It's one thing if one spouse is economically disadvantaged and the other advantaged by the marriage, and it is another situation if they both are advantaged by the marriage or the marriage has had no effect on

them economically. That is something we have to wrestle with ourselves, how to quantify that.

MS. TERRY: Absolutely.

MR. SCHOENBERG: Mr. Chairman, if I might?

ASSEMBLYMAN KAVANAUGH: Yes.

MR. SCHOENBERG: I am really fascinated with the conversation you are having, because I think it goes to the philosophical underpinnings of alimony. I think what I see as flaws in the philosophical underpinnings of alimony as it is administered today in New Jersey, is the kind of problem that I think concerns Mr. Broderick, and probably a lot of other men here. I mean, historically, men paid alimony to women because that is just the way it was. That is the way the court saw it, that it was a woman's right; she was entitled to be supported.

That philosophical asset you pointed out existed at a time when divorce was a relatively rare thing, and mainly a creature of the upper classes. Obviously, the world we live in in 1994 has totally changed since then, and divorce is the rule, not the exception anymore. A marriage contract -- most people do not look at it as a contract when they say, "I do," but a lawyer would look at it as a contract -- is no longer seen as a permanent thing. Our society now says that divorce is something that is acceptable, and it is almost available on demand. It is available on demand in many states. Yet, the philosophical underpinnings of alimony really haven't kept up with that.

I don't have an answer, and this is really not a question to you, Myra, but that is the problem I see that leads to the kind of conflict that was apparent in the exchange between you and Mr. Broderick. There is a flaw there and case law doesn't deal with it at all. I don't know what the solution is, but there is a problem there.

ASSEMBLYMAN KAVANAUGH: Again, in fairness to the other people--

Commissioner Broderick, do you have a--

MR. BRODERICK: One final question. First of all, I don't think that what happened between Myra and me was a conflict.

MR. SCHOENBERG: I thought I sensed conflict in the dialogue. I apologize.

MR. BRODERICK: This is a question that I will ask of all of the groups that testify, not just your group. I know there are other groups waiting to testify. You said that NOW represents, what was it, 12,000 members? How does NOW come to their decisions about matters such as this?

MS. TERRY: We have a Legislative Task Force, and we also have a Divorce Reform Task Force. All of these issues are talked about and voted on. In the Legislative Task Force we go over all the bills before they are brought to committees. We talk about which ones are going to become priorities and which ones are important for us to get involved in. Certainly, our Divorce Reform Task Force looks at everything with a fine-tooth comb, decides which way we want to go, and how we want to develop our issues.

MR. BRODERICK: Who are the voters? Who votes on it, the Executive Board or-- Who does the voting?

MS. TERRY: Depending on what the issues are-- If it is anything that is controversial, it could go back to the entire Board of the State. If it is something that is within our range of issues that would automatically fall into women's issues, the committees do it on their own.

MR. BRODERICK: How many members are there on the Board?

MS. TERRY: Fifty.

MR. BRODERICK: Thank you.

ASSEMBLYMAN KAVANAUGH: Thank you, Mr. Broderick, and thank you very much, Ms. Terry.

MS. TERRY: You're welcome.

ASSEMBLYMAN KAVANAUGH: Bob Dass -- D-A-S-S. Bob has appeared before us, but today he has asked for the opportunity to play a three-minute tape. If you hold that up to the microphone-- The tape is the recording of the Superintendent of the Camden County Youth Detention Center.

B H A G W A N D A S S: Mr. Chairman and members of the Commission: I appreciate the opportunity to speak to you. The purpose of the tape is to present the ideas of a person who deals with youth and children all the time, and the kinds of problems the children run into because of the lack of--

ASSEMBLYMAN KAVANAUGH: Please pull the microphone closer to you.

MR. DASS: Okay. This person is an expert in the field of children's behavior and why they act the way they act in youth centers; also, what happens when there is a lack of parental contact with the children. This tape speaks about one particular case where the child did so many bad things that he had to go to jail for 30 years.

It would be helpful if you would follow this tape. Will you please follow along from the paper I have submitted? I don't know if everybody has it. My legal name is Bhagwan Dass, and you will see the paper under the name Bhagwan Dass. If you open to the second page of that submittal, it will help you to understand the language on the tape as you follow along.

Before I start the tape--

ASSEMBLYMAN KAVANAUGH: Do all of the Commissioners have that? Oh, yes.

Just a moment. Mr. Gregory, is the volume sufficient for you?

MS. NAGLE: He needs a copy.

ASSEMBLYMAN KAVANAUGH: Oh, you need a copy?

S T E V E N G R E G O R Y: (speaking from audience) It would be helpful. If you all are going to have difficulty

hearing it, you will need the copy. It will really work for transcription.

MR. DASS: I want to say for the record that I am not taking any credit for it. A Miss Mary Prevety (phonetic spelling) is the author of this, and she deserves all the credit. However, I do share her views, thoughts, and concerns in this matter. I personally am a noncustodian parent and I am going through similar difficulties of not being able to get enough time with my child. This tape will explain to you how critical it is for the parent, especially the father, to spend time with his child.

Before I start the tape, I want to say that I accidentally erased one sentence from the tape. But if you follow along, you will be able to see where it was erased. Just one sentence in the first paragraph was erased.

ASSEMBLYMAN KAVANAUGH: Turn the volume up and hold it close to the microphone, please.

MR. DASS: It will be on in a second. Oh, I have to rewind it. I'm sorry I didn't-- I was playing it earlier for Bonnie, because it is the same thought that she expressed and she was interested in hearing it.

MR. BRODERICK: While we are waiting for that, Mr. Chairman, while we are waiting for that to rewind--

ASSEMBLYMAN KAVANAUGH: Yes?

MR. BRODERICK: It strikes me that a lot of the problems we have heard about so far have to do with problems when families live in different states. We may want to consider making recommendations, not only to the Legislature, but to the Congress.

MR. DASS: I'm sorry, Mr. Chairman, I put the tape the wrong way. That is why I was having so much difficulty. I was all set originally until I played it for Bonnie, and then I got--

ASSEMBLYMAN KAVANAUGH: I'm glad you weren't my tailgunner over Berlin. (laughter)

MR. DASS: I apologize. Now it is all set, hopefully. There is a blank portion at the beginning. It will start in about a minute. (tape is played at this point)

John trails me across the ping-pong room, placing his finger across the headline that tops the page. "See that," he said. He reads the words aloud from the Youth Center Student Newspaper: "Too late to start acting like a dad." "I have a story just like that," he said softly. When he gets to the--

"I didn't really hear from my dad until I got in trouble. Then he started calling, writing to give advice. It was too late." John is awaiting his sentencing for murder -- 30 years.

One boy's story, three sentences long, an American tragedy. I have never seen John's dad, but my heart has questions for him: Dear Dad: At the end of your day, what matters most, your flourishing career or the minutes you stole from your son? Dear Dad: At the end of your day, what matters most, those delicious, memorable moments with the latest romance in your life or the memories you never gave to John? Dear Dad: Your son is right. It is too late. Grown-ups can delay, can wait, can distract, and push away, but not your son. Your son grows up, and by the time you do have time for him, he has already bonded to the boys on the corner, the drinking buddies, the mall rats, the wrong girl. And by the time you do have time for him, he is already thumbing his nose at school. So who do you think has shaped your child? Someone taught your son what it is to be a man; that a real man settles every slight with fists or with a club or with a bat.

And Daddy, were you there to teach him another way? The average American working parent spends 30 seconds a day in meaningful conversation with his or her children -- the average, 30 seconds a day. Daddy, you spent not even that.

This boy beside me, John, has a giant hole in him where a father should have been. Building a conscience in your child takes more than 30 seconds a day. Putting values into your child takes more than 30 seconds a day, so does teaching him to love his God, respect his fellowman, especially when the television set is on seven hours a day in the average home.

I shall hold John's hand today and write a letter to all the fathers of America. Dear Dad: Do you want to change America? Pull out the stopwatch in your home. Time yourself. How much time do you spend each day just talking to your child, building memories, anchoring him with family traditions, and showing him how to be a father just like you? Double that time, triple it, quadruple it, and watch what happens. Time together builds memories. Time together builds values. Time together builds families, builds family traditions. Time is love. This is Mary Prevety.

ASSEMBLYMAN KAVANAUGH: Thank you very much for sharing that with us. We appreciate it.

MR. DASS: Thank you, Chairman.

This was broadcast on National Public Radio. When I heard it I was very pleased to hear the message. I went to a Philadelphia radio station and I purposely got this tape to share with you people here.

If I may add one more thought: Just as was brought up by Mr. Broderick, the out-of-state situation is even more difficult. Like in my case. When I went to a New Jersey court to get visitation rights, they said, "We have no jurisdiction over Florida. We cannot help you." I cannot afford to fight this legal battle in Florida and make all the trips down there to get the visitation rights.

I am in a catch-22 situation. It is very difficult for me. I literally pleaded and begged my ex to spend some time with my child, but that has not helped me very much.

Thank you, sir. I appreciate it.

ASSEMBLYMAN KAVANAUGH: Again, thank you for being here.

MR. DASS: I would love to spend more time with my child, if I could.

ASSEMBLYMAN KAVANAUGH: Next will be Steven Gregory. Whatever is convenient for you. See if the wires are long enough.

MR. GREGORY: They stretched them before.

ASSEMBLYMAN KAVANAUGH: We appreciate Steven coming. Steven is hearing impaired and he has had the opportunity here, which is made available by the State for anyone-- If there is anyone else who has problems, the facilities we have here in the State House-- We do have the wherewithal to take and do this for individuals.

Steven, you're on.

MR. GREGORY: Thank you, Assemblyman.

I come with a little different background than some of the other people who have discussed this subject. I am a single parent of four children. I live in Gloucester County in the town of Pitman. I have a joint custody access schedule for my children, and I participate in raising them. I am a high school cross-country coach. I work in two districts. For many of the kids, both boys and girls, on my teams, I am the first father figure that many of these children have seen. I have appeared amicus curiae to the New Jersey Supreme Court. As a result of my work before the Court in the publication of Sordiman v. Kinny (phonetic spelling), for the last four years it has been -- as Mr. Louis will tell you -- it has been virtually impossible to take a child out of New Jersey away from an actively parenting noncustodial parent. I am very proud of that work.

I am not trained as an attorney. I am not a member of the State Bar Association. I trained myself like Abe Lincoln. I read by the fire at night. I have been very grateful that I

had the opportunity to do that because of the results of the work I have done. I was a nominee to this Commission, but didn't have enough political pull to get in there. (laughter)

The comments I have relate to the difficulty I had in my own life in painting the joint custodial access schedule I have. Just for example, I litigated Father's Day three years in a row. The fourth time I finally got a judge to agree that I shouldn't have to come back every year to litigate Father's Day. That is why the Assembly is considering now a bill which would -- which I am urging this Commission to support -- define a minimum parenting standard.

I found my children placed in the middle because there were so many. After Father's Day came the Fourth of July; after the Fourth of July came Labor Day; after Labor Day came the Columbus Day holiday; after Columbus Day came Thanksgiving; after Thanksgiving came Christmas; after Christmas came the Martin Luther King's Day holiday. Then spring break, and we are back to Mother's Day, which I was happy not to litigate.

It got to the point that after the third year, my children didn't even want to hear that daddy was going to court so that they could enjoy Father's Day. They didn't want to be in the middle.

This Commission has an opportunity to take children out of the middle of litigation by supporting some sort of minimum parenting standard and by supporting some sort of equalized sharing predicated on the parents' abilities and locations for the holiday schedule. That is what this Commission needs to do.

So many of the kids that I have coached-- I don't know if you have ever been on an athletic team, or have ever worked with a group. When you coach, the bonds between the coach and the athlete become very strong. I work with these kids maybe two, two and a half hours a day, five, sometimes six days a week, between September 1 and Thanksgiving. In that

very short period of time, bonds are developed between me and my athletes. I know more about these athletes' lives than the parents do. What I am finding is, these children do not know their fathers. I am the father figure. What I work hardest for come November 1, when we are two-thirds of the way through the season, is to get them back in again so that I can get another opportunity with them in September -- in fact, you talk to Lee Hylanman (phonetic spelling) about what I do -- to get these kids back in again so that I can get them next September, so they won't be one of the statistics you just heard about on the tape. We do not have enough parents teaching character.

The way custody issues are generally brought in to the court, especially when there is a guardian ad litem involved, is that eventually somebody on the opposing side says, "The issue is control. The issue is not concern for the children; the issue is not child support; the issue is control." So the judges look down over the corner of their glasses -- over the edges of their glasses -- and say, "I am not interested in hearing about a parent who wants control." That is because all these pro se parents don't know how to say the words, "All I want to do is raise my son. All I want to do is raise my daughter."

V I N C E N T G U I D O: (speaking from audience) I have said it to four separate judges. Everything he is saying is true. I can't believe it, he's saying my case. It's always about the holidays. Every freaking year it is about the holidays.

ASSEMBLYMAN KAVANAUGH: Can we have a little order, please, in deference here? I know it is emotional for many of you.

MR. GREGORY: One of the earlier people who testified made comments about pamphlets. The New Jersey State Bar Association does provide pamphlets to attorneys. The purpose

of these pamphlets is to pass them out to matrimonial clients, so the matrimonial clients can note what's coming.

It would be a good opportunity for this Commission to make a recommendation to the Bar Association that the language in those pamphlets should be changed so that, for example, instead of visitation, "parenting time," or something like that.

The actual way I feed my family-- I am a residential landlord. I have been in business for 26 years. From day one, I have never in my life used the words "landlord" and "tenant," because landlords and tenants fight. I use the word "owner," because I can't get away from that, and I use the word "resident," because I can't get away from that. Owners and residents mesh and work out problems. Landlords and tenants go to court. Visitation is not rearing. Parenting time is raising the child.

That is what Mr. Broderick needs to know. He was talking about people in the trenches. It is the parents who are in the trenches, and they are trying to climb out. It is the real parents who need the help.

I have had some experience with the probation department. Because of my background and knowledge, I am able to judge what happens through the probation department a little differently than some other people. I see another area that this Commission could get involved with.

There is a big change that has occurred as of last October in the collection of child support. It is a federally mandated program. It requires all child support to be paid through probation departments and then it is passed on to the parents. In essence, the probation department becomes a pass-through collection agency. That is the way the law is supposed to function.

Because things are new and because procedures are just getting set up now and organized, the Commission needs to address the way the probation departments execute their

function. For example, I had one motion that was an enforcement motion that resulted in an order. I found that what had happened was, the order was drawn up by the probation department. The probation department acting not as a neutral party, but as an advocate, drew up an order. What I found was, this order was submitted to the judge for signature without one party ever having seen the order.

Those of you who are attorneys know there is a five-day rule, a ten-day rule, that provides each party with an opportunity to review the child support -- to review any order the court enters, prior to it being signed. The order contained an egregious error. It is in the Appellate Division. The reason it contained the error is because there was a standard form used which contained something that had nothing to do with the case.

So there needs to be some sort of recommendation from this Commission that the probation departments, in executing their duty, use the process that is provided for in the court rules.

There is one other example. Well, let me end here and give someone else a turn. So that is my urging to this Commission.

Yes, Mr. Louis?

MR. LOUIS: Mr. Chairman, through you, you're saying that when probation submits an order, they do not follow court rules? They are not following the five-day rule? In other words, you are not getting-- The person against whom the order is being entered, does not get a copy -- an opportunity to review the order to see whether it is accurate?

MR. GREGORY: That is correct.

MR. LOUIS: I have read at least a draft of the minimum parenting standard bill. If, for some reason, that bill did not pass, would you then be in favor of a bill that would mandate a judge to enter an order about holidays, unless

the parties agreed themselves, so that you would not -- so that a person would not be placed in the ridiculous position of having to come back every year?

MR. GREGORY: Well, not many people can understand the background that the family law section was opposed to the minimum parenting bill and withdrew lots of lobbying. If you can get it out of the family law section to support a proposed, a mandated, a legislative-set-forth holiday schedule, you would be doing a good job for the kids by taking them out of the middle.

MR. LOUIS: My question was: Assume just for argument's sake that the Legislature did not wish to deprive judges entirely of their discretion, would the fallback position-- Would this be acceptable to you, that there is a mandate that a judge must enter an order, some order, about holidays and specify which holidays, so that you are not -- so that a person is not placed in this position of burdening themselves, the children, and the court system by coming back every year to deal with whether they see their children on Father's Day? It's the fallback position. You didn't get your first choice. Would that be an acceptable second choice?

MR. GREGORY: That is hard for me to just answer yes to. Of course, I would support such a thing, but it is inappropriate in that the scope is not large enough. For example, we have right now a joint custody statute that says the judge must order unless, and put his findings on the record. That would be the appropriate way to write a holiday schedule; that the judge must equalize the holidays or put his findings on the record. That would be the way to write it.

MR. LOUIS: Thank you.

ASSEMBLYMAN KAVANAUGH: Commissioner Broderick?

MR. BRODERICK: Steven, would you prefer that I speak so that you can read my lips, or is this your preferred way?

ASSEMBLYMAN KAVANAUGH: Do it that way.

MR. GREGORY: Well, I really don't hear.

MR. BRODERICK: Okay. The bill you are talking about has just been introduced. It is A-1594, for the information of anyone else in the audience who is interested in it. It is the so-called "minimum parenting," but now it is known as the "Child's Rights Enforcement Act."

I am the noncustodian parent representative on the Commission. I have a bit of difficulty with this bill for a couple of reasons. First of all, I have heard many horror stories about how the court system has treated people. I am not sure the way to address that is to leave the question of custody in the court system. My professional background is with the New Jersey Education Association, which negotiates contracts. I think there is an analogy here, in that the best contract is a contract that the two people agree to themselves.

Now, obviously, there are going to be times when the two people will not agree. What do we do then? One of the suggestions we have heard is that a standing master -- I think, is the term we have heard -- be named who will have jurisdiction over this particular case. If the two parties themselves cannot come to an agreement, then that individual will have the authority to enforce a binding order. What do you think about that?

MR. GREGORY: Well, it is advisory master. It is an advisory master that helps the judge.

MR. BRODERICK: No, we're talking about someone who would have the authority to make a binding decision.

MR. GREGORY: My personal opinion is -- having watched my own children go through this process -- that if this is the divorce process here, do we need it stated that you can pull out the adversarial nature of the process? You are improving the process from the children's aspect.

MR. BRODERICK: I agree.

Let me share with you a story which reaffirms your experience with the probation department, and I think I shared this at a prior meeting of the Commission.

My ex-wife filed a domestic violence complaint against me the day before Thanksgiving. The probation department closed at noon of that day. When the courts get such a complaint they are supposed to check with the probation department to see if there is a pending divorce action. Since the probation department was closed, the judge took it upon himself to issue a restraining order against me, which lasted for the entire Thanksgiving weekend, and which prevented me from seeing my daughter. So I can confirm your experience with the system, and it does happen.

Thank you, Mr. Chairman.

ASSEMBLYMAN KAVANAUGH: Thank you, Commissioner.

Is there anything else?

MR. SCHOENBERG: Mr. Chairman?

ASSEMBLYMAN KAVANAUGH: Mr. Vice-Chair?

MR. GREGORY: Sir, I just have one other thing. I am the first nonjudge, nonattorney, nongovernmental employee nominated to serve on the New Jersey Supreme Court Family Practice Committee. My appointment is pending. The appointments are to be made in June. I would like to remain on tap to this Commission as the first regular old citizen. I would like to remain on tap to this Commission if there is any way I can help.

ASSEMBLYMAN KAVANAUGH: The Vice-Chair has something.

MR. SCHOENBERG: Actually, this comment is directed more to Mr. Broderick than the witness. You were talking about a standing master. I am interested, but how is that different from a judge? How would a standing master operate?

MR. BRODERICK: Actually, I think Judge Murphy brought this issue up at the last meeting. I am not sure how it would operate differently from a judge, but my understanding of the

distinction is that a standing master would not be part of the court system. Part, I think, of why we have so much difficulty with the system is that the judges and lawyers are generally not trained in this area. They have no idea of how to deal with these sorts of conflicts.

A standing master could be a psychologist, a social worker, a probation officer, someone outside the system with training and expertise in dealing with family crises.

MR. SCHOENBERG: I would think, anyway, someone who is not sitting in a cloistered environment like a courtroom, but who has the freedom to go out of that intimidating environment to investigate the case. I think that is a fascinating idea.

ASSEMBLYMAN KAVANAUGH: Commissioner Louis?

MR. LOUIS: Mr. Chairman, if I may just mention something to Mr. Gregory, I serve on the Practice Committee. In the event the Supreme Court, as a matter of policy, says that they do not want a nonlawyer on the committee-- No, I think that is probably-- There are nonlawyers on the committee. If you don't make it, I should say, we have, as a matter of course, auxiliary workers. I forget. We have a name for it which I do not remember right now, but you may be involved whether you are on the committee or not. What you should do is write Judge Serpentelli to express your interest as to which particular subcommittee you would like to work with. Therefore, you may have input, in any event.

I intend to write Judge Serpentelli to raise the question you just raised about probation. Feel free -- anyone may feel free -- to write the Chair of a Supreme Court committee to ask the committee to deal with any issue that they think is appropriate. So whether you get on it or not, at least I, for one, would seek your input.

ASSEMBLYMAN KAVANAUGH: Thank you, Commissioner.

MR. GREGORY: Thank you.

ASSEMBLYMAN KAVANAUGH: Possibly what you could do now, Steven, since you are on a first name basis with Commissioner Louis, is ask him for a letter of reference, because he does have some political clout there with the Bar Association. But thank you very much for coming.

Does anyone else have anything?

MR. GREGORY: I'll call you later.

ASSEMBLYMAN KAVANAUGH: We have your name and address, I'm sure.

Thank you.

MR. GREGORY: Thank you.

ASSEMBLYMAN KAVANAUGH: Next will be -- I am sorry for the pronunciation -- Mehenera Kathari. Please come forward. Thank you for being here. You are starting at 16:00 -- 10 minutes.

M E H E N E R A K A T H A R I: Thank you for this opportunity.

ASSEMBLYMAN KAVANAUGH: Please pull the microphone closer to you so we can -- and if you would speak up a little bit.

MR. KATHARI: Respected Chairman and members of the Commission: I am an immigrant, and a law-abiding citizen of this country. Like a lot of immigrants, I have heard and watched a lot of movies on American history before coming here. I was greatly impressed by the ideals of John Adams, Quincy Adams, Thomas Jefferson, George Washington, and the likes. When I watched those movies at the American Library in my hometown, I knew that America had to be the best country in the world. I was particularly impressed by the idea of true justice for everyone.

Recently I have been to family court. I realize that family courts are bureaucratic, incompetent, and corrupt. I apologize to you for giving an example of my case in this testimony, but I think my case is a unique case of fraud, which

was supported by our so-called justice system. I am probably the only man who has paid alimony for two days of fraudulent marriage. I was married to a woman after a brief introduction, as is the custom in our culture. We separated on the second day because she didn't want to have children. We agreed to end the marriage, and she left my house after a week.

When she realized that she could not make money from me in a normal amenable divorce for such a short marriage, she came back on the pretense of picking up her personal belongings and she faked a domestic violence. Even the police are forced to take the easy way out in a case of forged domestic violence and simply write up a report based on the woman's word.

I was totally taken aback when she was in the courtroom with her attorney, and I was without any legal representation. I was very surprised and totally shocked when she was awarded temporary alimony in the court, even though she falsified the fact, under oath, about her job and financial status. The temporary alimony was granted, specifically worded "without prejudice," since that was the only information available.

She was not granted any alimony in her previous divorce because of her financial status and her ability to make money. Then I applied to vacate the order with the proof that she had a lot of money -- more than \$88,000 through her previous jewels and her savings -- and was working under the table at the time of the hearing and was not living with me. She had perjured herself under oath in the courtroom and in her subsequent affidavits, but my application was denied. In the meantime, she was working under the table in a grocery store where she had invested her money through her boyfriend.

It was an irony that this woman was able to buy a brand-new car with the proof of her under-the-table job, but this court would not accept the same proof nor order an investigation, which our law provides for. This investigation

would also have brought out the fact that one week after our marriage, this woman was living with another man.

We went to our Lease Agreement Panel Monday, where panelists recommended that she should return all the money and we should separate without any claims against each other. We were told to go to a judge. An immediate trial was ordered the next day. Surprisingly, her attorney called in sick. Surprisingly, we got the next court date after 25 days, with another judge. On the next trial date, the honorable judge told my attorney that she wants no trial and to settle the case by paying another \$3000, or else she would continue the trial for the next -- at least three days. She even said that she would not record the previous presiding judge's order. I was forced to accept the situation.

Even though our Lease Agreement Panel recommended that my wife should return the money, the panel's recommendation was not taken into account. Even though every motion was denied me, I received word that he, the judge, would not vacate the order by another judge. The only thing I can conclude is that these judges were not acting in the best interest of justice, but to protect their relationship with their superior judges.

I have consulted at least six attorneys, and every one of them has said one thing, that this is a gross injustice. I feel that we are living under a tyrannical regime right here in the U.S.A., a country which fights against human rights violations all over the world. I am sure this event has taken at least 10 years off my life, and taught me that I should never dare to marry. This means I have to stop being a normal person. Marriage is a contract that no one knows about until one goes to family court. Therefore, this contract from its inception is a fraud. A man has no defense against fake domestic violence. Women are not punished for their perjury under oath. There is so much money in the system for attorneys and women that this crime can continue to happen because

unconstitutional laws have been enacted with the power of words and lobbying by the western interest groups.

I thought the principle of all justice systems was that no innocent person would be punished, but in family court the principle has been divorced. Family court and family laws seem to work on the principle that for the mistake of one man, they will punish every man. All this leads to corruption in our society. We must remember that injustice anywhere threatens justice everywhere. Power corrupts, and absolute power corrupts absolutely. No one person, no matter how important he or she may be, should be given absolute power. If I commit a serious mistake in my job, I lose my job. There is nothing like that happening to anybody in the justice system. You are punished even more severely if you argue with the judge.

The system needs a complete overhaul. I have a few suggestions: Eliminate all attorneys from family court; get volunteers from society to investigate behind every medical dispute; eliminate the conceptive element; no attorney fees benefit for any spouse; punish perjury under oath; analytical reasons, including citing statutes, should be given by a judge for any decision.

Thank you for listening. I hope you will change the system to make it a true justice system. Thank you very much.

ASSEMBLYMAN KAVANAUGH: Thank you very much for coming, sir.

MR. BRODERICK: Where were you married, in New Jersey?

MR. KATHARI: Yes.

MR. BRODERICK: And all of this took place in New Jersey courts?

MR. KATHARI: Yes, right, absolutely.

MR. BRODERICK: You said you consulted six different attorneys.

MR. KATHARI: Yes.

MR. BRODERICK: Are you on appeal with this?

MR. KATHARI: I was on appeal at the last point when I saw that appeal cost me a lot of money. My attorney never-- He filed an ordinance of appeal, but he never filed a brief. At the last point, I realized that I was investing a lot of my money. I am supporting seven people of my family, and I realized that if I don't agree to the words the last time the trial just said, then I will be losing more money, and I will be hurting myself a lot more.

So I felt that I had to-- I was forced to accept the situation. Before I came here, I always had the greatest respect for the justice system in this country. I never thought anything like that could happen any day. In the beginning stage, my wife threatened me that, "I will call the police," and all that. I thought she was just threatening me, because nothing like that could happen. The only reason I didn't lose my house was because my house is owned by my sister; my nephew lives there, and I live there, too.

I didn't know enough to commit domestic violence on a woman in one week. Investigation-- I am told that this is provided in our law. If investigation was ordered, somebody should have found out. She is still working under the table, not paying taxes and making money, whereas I am paying taxes. I was punished because I am working honestly. If that is what the system does, then I think it should be completely overhauled. This is not a system. I think no man should dare to marry over here.

MR. BRODERICK: So the case is over? You agreed--

MR. KATHARI: The case is over, but he is still fighting. Again, it is a funny thing. His lawyer filed a divorce. My attorney, of course, had filed an annulment complaint; her lawyer filed a divorce complaint. Divorce in New Jersey-- According to New Jersey law, you have to be a resident of this State for one year before. In the courtroom when we were first trying to proceed on the divorce case, the

judge -- the girl said I was living here for seven months. Her attorney had filed the papers. The judge called both my attorney and her attorney and said, "Okay, we proceed on your annulment action. They proceeded on the annulment, and an annulment was granted.

My lawyer had filed the papers with the court. Her lawyer has taken no objection. So this is a way to make money. In the meantime, I am giving my-- My salary is being-- There is a salary garnishment from my employer, so she is getting money. I think this will go on a little more and I will lose a little more money.

MR. BRODERICK: You were legally married for two days?

MR. KATHARI: The second day she said to me-- The first time she said to me, "I will think about it." I said, "You tell me." The second night, after a couple of hours, I said, "You live in a separate room; I live in a separate room." I gave her a separate room; she slept in a separate room. For one week she stayed with me.

In our custom, usually the relatives come. The relatives who came, who introduced us-- They are not supporting her, too, because they didn't like what she did. She made so much money from her previous divorce, too. She is a noncustodial parent.

MR. BRODERICK: Thank you, Mr. Kathari. Thank you, Mr. Chairman.

MR. BLITZ: Mr. Chairman?

ASSEMBLYMAN KAVANAUGH: Commissioner Blitz?

MR. BLITZ: In your proposals, are you suggesting that people be denied the right to counsel in family court even if they want one?

MR. KATHARI: I think the family court should not-- If the judges know the law completely, if the judges know everything about the system, why shouldn't the judges be able

to give-- Because anyway, our Lease Agreement Panel attorney told me that--

MR. BLITZ: My question was: In your proposals, are you suggesting that people should be denied the right to counsel, even if they want one?

MR. KATHARI: I think we should eliminate attorneys because when money comes into play, then the whole system gets corrupted. Here in this system there is so much money for attorneys that the system-- The party who is not paying for an attorney would want an attorney, because if I am a wife and I know my husband is going to pay for the attorney's fees, I say, "I want the best attorney in the world."

MR. BLITZ: And your recommendation is legislation to deny right to counsel in family court?

MR. KATHARI: I am not exactly saying that.

MR. BLITZ: That's what you said in your proposal.

MR. KATHARI: I think probably-- I think what I am trying to say is that there should be no-- Eliminate all attorneys from the family court.

MR. BLITZ: Okay, that's all. Thank you.

MR. BRODERICK: Mr. Chairman, are we taking a break soon, or are you just going to go on?

ASSEMBLYMAN KAVANAUGH: First of all, are there any more questions? (no response) Thank you very much for coming.

MR. KATHARI: Thank you for the opportunity.

ASSEMBLYMAN KAVANAUGH: Thank you for submitting your testimony.

Ann Marie Ackley, please come forward. Ann Marie has a two-hour ride and she has arranged transportation. So we will take a three-minute break as soon as you are finished, Ann Marie. You have 10 minutes.

A N N M A R I E A C K L E Y: (speaking from audience) I have four pages of testimony.

ASSEMBLYMAN KAVANAUGH: Well, you can paraphrase, because you have 10 minutes.

MS. ACKLEY: You don't need to look at this until after, all right?

ASSEMBLYMAN KAVANAUGH: Okay. It's 16:12 at the moment, Ann Marie.

MS. ACKLEY: One note should be made that I have legal custody of my nephew.

ASSEMBLYMAN KAVANAUGH: You can sit down and relax.

MS. ACKLEY: Sorry.

ASSEMBLYMAN KAVANAUGH: Please speak right into the microphone.

MS. ACKLEY: In the process, I was given a choice in the domestic violence situation I was involved in to put myself into financial disparity or stay in a very hostile marriage where I could have ended up as a statistic, or possibly could have been dead.

I have lost custody of my children. I have no custodial rights. I have been granted parental rights. I have, to date, not seen my children in a year. I have received no pictures of them. I don't know what grades they are in in school. I don't know how they are progressing.

The financial devastation-- I am in debt to an attorney for \$48,000, among the \$30,000 stock I sold of my pension fund. My husband made \$50,000-plus a year. He was my sole source of support during the five years of the marriage. The judge told me: "Go out and get a job." Last year, I made \$4000, because I have no job skills.

I had suggested to the judge that the matter, instead of being mediated, should have been held to binding arbitration, because he told me-- When I asked him for a divorce, he told me that he would see to it that I lost both of my children. That was not done. The restraining order was dropped against my wishes. The people who are really suffering

in this are the children, because they have been deprived of two parents. They only have one, and who knows what he says to them.

Right now my position is, I am raising a child who is not my own, and I am collecting public assistance. Hopefully, I am going off that, because I have a minimum wage job. I went from owning my own house to living in a house that is in foreclosure. The judge gave me the house 10 months into the foreclosure, and ordered -- even though my husband was under court order to pay the mortgage payment -- that no mortgage payments be made to the final date of the order, and no moneys to fix up the house. So I have sole possession of a house in foreclosure. I am in debt to the tune of over \$200,000, thanks to this divorce.

I have tried, without any success, to retain counsel, to go through Legal Aid, and through all the organizations in the self-help group clearinghouse. I have been given no choice but to represent myself pro se. As other people have testified, the judge looked upon me-- I was looked upon last. The lawyers had their say. They had everything directed the way they wanted, and me, not knowing the court system and being at an extreme disadvantage, had at least five things in my motion which were not addressed.

The system needs to be changed. It would have been better, when he was asked to go to arbitration, if he had been forced to comply with the arbitration. He made one appointment, and said about the next one that he had a business meeting and couldn't go. He was not ordered to further the mediation, and it was an all-out war. The lawyers did not help because-- I had two attorneys. One lawyer was telling me, "Well, you can get this, you can get this, and you can get this." I said, "I don't want this; I don't want that. I want to settle this peaceably. I want my life to go on. Just give him what he wants, because I want to be free of him." All the

attorney did was create an adversarial position. Now he is raising my two children, and he makes \$50,000 a year.

The other tactic he pulled was: Right before the divorce, he got a 50 percent decrease in pay. Then when we got divorced, he got a 50 percent increase. I got no rehabilitative alimony. I was denied because the judge said he had two children to raise. It was not my wish to have things this way. Had I known what was going on, I would have let him kill me first before I left the household to be plunged into such financial disparity.

The justice system-- After having gone through the family court, I do not believe there is such a thing. I have been unduly wronged because I can raise my nephew, but I can't see my own children unless I am supervised. I don't know what the resolution to this is. I just can't get any help any way I try. I have contacted 31 attorneys in the Counties of Morris and Passaic and asked for help. I have no money, and no one will help me. Legal Aid has turned me down five times. I spoke to Vincent Chelli (phonetic spelling) in his office, and they said the meager resources of the Legal Aid Society could not help me, even though I qualify financially.

So what am I supposed to do except represent myself, in a system that I am inadequately prepared for. I think that needs to be changed.

ASSEMBLYMAN KAVANAUGH: Thank you very much, Ann Marie. Are there any questions of any Commissioners?

MS. VON SEYDEWITZ: Excuse me, I do have a quick question.

ASSEMBLYMAN KAVANAUGH: Commissioner Von Seydewitz?

MS. VON SEYDEWITZ: I haven't had time-- It might be incorporated in your written statement, but you lost-- The reason why he has custody is because of the--

MS. ACKLEY: Because of an alleged criminal matter that was later misproven. I think the custody should have been

held contingent upon the final outcome of the criminal case, and it was not. The judge said he had no choice because of the alleged criminal matter. He had no choice but to give custody of my son to his stepparent against my son's wishes.

MS. VON SEYDEWITZ: How old is he?

MS. ACKLEY: My son is 10; my daughter is five, and I have not seen them in a year. Every time I call, he hangs up on me. I have no contact whatsoever. I don't even know anything. I mean, I don't get any notice of their school report cards, pictures, birthday cards, nothing. I don't even know if my children receive anything I send them, except that I have taken the very expensive way and sent things restricted mail delivery. My son is 10 and he can sign for things. That is the only guarantee I have that he received something, or at least knew I sent something. Other than that, there is no guarantee to anything. I mean, he is the custodial parent, I have been told. He has the right to deny me seeing my children, according to the police departments that I have asked to get involved to see the children.

Without an attorney, there is no resolution because I can't get this back into court and be successful on my own, although I have tried. I have, and I have lost my motion.

ASSEMBLYMAN KAVANAUGH: Yes, Commissioner Flohr?

MS. FLOHR: Do you have a visitation schedule, an order to provide you with visitation?

MS. ACKLEY: The judge left the order open-ended and said, "When the criminal matter is adjudged and disposed of, if the parties can't agree, the court will set an order." The judge told me and his staff, "I am sorry to use this language." I was told, "Tough shit, file a motion." To date, I have no visitation schedule. I doubt I will ever have a visitation schedule because, frankly, I can't get into court. I can't afford the time, and I can't afford the money.

It is really very unfair that because I have no financial resources, I can't do anything.

MS. FLOHR: It appears, then, that you are totally dependent upon the cooperation of the custodial parent.

MS. ACKLEY: That is correct. I mean, in my motion I even said, "This is for the children." When is the court going to stop being a continual battleground? That is all the system makes the court, a continual battleground where nothing gets solved. I think it would be a good idea to set a minimal parenting standard, or parental time with children, because otherwise, like someone said, we keep going back to court and saying, "I want this day, I want this day, I want this day."

Granted, it should be-- Mother's Day should be included. This is the visitation order. Mother's Day should be one of them. You know, you should have a standard that you should have "X" number of hours on a weekend with the children. I went from being the sole provider to not ever seeing him. I mean, they lived with me day in and day out. He went to work 72 hours a week, and he was never home to care for the children. Now he is their sole provider and caretaker, and I don't see them -- ever. I can't even call them on the phone.

ASSEMBLYMAN KAVANAUGH: Thank you, Ann Marie.

Yes, Commissioner Broderick?

MR. BRODERICK: Couldn't you see them at school?

MS. ACKLEY: No. I have been arrested. I went to the public school grounds to say hello to my son, and I was promptly arrested by the police department.

MR. BRODERICK: Who called the police, the school authorities?

MS. ACKLEY: No, he did. He is the custodial parent.

MR. BRODERICK: Have you asked the school for copies of the records for your children?

MS. ACKLEY: I have been told that they have been instructed by him not to give me anything. If I am supposed to

have parental rights, under Berger v. Berger, which was in my motion, I should have the right to know them, to love them, to see them, to get pictures of them, to have report cards, to be able to contact them, and for them to be able to contact me. All this did was destroy the relationship I had with my children. I mean, the parent whose child I am raising has more rights to his children than I do, and he has been accused, and he has been indicted for sexual molestation of a child. He is allowed to see his children, and I can't.

ASSEMBLYMAN KAVANAUGH: Thank you very much. Thank you for bringing those views to the Commission.

David Marcks and Daniel Hudson.

Just a moment, I'm sorry. We are going to take a three-minute break so we can change the recording tape. But it will be just three minutes. The men's and ladies' rooms are up at the end of the hall. No cigarette smoking.

(RECESS)

AFTER RECESS:

ASSEMBLYMAN KAVANAUGH: Could we all come back so we can get started, please?

Do we have Daniel Hudson or David Marcks, or both? All right, sir, you are?

D A V I D M A R C K S: David Marcks.

ASSEMBLYMAN KAVANAUGH: David Marcks, Fathers United for Equal Rights & Women's Coalition.

MR. MARCKS: And Women's Coalition, correct.

ASSEMBLYMAN KAVANAUGH: Thank you for being here, and for being patient.

MR. MARCKS: Thank you for the opportunity to speak before the Commission.

ASSEMBLYMAN KAVANAUGH: We will try to adhere now to the 10 minutes. It is 16:33. You're on.

MR. MARCKS: With all of the issues that were touched on or covered today-- I would like to get on every one, but I am not going to do that. I am going to stick to what I had planned, one of the issues, and one of my pet peeves.

Being a single father myself -- I am a noncustodial parent -- I am split between two counties. I live in Monmouth County and my daughter lives in Ocean County, so my wage garnishment and child support go through Monmouth County, but also the case is heard in Ocean County. In dealing with the two counties, which are side by side, each court system is run completely different. I think there needs to be some kind of consistency from one county to the other.

Also, being the Vice President of Fathers United, when people come in with problems, you can't even start until you know which county, which procedures, and everything is in shambles. One of the things I see all the time -- and in my personal case -- is the interference with custody and visitation. When you go to family court, there are two issues that are considered: One is custody and visitation -- and I would like to get rid of that word and call it "parenting" -- and the other is child support.

My child support is wage garnished, which is fine with me. However, they enforce the two issues completely different. We all know what happens if you don't pay child support. You get the bracelets. You get picked up on a weekend sweep from the sheriff's departments, and you go to jail. In the event that-- For example, my child support order is \$100 a week. If this week I only have \$50, that \$50 that I did not pay will stay on that record and will show a debit until the day I die.

Now I have another court order. In some counties it is all one order. In Ocean County it is two separate orders.

Custody and visitation is on one order, and child support is on another. This one we know they will enforce. If you don't pay child support, you go to jail. However, if I have a court order that says I am supposed to pick up my daughter on Friday night at 5:00, and I get there and she says, "You are not going to get her today. Come tomorrow," or "Don't come until 8:00," nothing happens. Why would you enforce one order signed by a judge so vigorously and not the other? I do not advocate nonpayment of child support, but I would like to see both sides of that addressed. If I miss five hours of my visitation this week, that five hours should also be made up and should be held on record and made accountable for.

Or what about a holiday? You can't replace a holiday. My particular incident was on Christmas Day. I showed up in the morning and she said, "You are not going to get her." Try getting ahold of the sheriff's department, a prosecutor, or a police officer who wants to give you a hand on Christmas Day. It is pretty tough. The women want to be treated equal. I would like to see some kind of equal treatment for a violation; not just a one-time thing, but a continual violation of your parental rights or your visitation time. It just keeps on being ignored. It is very hard to prosecute on a 2C13 charge, the way it sits and stands and the way the divorce laws read now. I think maybe that is something the Commission should look at, and then it could be addressed.

ASSEMBLYMAN KAVANAUGH: Thank you.

Commissioner Louis?

MR. LOUIS: Have you ever, when you had a visitation violation -- you or members of your group-- Have they ever called the police to ask to have the order enforced?

MR. MARCKS: Absolutely. In my specific case -- and I have other cases I would talk about--

MR. LOUIS: What happened?

MR. MARCKS: Basically, nothing. I carry with me, because another point of that--

MR. LOUIS: What do the police say? Do they say, "That's not my job"?

MR. MARCKS: Right. There is nothing they can do about it. First of all, depending on-- This is only trial and error, and I learned to absolutely strictly word the court order now. But they can only enforce the law; they cannot interpret it. So if you have anything that says "liberal visitation" and the judge signs it-- What's liberal? No one knows.

I have a color-coded calendar which I keep with me, with a color-coded court order. I leave one in one township police department and one in the other. If there is ever a problem, I say, "There it is. If you look under page 3, it is highlighted in orange. If you go to the calendar, you can see it is my time."

MR. LOUIS: Then what happens when you have this specific thing? What does the police officer say to you when you show him that?

MR. MARCKS: They will escort you to the house as a peace officer, but they will not do any enforcing or arresting at all. Then it goes to the Monmouth County thing. You have to file a criminal charge. Then it gets heard in--

MR. LOUIS: You didn't get any satisfaction?

MR. MARCKS: No satisfaction? Nobody will do anything.

MR. LOUIS: Did you ever ask a judge to give you compensatory time for the time you lost, to make up the time?

MR. MARCKS: It is almost laughable, believe me. I have knocked down doors to get something straightened out on this. It was almost laughable. Do you know what the final order was? I pressed a 2C13, subcode 4. It was sent down to just a contempt charge.

MR. LOUIS: Yes, but that is the criminal part.

MR. MARCKS: Right.

MR. LOUIS: That I understand. My experience is the same as yours. Prosecutors are very reluctant to prosecute.

Did you ever go to family court and say, "Judge" -- make the argument you just made to us -- "if that \$50 accrues, why don't I get some compensatory time?" Did you ever make that argument?

MR. MARCKS: Yes, I did.

MR. LOUIS: You did? Did you get it?

MR. MARCKS: I didn't get it. I was almost laughed out of there.

MR. LOUIS: Would your group be in favor of an amendment to the statute saying that judges should look at compensatory time?

MR. MARCKS: Sure.

MR. LOUIS: What else?

MR. MARCKS: What happened in my case was, it was almost practically laughed-- It was, "Well, you're counting hours." Well, we are counting dollars on the other side.

MR. LOUIS: When I look at these visitation violation problems, the problem-- If I were drafting a law, writing a law, what do we put down? That is our problem as a Commission: What would you want us to do? It is nice to hear, and helpful to hear that orders are not enforced, and I understand that. But it is not going to help the situation if we write a report that says, "Orders are not being enforced."

MR. MARCKS: We did. We were working pretty good with the Ocean County Probation Department. Bonnie Parker, who spoke earlier--

MR. LOUIS: I was afraid to ask the question: "Which county is a little better, Ocean or Monmouth?"

MR. MARCKS: Ocean.

MR. LOUIS: Oh, thank you.

MR. MARCKS: One thing I can say is that the mediation department does work well. If it is court ordered and the person is made to go-- I mean, you can lead a horse to water, but you can't make him drink it. However, I think that some of the-- You can't help but open up your mind when you're there, you know. They show different movies and have various speakers, etc.

MR. LOUIS: That's in Ocean County?

MR. MARCKS: That is in Ocean County. The first couple of times-- I don't even think it should go a couple, but the first time it should be some kind of education to educate the parent who is in violation.

MR. LOUIS: Would it be fair to say that your group would be in favor of mandatory education--

MR. MARCKS: For violations.

MR. LOUIS: --sort of what Bonnie Parker said, for people-- When you come into the system and you have children, there should be some education about your parental responsibilities and what people do to affect children?

MR. MARCKS: Education, absolutely. Actually, you don't divorce the children.

MR. LOUIS: You have seen what we have in Ocean County?

MR. MARCKS: Yes.

MR. LOUIS: You like it?

MR. MARCKS: Yes.

MR. LOUIS: Okay.

MS. FLOHR: Would your group-- I'm out of order.

MR. MARCKS: Another point you made-- Not just education would fix that. I mean, if you--

MR. LOUIS: It's not going to.

MR. MARCKS: I have also heard people say that the answer for this problem is -- and it has been done -- "Okay, we are going to hold the child support check this week, unless the

proper parenting time has been awarded to the noncustodial parent." Who suffers? The children suffer again, because that money is supposed to be going to the kids. They take the money and hold it because she doesn't want to-- Then the kids are suffering again. I have no idea even how that would work.

MR. LOUIS: Would your group be in favor of that? Would you agree with me that there is a substantial argument on the other side? You might be hurting the child by doing that.

MR. MARCKS: Right.

MR. LOUIS: Would your group be in favor of a statute that required that, even though it might hurt the child?

MR. MARCKS: I don't believe that is the answer, no. I don't believe we would be in favor of that.

MR. LOUIS: So compensatory time might be an answer?

MR. MARCKS: Sure.

MR. LOUIS: I assume awarding counsel fees if you incurred costs to go to court would be an answer.

MR. MARCKS: Right, if you had to go to court to enforce that.

MR. LOUIS: A change in custody might be an answer.

MR. MARCKS: A change in custody-- That is something nobody ever wants to touch. I don't even believe it needs to be a change in custody. What I think here is, if every parent had the opportunity to be a noncustodian parent, when they got back to being a custodial parent they would see things in a different light.

However, we all know that if I am late in my child support payments and they have a Friday night "deadbeat dad" sweep, if I get thrown into jail, I can say, "But I have a court order. I am supposed to pick up my daughter on Friday night." Does anyone say, "Do you have your daughter this weekend?" No, they'll scoop you up and take you to jail for the weekend, or until you can get out.

I don't think it would be a bad idea -- and I am talking about someone who continually abuses that, that Friday night is a scheduled visitation that I have with my daughter-- If she has violated that, I don't say reverse visitation, but when I do have her, pick her up, let her mother sit the weekend in jail during the time that I have my daughter. Do you know what I'm saying? Not take the whole case and switch it, who is going to be the custodial parent.

MR. LOUIS: There is a legal problem in doing that, because when you pick someone up for nonpayment of support, you are picking them up to coerce them -- that's civil contempt -- to pay the money. When you put someone in jail for not giving visitation, that's criminal, because they can't be-- They don't have the keys -- the phrase is "having the keys to the jailhouse in your pocket." The answer is, file a criminal complaint, but I think we can agree that that is not necessarily going to be an effective remedy.

Mr. Chairman, I know I have taken a lot of time. Thank you.

ASSEMBLYMAN KAVANAUGH: Commissioner Flohr?

MS. FLOHR: I wanted to ask whether your group would favor empowering the police to enforce the order on the spot?

MR. MARCKS: Absolutely. The thing is, again it goes back to education on how you word your order, because the police can only enforce the law; they can't interpret it. So unless you actually spend--

I encourage that you spend a lot of time on your motions and your parenting schedule, and make it 5:00 p.m. on Friday evening until -- or if it is every other-- Have a starting date so you can track back. Color code your calendar and bring it to the police department.

MS. FLOHR: I understand that it does have to be very specific. I have seen instances of litigants who spend thousands of dollars arguing the wording of the order, after

the final order has already been spoken by a judge. But nobody could agree on what was said.

MR. MARCKS: Right. Again, with the five-day rule, the order, or what you thought you agreed to in court-- When the order finally comes through, you're back at it again. A couple of things are left out that are very important to having the police empowered to enforce that.

ASSEMBLYMAN KAVANAUGH: Commissioner Broderick?

MR. BRODERICK: Can I get some clarification from what Frank just said? If someone is jailed for nonpayment of support, that is a civil action in the litigant's rights?

MR. LOUIS: Yes.

MR. BRODERICK: But there is no parallel in the custody--

MR. LOUIS: Well, theoretically, the remedy would be-- I guess if the custodial parent said, "I will never let the noncustodial parent see the child," and the judge put that person in jail until he or she agreed, but there would be another remedy, because where is the child? So I am not sure there are parallel kinds of remedies. That is one of the problems you have, because prosecutors can't fool with dollars.

When I used to be an assistant prosecutor, when the Legislature passed 2C, the interference from custody, the prosecutor called me in when I left the office and said he would arrest me if I told all the family lawyers about the statute. He was kidding, of course, but they do not want to deal with that statute. They perceive it as a civil problem.

MR. MARCKS: Now it is on the back of orders.

MR. LOUIS: Well, it may be on the back of orders, but my experience is as yours; that to the extent that there is an effective remedy, it is going to be in family, not in criminal.

MR. BRODERICK: Thank you.

ASSEMBLYMAN KAVANAUGH: Thank you very much, and thank you for being here.

Oh, I'm sorry, Commissioner Von Seydewitz.

MS. VON SEYDEWITZ: I did not get your whole name.

MR. MARCKS: David Marcks, M-A-R-C-K-S.

MS. VON SEYDEWITZ: I just have a couple of questions for you. Which part of your case is in Monmouth, probation or--

MR. MARCKS: Child support is handled through Monmouth.

MS. VON SEYDEWITZ: Okay, but if you have an issue you go into Ocean, because that is where the divorce took place?

MR. MARCKS: It goes back to Ocean.

MS. VON SEYDEWITZ: Now, Ocean, I have heard a lot of good and a lot of bad, but in terms of the issue of visitation, you cannot seem to rectify getting that order enforced on a consistent basis? Is it the township, the municipality where you are trying to enforce that order when you have a problem, or is it Ocean County Court?

MR. MARCKS: I think it goes right back to what he said. As soon as it gets into criminal, nobody wants criminal. Then, if it goes to a 2C charge, the county prosecutor would prosecute that. Well, they say, "Well, it is not so severe," and they kick it back down to municipal. Then you have to go to municipal court, and in municipal court, in all honesty, it is almost laughed at. When you are in there-- I mean literally, what finally happened -- I mean, it was almost like kangaroo court -- she received a suspended charge of 12 months, which was actually good, because if she does it again she will have to face the original charges.

Then her lawyer stated to complain about the court costs. "Who is going to pay the court costs for the inconvenience of today?" The judge didn't even want to start going into it. He fined her to bring her receipt back within 30 days for \$25 worth of toys bought for that child. Literally, the courtroom was laughing. I mean, that is how it goes from being a criminal charge to a joke. Even to enforce

that, I mean, it took weeks for me to even find the person who knew what to do with it, and because I was not represented, I was pro se.

MS. VON SEYDEWITZ: As Mr. Louis said, because of family court judges and their attitude, particularly in Ocean, you would fare much better in family, because even if you had to go back as a matter of principle four or five times, then you are going to have consistent -- a paper trail, so to speak, that shows there is a history.

MR. MARCKS: Which is the only thing you can do: Continue to let it keep happening, happening, happening until you have a nice, big, long paper trail. That is correct, and then end up back in family court.

MR. BRODERICK: Mr. Chairman, I have a question?

ASSEMBLYMAN KAVANAUGH: Yes, Commissioner Broderick, go ahead.

MR. BRODERICK: You are a member of Fathers United for Equal Rights. Is that what you said the name of it was?

MR. MARCKS: That is correct.

MR. BRODERICK: How many members are there?

MR. MARCKS: There are 120.

MR. BRODERICK: Is that just in Ocean County, or is it--

MR. MARCKS: It's pretty much throughout the State.

MR. BRODERICK: Do you have any kind of structure, like a board that--

MR. MARCKS: Yes, we have an Executive Committee.

MR. BRODERICK: How many people on that Committee?

MR. MARCKS: Five.

MR. BRODERICK: Thank you.

ASSEMBLYMAN KAVANAUGH: Thank you very much.

The next one to give testimony will be Dr. Jeff Barnes. Dr. Barnes?

J E F F R E Y B A R N E S, D.M.D.: I would like to read my short letter, but before I do that, in reference to what one of the men said in reference to your question, Mr. Blitz, about, "Do you think people should be denied attorneys in the courtroom?"-- When it comes to family court, I think we should get to a point in this matter where attorneys shouldn't even be involved, because they shouldn't even be in an adversarial situation. So that's real simple.

I would like to read this, and then just a couple of brief things: I was divorced in 1981. I am a 48-year-old Trenton dentist with \$20 in my savings. I have been in family court in 1979, '80, '81, '83, '84, '85, '93, and '94, and I have spent about \$100,000 in child support and legal fees. My ex-wife has over \$200,000 in equity, and an income of about \$70,000 a year. We have one 20-year-old child from our marriage who refuses to get a regular summer or vacation job, having worked last year no more than three weeks, having five months off during the year, and who is a college student who last semester went to school for one and a half days during the week, and hasn't passed a Liberal Arts course in a year.

We have a system that pays the same child support whether the custodial parent earns \$5 or \$50,000, that seems to be more obsessed with supporting women than children, and that alienates men from their children by encouraging alienation because it is more profitable for women, who prefer that the fathers are away from their kids. I have a sick wife and two sick kids at home.

The above information qualifies me as an expert through my experience. Any testimony today from militant women's groups goes to justify what I have said. Deadbeat dads are created by the system. They pay 50 percent in taxes, 30 percent for lodging, about 15 percent in child support for one child, leaving about 5 percent for food, clothing,

transportation, insurances, etc., etc. No wonder there is a problem with child support.

I am not only here to complain, but because I feel I have the answer. Also in reference to this, there were hearings, maybe within the last year or two, about a judge in Camden who came up for tenure, or whatever. There were 21 witnesses against the judge. They took seven hours of testimony. They were all con; they were all against the judge. The general feeling was that these were all losers, and therefore their testimony was invalid.

Part of what I'm saying is, I have a 20-year-old son from my ex-wife. This is water over the dam. So what I am talking about now is, there is nothing for me to gain by this testimony I am giving, nothing more. I have been paying child support for 14, 15-- This is my 15th year for child support, so I have had a bad experience with that.

Parents should be considered equal at the time of divorce. Keep gender out of this. Custody goes to the parent or parents who want it and/or can afford it, just as the decision to have children is made by mature adults when they can afford the responsibility. If both can afford it by their own decision, then one takes the summer, and one takes the school year. If neither wants custody, then the child goes to the State. Equitable distribution of marital assets can make up for the disparity of dollar worth. This is not tough. It is only made complicated by people trying to get over.

Child support does not go to the child. Visitation is a weekend baby-sitting service. These concepts create wars in the courtroom. When you have two parents-- I think no matter what the people getting the divorce feel about one another, both feel empathy and caring for their child. The way the system is, where you have a school year and then you have a summer break, this situation can be worked out. It seems very flowing. Also, in 1981 when I got divorced, I was told a

couple of things. One was that I couldn't get custody because I was a man. Thankfully, that is changing a lot. The other thing I was told was, first, right off the bat, right when I met my attorney, "There is no such thing as honesty; the whole thing is money." This has to change; this has to change.

As far as a crisis in the country, yes, we have a crisis; it is a legal crisis, whether it is in family court or pain and suffering awards. We do not have a health care crisis; we have a legal crisis, and this is a very big part of it.

Currently, I am going through a scenario with my history -- with my 20-year-old trying to get him emancipated. I have an agreement with my ex-wife. I pay tuition; she pays room and board. So I am not trying to get out of an obligation. But because of the situation in the courts, I am put into a situation where my son doesn't give me the right time of day, because it behooves her to keep me away. This is the way it has been for 15 years. It's a disgrace.

I would be happy to answer any questions.

ASSEMBLYMAN KAVANAUGH: Are there any questions from the members of the Commission?

MS. VON SEYDEWITZ: I just have a remark. I am just saying this for the record: The tone of some of the things you have said, I take offense to because basically you are putting the onus and the responsibility on the fact that these things come from -- they are created.

DR. BARNES: Oh, yes.

MS. VON SEYDEWITZ: They do not take responsibility for becoming that, they are created.

DR. BARNES: No, they have no money to pay their obligations, is what I'm saying.

MS. VON SEYDEWITZ: Okay.

DR. BARNES: It isn't necessarily, you know, that the awards for child support, whether it be deadbeat dads or

deadbeat moms, are not practical, because there is just not enough money to go around. Even the child support guidelines are based on the type family. When you have a divorce, you end up with two families -- I mean, two houses. There is more money needed because you have two households to support, so there is less money that can go to the other scenario.

What the woman from NOW said, if you had one person who was making \$20,000 and another spouse making \$200,000, well, that is not a crime that they're different. The fact that they were married for an extended period of time should not give a lien on one another. They have accumulated assets during their marriage, and it would seem to me that that would be normally split. Okay?

However, if one was making \$20,000 before they were married, then they will make \$20,000 after they are married. Why does being married for a specific amount of time entitle the person who was making \$20,000 a lien on the person making \$200,000? There is no crime in being poor; there is no crime in it.

MS. VON SEYDEWITZ: So in other words, the children of the impact marriage who benefit from the standard of living that both parents are able to provide, regardless of how much money comes from either side, are expected to suffer the effects to the balance of what the income is of the parent who--

DR. BARNES: That is a good question. I would say when you have, let's say, two people working -- a husband and a wife both working -- and they are living under one roof, if they separate, then obviously everybody's standard of living is going to go down. Yes, obviously. Not only the child, but the man, the woman, the child, the children, because there are going to have to be two houses being supported. Everybody is going to pay the price of that. It is much more -- not lucrative, but there is more money in one household than there would be in two. That's basic arithmetic.

MS. VON SEYDEWITZ: Let's say it is \$100,000 versus \$25,000. Everybody takes their marbles and goes, and the child develops a standard of living that is imposed by virtue of the lower income of the one parent.

DR. BARNES: Well, the parent that is making \$100,000 certainly will have a higher standard of living. So when the child is living with that parent, it would seem to me that they would benefit more from that one. Once again, being poor is not a crime. That is just a fact of life. There is nothing government can do, or should do, about that, because when they try to get involved in that, you end up with committees like this, because you can't handle it.

ASSEMBLYMAN KAVANAUGH: Commissioner Louis?

MR. LOUIS: Would you agree with the statement that children should not be penalized by virtue of their parents' divorce?

DR. BARNES: It doesn't make any sense, because they are. That is a fact of life; it has to be. Everybody is penalized.

MR. LOUIS: But if we were helping to design a system, wouldn't we want to design a system that validated that statement, so that children would not be penalized -- if we could?

DR. BARNES: You can't; you can't. It's impractical. I mean, it is not pertinent; it is impossible unless the State is sort of, like, going to give awards away to divorced children.

MS. FLOHR: You would--

MR. LOUIS: Let me finish. Would it not be possible for the custodial parent to pay more child support if the custodial parent's income went up after the separation, after the divorce?

DR. BARNES: Child support does not go to the child. It goes toward making the person whom it is going to -- making

that person's financial obligation less. My ex-wife cut back on her work because I give her money.

MR. LOUIS: If the child support doesn't go to the child, does it then logically follow that we should eliminate child support?

DR. BARNES: Yes, we should eliminate child support. That is exactly my point.

ASSEMBLYMAN KAVANAUGH: Commissioner Flohr, or was that your question answered?

MS. FLOHR: I forgot my point, actually.

MR. LOUIS: That is a trial lawyer's trick. You interrupt, and then-- (laughter)

MS. FLOHR: Thanks, Frank.

ASSEMBLYMAN KAVANAUGH: Frank, I just have to stop for a minute and I forget what I am thinking about.

MS. FLOHR: I have a question now. You mentioned how much you are now paying in child support. I wonder if you have any concept of what you were paying to support your child prior to the divorce, and how that compares with what you were ordered to pay after the divorce -- whether you were ordered to pay less than you were previously providing, or more, or do you not have the data?

DR. BARNES: No, I do not have the data. I would really be guessing; I would be completely guessing. I don't know, except to say that in a situation when you get a divorce, everybody is making out, generally, less.

MS. FLOHR: Would you favor a concept of accountability on the part of the custodial parent?

DR. BARNES: I think both parents should want to be the custodial parent. If one does not want to be a custodial parent, that is their right. It would be too bad for the child, but you can't say, "You've got to be, it's the law." I think both parents have the right to have custody.

MS. FLOHR: I am speaking of accountability for the child support reaching the child.

DR. BARNES: I have no idea how one could legislate that and have it actually work. You would be ending up in court with lawyers arguing until there is nothing left. I mean, I know somebody who had three homes and all sorts of stuff. There is nothing left. There is nothing left; it all went to attorneys' fees. Then, all of a sudden, it was resolved. When there is no more money left, all of a sudden it is resolved. I mean, this is morally criminal. It's not, you know, nobody is going to go to jail over this, but it is morally criminal what is going on in this country with divorce.

All the parents want to have is the ability to see their kid. Whether you call it today "custodial" or noncustodial" parent, man, woman, it does not matter. We just want to be parents. Leave us alone. Leave us alone.

ASSEMBLYMAN KAVANAUGH: Commissioner Broderick?

MR. BRODERICK: Part of what you say troubles me, because what if the two parents can't agree on how to be parents, which is very common?

DR. BARNES: Each will have their own time. The way I say it is, one for the summer, one for the school year, for simplicity's sake. When my son is with me during the school year or during the summer, I am the boss. You know, I am the parent. I am in charge. Okay? And my ex-wife will have her chance. That's the way it is, because we are two different people, and we are going to have different views. My son would get some benefits from what I have to say, and he would get some benefits from what my ex-wife would have to say. And some of them, yes, may be different, but that's life. Once again, you are not going to legislate, "Well, you're teaching the kid to play baseball. You should be teaching him football." No, I don't--

MR. BRODERICK: Doctor, I am going to take the prerogative of the Chair and interrupt for a second here.

In your statement you said your son is 20 years old, and he is really not making it.

DR. BARNES: Right.

ASSEMBLYMAN KAVANAUGH: In college, and you are continuing to pay and all.

DR. BARNES: And I filed last February.

ASSEMBLYMAN KAVANAUGH: Don't you think this action, this summer/winter type thing and the custodial whatever, has been disruptive? Is there a possibility that maybe, as far as if you were here earlier-- You know, a "Have you hugged your kid today?" type of thing.

DR. BARNES: A good point, but if I had the opportunity to spend a couple of months with him, he would be able to see -- he couldn't help but see the way I live my life. That input, you know, and somebody was saying about 30 seconds-- Well, if you spend 24 hours with a kid, you know, just being in the same house, maybe you have that 30 seconds of time. But quality time comes from quantity time. So just being around your kid for what would hopefully be months at a time, is going to give that kid input. It is great. Let the kid have the input of both parents, even though they may be different. That is what makes ball games.

Still, the kid is going to have a chance to form his own opinions, and it won't be the poison from one parent trying to tell the kid something, because they are going to get something out of it. But when you are referred to as a "meal ticket"-- No more meal tickets for our kids, please. No more meal tickets. Keep money out of it. There is no crime in making \$10,000; there is no crime in making \$100,000. The kid will learn, "Look, mom or dad is making \$10,000. They are trying the best they can." Or, "Mom or dad is making \$100,000,

and trying the best they can." The kid will have a chance to see the best of both.

ASSEMBLYMAN KAVANAUGH: Commissioner Broderick, I'm sorry for interrupting you.

MR. BRODERICK: I'm not sure what you are suggesting we do. I'm sorry that I missed the beginning of your statement, but I am still not sure what it is you are recommending.

DR. BARNES: Well, I think as an overview it is probably just to-- When a divorce is granted to parents, then maybe the point of the divorce court would be to say, "Okay, there is a certain amount of equity that has been accumulated during the marriage, and this has to be divided equitably." And when there is a child or children involved, then that equitable distribution certainly is pertinent to helping to finance the situation. Okay?

But once that is done, get out of it and say, "Okay, mom and dad, you are both going to have your time. We are just going to figure out who gets summer and who gets the school year." You know, then there are some things like vacation times and holidays and stuff like that. Those details really would not be hard. Mom gets the even number Christmas years, and dad gets the odd ones. There are certain details, but these are minor in comparison to the baloney that is going on in the court system today.

MR. BRODERICK: May I ask you something about your statement?

DR. BARNES: Sure.

MR. BRODERICK: You have spent over \$100,000 in child support. What are some of the issues that you spent that much money on -- and legal fees?

DR. BARNES: Well, court-ordered child support, legal fees, you know, all those times back to court-- Well, the divorce took two years.

MR. BRODERICK: Right.

DR. BARNES: Then there were motions in '83, '84, and '85.

MR. BRODERICK: What were they about?

DR. BARNES: What were they about? Okay. One was to sell the marital dwelling, which was supposed to have been done back at the time of the divorce, so she could get money to put clothing on my kid. It was a situation where my son was not getting-- That is why I say that child support money doesn't go to the child. My kid-- It was unbelievable the way my son was brought up, and I had no say in it. I couldn't get through to it.

So I figured, well, if she was forced to sell the house -- because that is what she agreed to do -- she would have all this money, so she couldn't help-- Hopefully, she would have the inner faith to do something for my kid. Once again, I couldn't get-- You know, I'm a guy, and at the time custody was out of the question; so were the legal fees. The legal fees to go through something like that and come in a close second were out of the question.

Then she sued for an increase in child support -- that was one of the times -- but never getting it; never getting anything. Now, recently, he is older than 18, and he is a bum. He is acting emancipated, so I am trying to emancipate him, not to try to get out of paying for his college, but hopefully, to snap him out of it and make him a responsible adult.

MR. BRODERICK: So these were disputes that the two of you could not resolve between yourselves?

DR. BARNES: Oh, not even close.

MR. BRODERICK: Okay. So that is why you were in court?

DR. BARNES: Right.

MR. BRODERICK: So if the court system weren't there, what would you do?

DR. BARNES: I would have my kid three, four, or five months a year, or eight or nine months a year, and there wouldn't be any problems like that.

MR. BRODERICK: How would you do that?

DR. BARNES: I would have a right to see my child, have him live with me, because I would be a custodial parent.

MR. BRODERICK: But how would you enforce that if the system were not there to say, "He has him this much of the time, and she has him that much of the time"?

DR. BARNES: We got married under the system, so we had to get divorced under the system. The system should say that one parent gets custodial time for this amount of months, and the other parent gets custodial time for that amount of months. All the other problems would disappear.

MR. BRODERICK: What was the order at the time of the divorce regarding custody?

DR. BARNES: We had a joint custodial situation at first: Alternate Fridays through Mondays. He was with me on Wednesdays, and with her on Tuesdays and Thursdays. We were in the same community. That was unbelievable. I mean, it was a constant war. I had to do all of the transportation, or I couldn't see my kid. It was a constant war. You've got to get the war out. The only way you are going to get the war out is to get the money out. You've got to get the money out. We have to stop using our kids for meal tickets. That's the whole-- That is just about so much of it. It is amazing. If you think you are going to create a system by changing certain things so that the child support is paid in a different vehicle and you will get rid of all these problems, you're dreaming.

MR. BRODERICK: I think the point that Sara Flohr was making was that there is now no accountability for how the money is spent. In other words, you have an obligation for

child support of "X" dollars a month. You write the check out to the custodial parent, and then you don't know where that money goes. There is no accountability for that whatsoever.

DR. BARNES: So they would be lying about that. Those people are lying under oath in the court today. They're not going to lie about how they are spending the money?

MR. BRODERICK: I don't think we can change the law so that people will no longer lie under oath. But what we are trying to do is design a system, as Mr. Louis said, that will be as -- if not beneficial, as least punitive to all of the parties involved.

I think the point that Sara was getting at had to do with, "Can we design something that will convince the noncustodial parent that the money that he or she is paying in child support is, in fact, being spent on the child?"

DR. BARNES: No.

MR. BRODERICK: So you are proposing that there be no such thing as child support?

DR. BARNES: Or whatever else you are going to call it. First of all, there is no such thing as child support. You are just playing games calling it that.

MR. BRODERICK: Wouldn't you agree that most parents who receive child support spend it wisely for the benefit of the child?

DR. BARNES: Do I think that is the way it is?

MR. BRODERICK: No. Do you agree that most parents--

DR. BARNES: Right.

MR. BRODERICK: --do spend the money they are given for "child support" -- or whatever you want to call it -- wisely and for the benefit of the children?

DR. BARNES: I am not an expert on that, but my tendency would be to say, "No," from a practical aspect and from what I have heard from people who are divorced, because it is common now.

MR. BRODERICK: Thank you.

ASSEMBLYMAN KAVANAUGH: Anyone else?

MS. BENZ: Yes. I just want to make kind of a general comment. As a child advocate and the Director of a Family Counseling Agency, I feel it is really important that we keep in mind that children do need to be supported, emotionally and financially, so they can become the really productive citizens we want them to become, and they go to college, they hold jobs, and they do all those good kinds of things which hopefully will help us to get out of the kind of mess that we are all here to straighten out.

DR. BARNES: That's what the hearings are for, not committees, not legislation.

MS. BENZ: Parents need help, too.

DR. BARNES: Well, go for help. They could go to private psychiatrists or psychologists or schools to get help. What you are talking about is the job of a parent, not you.

MR. BRODERICK: But unfortunately, a lot of parents do not live up to that job.

DR. BARNES: That is their problem.

MR. BRODERICK: No, it's not. When their kids come into prisons and other agencies that we all pay for, that is all of our problems.

DR. BARNES: It influences all of us, but you can't--

MR. BRODERICK: You bet it does.

DR. BARNES: Yes, I agree, it influences all of us, but the responsibility of parenting goes on the parent.

MR. BRODERICK: Absolutely, but so many parents are not living up to that responsibility. That is why we're here.

DR. BARNES: Well, I don't know if that is why we're here. That is maybe one of the reasons why we're here, but we're here because the system doesn't work. It's failing; it's abused. It is absolutely absurd what is going on. New Jersey

is at the forefront, I think, in this matter -- not of correcting it, but having the system being abused. It is just like wild.

The fact that my son is an adult and I, because of my marital status, am forced to pay for his college, when he is an adult, is absolutely absurd. Once again, I am not trying to get out of it. I have an agreement to pay for his college; I am going to pay for his college. But because I am divorced I have to? That is unequal treatment under the law -- the 14th Amendment -- and I am going to win.

MR. BRODERICK: We discussed that here at the last Commission meeting.

DR. BARNES: Who? Not you and I.

MR. BRODERICK: And I agree with you.

ASSEMBLYMAN KAVANAUGH: You better encourage him, Doctor, to do a little better, or you won't have to be paying for college much longer.

DR. BARNES: He got a 750 in math on the college boards. He's no dummy. He is just having a good time.

ASSEMBLYMAN KAVANAUGH: All right. That's terrific.

DR. BARNES: Thank you for your consideration.

ASSEMBLYMAN KAVANAUGH: Thank you very much.

David Davis, Rutgers Family Law Clinic, which is an organization at Rutgers Law School. Welcome.

D A V I D D A V I S: I should put a small disclaimer here. We do not have faculty approval yet, so if I use the term in public I am required to say it is a student organization. We expect to have faculty approval by the fall.

ASSEMBLYMAN KAVANAUGH: Okay, we can strike that from the record so we don't get you into trouble.

MR. DAVIS: Okay.

I don't want to dwell on my own personal case too much, but I do want to qualify, which will take a couple of minutes.

Two years ago, my girlfriend-- Her belief that she was sterile due to difficulties during an earlier childbirth turned out to be untrue. Our relationship wasn't very serious, but it quickly deteriorated. She became upset and felt that I wasn't committed enough to her. I asked her to marry me, and she said, "Why? Is it because of the child?" I said, "Yes, but I think we can work at it." That was the wrong thing to say. It went downhill, and she was pretty quickly saying, "You don't need to be in the picture. You can be out of this."

It got to be where we were bickering back and forth all the time. But by June I agreed that it wasn't working and I said, "We don't have to deal with each other, but I want an agreement about this child." You know, I talked to the child in utero. It was real to me at that point. I said, "We will work out the custody, visitation, and support issues." I wanted to see the child daily. I agreed to pay a quarter of whatever I made. At the time, I wanted to go back to school to get a Ph.D. in history. I said, "I will get extra financial aid. I mean, that is not going to be a problem. I just want to be in his life." His, I'm giving away what he is.

Part of my concern, also, was because she has been in three psych hospitals. After she got pregnant, she started getting disability for psychiatric illness -- full disability -- and I wanted to be there on a daily basis.

In July, she said, "Let's just not see each other anymore. Just send me stuff in the mail. Send me an agreement." I sent her an agreement. No response. I sent her a letter saying, "If we don't have a custody agreement, we are going to have a custody fight. I am going to bring out all the psych stuff, and it is not going to be fun for either one of us." That may have been coming on too hard, in retrospect, but in the context at the time, for all I knew she was either going to move or, for one reason or another, I would have a child, but would not know who he was.

September 1, with the birth now six weeks away, I sent her a letter saying, "Either we have an agreement, or I am going to file by September 30." I also wrote to DYFS and expressed my concerns about the psych problems. I learned subsequently that DYFS had told her that if she filed a DV complaint, she could get a presumption of custody, which would defeat any custody suit I could bring.

MR. BRODERICK: Wait a minute. DYFS told her that?

MR. DAVIS: Yes, apparently one of the DYFS workers from Middlesex County. So on September 27 I called and I said, "In three days I am going to file -- September 30. Just call back and let me know what is going on. What do you want to do?" She filed for the restraining order on September 28. Her entire complaint read: "The defendant left a threatening message on my answering machine. He sent me a list of his demands" -- the agreement. "He said if I don't comply with his wishes in writing by September 30 at 9:00 a.m., he will file a custody suit." She was granted a temporary restraining order on that.

At the hearing, when we went in, she added that earlier in our relationship I held her down and tickled her, and that I had twice refused to leave when we were having arguments. There was never an allegation of angry physical contact between us; never an allegation that I threatened to hit her, kick her, or anything like that, nothing in that order. Judge Lefelt said that if I handled sending the agreements with a lot less persistence, if I had just sent them and then backed off and waited for a response, I would have a pretty good argument. But as it was, he felt that harassment had occurred, and that my persistent -- I can't remember the exact words -- my trying to badger her into an agreement constituted domestic violence and harassment.

The court date for custody came up. I filed right after I was served. She didn't show up for the custody case at

all, which was November 9. She didn't show on this day. I was child support assessed; joint legal custody denied; and supervised visitation at the courthouse.

Since the date of our custody hearing, she has alleged six violations of the restraining order. The first time was when she received a child support check. She said, "This is contact during the order. I don't want it." She said on the record -- it is in the transcript -- "He sent me a check in the mail for child support and prenatal care, and I don't want it. I don't want anything from him. I just want him to leave me alone." She filed another complaint, a motion to force litigant's rights, after she unilaterally stopped coming to supervised visitation.

Now, during the restraining order hearing, she had said that I held her down and tickled her. She presented this in a way that-- I mean, yes, I tickled her, but by no means could it have been construed as domestic violence by any definition of that term that I had ever heard to that point. But the way she portrayed it there, it was like I was holding her down. I said, "Will you take a lie detector test on that?" She said she would. When the judge entered the restraining order, he specifically said that we could have contact by mail. She said, "Can you stop him from contacting me by mail?" He said, "No, you have a custody thing going on. I am not going to do that."

She received the letter scheduling a polygraph test. I was arrested for sending it. I spent four days in the Middlesex County Correctional Center for sending this letter, with a \$25,000, no 10 percent bail. When I was in there, I was assaulted, not sexually, but I was assaulted. I got out, and six months later the prosecutor in Middlesex dropped the charges, but at that point, you know, I had had a wonderful four-day experience. I shouldn't be sarcastic, I'm sorry.

ASSEMBLYMAN KAVANAUGH: Excuse me. Is this when you decided to go to law school?

MR. DAVIS: Yes, sir, it was. I changed from wanting to go for a Ph.D. in history to law school.

Most recently -- and this is about the end of where I am on this-- My son is now 17 months old. The restraining order is standing. It is before the Appellate Division. She just sent in a responding brief with brand-new allegations. She is now saying that there had been battering and all kinds of things she never said before. The Appellate Division said they are not going to strike the motion; it has nothing to do with the things that are--

I am not a lawyer yet, but you don't have to be a lawyer to know that you can't just make up new things. I don't know what is going to happen with that. I mean, my fear is that this is going to be ongoing for the next -- my son is now 17 months old -- 16-plus years.

He was hospitalized this past weekend with some kind of an intestinal infection. I don't know. I have never had access to his medical records. I wanted to see him while he was in there. I called. I spoke to security, and I said, "Look, this is the situation. We don't get along--" I explained it. "I would like to get in to see him. Can you escort me?" They said, "Yes, fine. We will get you up there." I wanted an hour. They said, "That's too much, a half an hour, 15 minutes, whatever. That's good enough."

They called the nursing station. She refused. She said, "No, I am not going to leave the room. He can't see him." I didn't get to see my son the whole weekend that he was in the hospital, and I still don't know what is wrong with him. This is on a restraining order based on harassment.

When I first got involved with this, I joined the New Jersey Council for Children's Rights. There was a little sticker up somewhere and I called them. I got involved with

FACE and FRAC and all these organizations. I found them to be tremendously supportive. When I first got involved, I thought that probably 60 percent of restraining orders were just ploys, from the people I had spoken to and from the transcripts I had read. I don't think that anymore. After I got to law school-- I went there with the mission of starting a Family Law Clinic, and I found that there is a lot of -- there are other noncustodial parents in the law school and there is a lot of support for doing that among the faculty and among the other students.

One of the first things we decided to do to get faculty support and to have an effect was to work on domestic violence. I was kind of like, "I don't know if this is really what I want to do." I went in and started doing courtroom observations and talking with-- There is a group down there called Solace and there is a group called Dove in the YWCA. I started sitting in on these hearings. I've got to say, I don't think that 60 percent of these are garbage. Maybe 6 percent are. I didn't see any come in.

I heard from Solace that sometimes they get people sent over from welfare who are told, "We can't give you money for a deposit and the first month's rent unless you are a domestic violence victim. Go down to the courthouse, get a restraining order, come back, and we will give it to you." I didn't see any of those come through. I just saw horror. I mean, I had to do courtroom observation; I have done 12 hours. I understand the passion now that is on the side of the people who talk about the domestic violence laws, and see the fathers' rights groups as people who are, you know, trying to deprive them of something, or trying to endanger them.

I don't know. The first project the Clinic is going to get going is something where we are going to represent TRO victims. I do think, however, when a domestic violence order is entered, as it was in my case, as it has been in other cases

that I have heard of, it is a crime. It is a crime just as bad as abuse. I think it is as bad as abuse, not because it is the same terror and the same loss of, you know, your whole, whatever, but because the courts are supposed to be dispensing justice. When you go in there-- You know, I get a complaint served and it says I am going to file a custody suit. I said, "She is not going to get a restraining order from this," and she did. I mean, I have seen transcripts where you just look at it and go--

Now, the Appellate Division is getting a little bit better on that, for people who followed Murray v. Murray and D.C. v. TH, two recent cases, but it has a long way to go. I don't know, honestly, what the solution is. I am really ambivalent. I mean, I am really torn at this point, because I can see, as I said before, the emotion that goes into people when they are working with people who have been battered. I think there more people out there who are battered than there are restraining orders. The frustration, personally-- I was talking to someone, trying to convince her to get one while she had a black eye, and she had been beaten. She didn't want to do it. She didn't think it was in the child's best interest to get a restraining order. It is just like, you want to go, "Get a restraining order." That just makes it that much more obscene to me, that someone could come into a system that is responding to that kind of emotion and say, "He tickled me. He refused to leave when I asked him to," and I can be deprived of a relationship with my son.

I know that sometimes some of the groups say things that are more extreme than I feel, but I can see how deadbeat dads are created by the system. I mean, if someone told me what I was going to go through in reference to this, when she said, "You can be out of the picture," I would have been out of the picture, and I would have let them chase me for the child

support. I would not have put myself through this, and I don't think anyone can be expected to. When this system is abused, it is horrific.

I think I covered just about everything I wanted to say.

ASSEMBLYMAN KAVANAUGH: Commissioner Louis has a question, David.

MR. LOUIS: Did you go to the second hearing, the final hearing and have a full hearing?

MR. DAVIS: Yes, that is where she brought up the allegations that I had held her down against her will and tickled her.

MR. LOUIS: And that is what is up on appeal?

MR. DAVIS: Yes, sir.

MR. LOUIS: What would you want the Commission to do? Do you have any specific changes in the DV law?

MR. DAVIS: You know, part of me would like to say take harassment out, but I can see how that could possibly justify one. I mean, this law was enacted without harassment in it. There is a presumption against custody, yes. Look at the 1312 enumerated offenses: homicide, sexual assault, rape. I mean these are things where there should be a presumption against custody. There should be immediate police response. There should be the full weight of the State protecting people who have been victimized by this. That does not extend to harassment. That does not extend even to someone who is being a jerk and calling someone on the phone.

MR. LOUIS: May I ask you a leading question, then?

MR. DAVIS: Sure.

MR. LOUIS: Would you want the Commission to say -- to amend the statute to say that the presumption -- the custody presumption does not apply to harassment? Would that be a specific legislative change that you would want?

MR. DAVIS: Yes, I would support that. This is something that really needs to be looked into: What is the solution? You can't--

MR. LOUIS: What do you say to the woman who really is harassed, in the true sense of the word?

MR. DAVIS: Give me a definition of harassment that does not fall under the other enumerated offenses. If someone is being telephoned constantly, they can change their number. If the person then comes over, it's trespassing, which is enumerated. If someone is being assaulted, and harassment covers the slapping, that is assault. What is there that falls just under harassment, aside from things like tickling, aside from things like threatening to litigate?

MR. LOUIS: No, repetitive abusive comments?

MR. DAVIS: Emotional abuse? Then it is time to get a divorce. Then it is time to leave the relationship. If he does not leave you alone, or she does not leave you alone at that point, then you have the trespassing, you have the assault, you have the other things there.

MR. LOUIS: No, repetitive abusive comments?

MR. DAVIS: Abusive comments?

MR. LOUIS: Verbal abuse repetitively, done with the express purpose to harass and annoy. Assume that there are some situations where you do have that. Would it still be your opinion that we take out the custody presumption for harassment?

MR. DAVIS: Someone can be a jerk and can be emotionally abusive without falling under the Prevention of Domestic Violence Act.

MR. LOUIS: Without being the better parent, is your argument?

MR. DAVIS: Yes. Look at the legislative intent of the Act. Is there something that doesn't fall under the other enumerated offenses? I'm asking because I believe you are with AWARE or with--

MS. VON SEYDEWITZ: Yes.

MR. DAVIS: Is there something that does not fall under the other enumerated parts of the Domestic Violence Act? There are 13 crimes. Are 12 of them harassment?

MS. VON SEYDEWITZ: You covered it, harassment being one of them. I think that Mr. Louis being an attorney and my being an advocate-- What you are addressing to him is more appropriate, so he should answer that. I see what he is getting at. Basically, there is a reason why it is in there. It was an element that was added because it has a purpose.

MR. DAVIS: Right.

MS. VON SEYDEWITZ: I think you, perhaps maybe, in some more well-thought-out testimony could present a solution to continuing application to the court on harassment charges that are unsubstantiated; that are unfounded.

MR. BRODERICK: Irene, would you say that again? I didn't--

MS. VON SEYDEWITZ: Okay. I am not going to say that harassment should be-- I could never agree that harassment should be removed from our present domestic violence clause. As a matter of fact, there are still a few loopholes in there that really do not provide victims with appropriate protection. By the same token, for that element of the population that feels that harassment is used inappropriately, that over a period of time if that is the offense used over and over, because very often that harassment is not going to stay forever, that there should be another way to deal with that; that the court should take another alternative -- should take a second look at what the charges of harassment are.

I don't know if you are telling the truth or not in your particular case.

MR. DAVIS: I'll send you the transcripts, if you would like.

MR. LOUIS: The only question I had when I looked at the subcommittees-- I don't know who would get domestic violence. We hear testimony from time to time about domestic violence, and there are some other issues. Perhaps because it is so interrelated, particularly at this point, maybe custody and visitation.

MR. BRODERICK: Maybe the process.

MR. LOUIS: Or maybe a separate committee. I just mention that, Mr. Chairman, for you to think about.

MR. BRODERICK: My take on what the witness is talking about is that harassment is not well-defined in the statute, and that what constitutes harassment is always going to be a judgment call on the part of the judge anyway; but that what some people consider to be abusive comment, someone else will view as persistence in the advocacy of one's own rights.

Obviously, I don't know what happened in your case, but for Judge Lefelt to -- at least as you are describing it to us -- have said that you were so persistent that that constituted harassment--

MR. DAVIS: That in combination with the tickling and the being held down that she described.

MR. BRODERICK: Okay. All right, that makes it a little different. But for a noncustodial parent to be persistent is seen by some judges, apparently, as harassment, when I believe that some custodial parents do use the statute as an excuse not to deal ever with the noncustodial parent. That is something that we are going to have to address at some point, but I am not sure how we are going to do that, except to perhaps amend the statute to include a clearer definition of what constitutes harassment.

MR. DAVIS: It is broken up, I think, into A, B, C or 1, 2, 3 in the first ones where we are talking about slapping. But again, all of those come under other categories. I don't understand what constitutes harassment, unless you are talking

about emotional harassment. Then it is time to get out of the relationship and stay out of it, and change your phone number. If he comes over, then it is trespassing.

I mean, you don't have to use the-- You know, it cheapens the term "domestic violence" when you apply it to someone who is-- People are emotionally berating to each other. That is one of the reasons people leave relationships, because people are not good to each other. If they were good to each other they would stay in the relationship.

MR. SCHOENBERG: That is the point that Murray v. Murray makes on domestic violence. I did not mean to interrupt you, but I think the more interesting issue that you are presenting is whether or not the presumption against custody of the defendant of the DV should be universal presumption, or perhaps it should be something decided at the time that the judge enters the final order.

For example, you know, even if Judge Lefelt were to find that that behavior you are describing constitutes a sufficient predicate act under the statute to warrant a final restraining order, he might find that that kind of behavior does not reflect at all on whether or not you would make a good custodial parent.

MR. DAVIS: He noted on the bottom of the order that custody, visitation, and other matters would be handled in front of Judge Paley on the custody date, but it didn't matter.

MR. SCHOENBERG: But that does not go to the issue of presumption.

MR. DAVIS: Right.

MR. SCHOENBERG: The fact that he wasn't deciding it there doesn't go to the presumption. Once the final order was entered, there was a presumption against you.

MR. DAVIS: Not only the presumption of custody, but there is one other part that is real dear to me. That is the

supervised visitation presumption. I have to walk through a metal detector before I can see my son every week, if I want to do it.

MR. SCHOENBERG: So perhaps the issue is that the presumption should not detach immediately just because a final order is being entered, and that there should be one more issue that a judge has to decide at a domestic violence hearing, as to whether or not that anticustody presumption, or that supervised visitation presumption should attach.

MR. DAVIS: A couple of other comments I never made: On child support, the U.S. Census Report recently said if they order joint custody and there is unstructured access, 90 percent of child support is paid. That is the census. I don't know how much better you can get than that.

Also, on child abuse, the most common abuser, according to DYFS, is a single mother. That is probably partially because of the pressures of raising a child on your own. That is another argument for joint custody.

Also, I do think it is fair to require some kind of an accounting on child support. Yes, people can lie, but at least you know it will make-- In instances where they are not lying or whatever, maybe the noncustodial parents do not understand how much it costs, or maybe they are going to get accountings that are so unjustified that, you know, they are obviously lying, and then they can take it back to court. I am obviously a big fan of joint custody.

MS. FLOHR: You made a very good point. False domestic violence accusations really take away resources that could be directed to those truly in need, so it is a concern for all of us. I thank you for making that point.

MR. SCHOENBERG: Thank you very much for your testimony.

The next witness will be Bruce Eden. I would like to note that on my watch it is 25 to six. I ask you to observe the 10-minute limitation.

B R U C E E D E N: I am the Chairman of the New Jersey Council for Children's Rights. We have over 3000 members in New Jersey, in every county. I have been in the divorce system for over 10 years. After listening to today's testimony for about three and a half hours, it is obvious to me and the average person sitting in this room that the family courts are unjust, unconstitutional, and criminal.

I was going to get into the long dissertation I have here on some of the issues, but I want to address some points that have been brought up here. I don't think anyone has really addressed remedies and solutions to some of these problems. I wanted to address Frank Louis -- he is not here right now -- on the visitation interference problem. They don't seem to throw people into jail for visitation interference, especially if it is a custodial parent.

What's the problem? The noncustodial parent is there to take the children. I mean, they have no problem when they arrest someone for child support who has visitation on a Friday night and they pick him up on a support raid, as was mentioned before. That, to me, would constitute visitation interference by the sheriff's department. We have a problem here. We have a problem if the sheriff is interfering with the visitation.

MR. LOUIS: I'm back.

MR. EDEN: Okay.

MR. SCHOENBERG: I think the point Frank was making is really that there is a more technical legal problem; that it would constitute a different type of hearing and a different type of decision by a judge to send a custodial parent-- To you, it doesn't make a lot of common sense.

MR. EDEN: Well, I am a joint custodial parent. I have 45 percent of the time, so that's even off. So I really don't have that problem. I have had it in the past, but not now.

Also, I just want to say for the record that I am from Passaic County. That is the prehistoric era in New Jersey, as far as how the court system operates.

Some issues that were addressed on the accountability for child support-- In the Social Security Income that disabled people have, or indigent people have where they are getting Social Security, they use a Social Security form to show accountability for all their assets and all their expenses. I don't think accountability of child support would be such a problem with the use of that form. Social Security wants accountability of how you live, how you receive your income, and what you spend it on. I don't think that would be a problem here. I think the State should mimic the SSI form at that point.

Some of the issues that were addressed were domestic violence issues. I don't think anybody is really here to make a recommendation on domestic violence. Several years ago, our organization tried to address the issue. We had a provision in the Senate version of the bill -- the new domestic violence bill at that time, in 1992. Unfortunately, it was taken out by the Assembly Judiciary Committee. Our position on that would be that false allegations of child abuse or domestic violence should be punished with jail time. There should be heavy fines, civil damages, and loss of custody. In fact, the provision we wanted in the bill was that-- There was a big quote in bold letters that would have been put on any domestic violence restraining order that said that anyone who made a false accusation, it is considered perjury, and that person could face a jail term of three to five years, a \$7500 fine, or both.

MR. LOUIS: Bruce, you would like that to be a specific proposal we would consider?

MR. EDEN: Yes.

MR. LOUIS: I just wanted to make that clear for the record.

MR. EDEN: That proposal to be specifically considered in the domestic violence legislation that is pending now, and any child abuse legislation that is pending now.

MR. BRODERICK: May I ask a question, Mr. Chairman?

MR. SCHOENBERG: Sure.

MR. BRODERICK: If I recall correctly -- and anyone else who remembers what happened to that bill can speak to this -- that provision was taken out because there was fear that it would inhibit people from making legitimate complaints. Is my memory--

MR. EDEN: Yes, but the police departments are handling a lot of the complaints. The police would be involved in the writing up of the complaint and the serving of the complaint, so the alleged battered individual would not have to confront the other person. If the police department was writing it up, obviously they would be basing it on probable cause.

MR. LOUIS: My recollection, having been involved in some of the debates, is that it would have a chilling effect on people filing a domestic violence complaint, number one, and there was no such statement on any other pleading. In other words, the inference being it is all right to lie in your divorce complaint, but not on your DV complaint. Those were the two arguments that were made in opposition to that particular bill.

MR. EDEN: Well, that is understandable, too, but it has a chilling effect to deprive someone of their liberty or property.

MR. LOUIS: That is the other argument.

MR. EDEN: Right. The position we have taken is that we would also like to see in domestic violence legislation what under Federal Rule of Civil Procedures 65-B-- They allow for

security in the form of bonds, cash, whatever, or collateral. Anyone who makes an allegation would have to put up that security until the hearing was over to determine whether the person is guilty, innocent, or it is just a false charge, to prevent the accused from being illegally deprived of those liberties or properties.

MR. BRODERICK: Excuse me. Is there a penalty for filing a false complaint? It is the same as filing a false police report, isn't it?

MR. LOUIS: Well, it would be two things. Of course, it would be filing a false police report. It would also-- They are sworn, so it would be perjury, as well.

MR. EDEN: When was the last time you heard of a perjury case with domestic violence being prosecuted?

MR. LOUIS: About the last time I heard of someone being prosecuted for interference with visitation.

MR. EDEN: Right. Never.

MR. LOUIS: Bruce, with respect to domestic violence, there are two issues that lawyers discuss: One, does your group have a position on the use of consent orders without an admission; and two, do you have a position on the risk assessment? Who should have the burden of proof in a risk assessment hearing? Do you understand what I am talking about?

MR. EDEN: Well, first of all, the burden of proof is the problem with the domestic violence law. The legislative intent that Mr. Davis wanted to address is-- The first sentence in the legislative intent is: "The Legislature finds and declares domestic violence to be a serious crime." So if you look at 2C:25-29(a) in the Domestic Violence Code, it says that any domestic violence hearing would be conducted with the preponderance of the evidence standards. Well, if it is a crime, it has to be beyond reasonable doubt, not preponderance of the evidence. So right there that is unconstitutional, because an allegation of domestic violence, in most of the

cases we have seen -- and I myself have been experienced with this -- is that in an allegation you are accused. There is no such thing as innocence in domestic violence. There is no such thing as defending yourself in a DV case, because the mind-set in the courtroom in front of the judges, in the political atmosphere, is that the judges are afraid to even give you any rights or any protections afforded to a falsely accused person, because of what happened in Bergen County several years ago in the Quagliano (phonetic spelling) case. Judges are scared to death of their jobs.

As far as the consent order thing, I don't know why anyone would consent to giving up their rights, in some cases, when it is a false charge.

MR. LOUIS: The difference is that under the present procedure, if you want to enter into an arrangement now and to do a consent order, before the judge can accept the consent order, the defendant has to admit that he or she committed an act of domestic violence, as opposed to simply entering into a consent order without such a finding.

MR. EDEN: I think the defendant should be given all the rights at that time and be told exactly what -- by admitting to that what they could lose as far as their rights were concerned, because in some cases people are consenting, and they have not committed a crime.

MR. LOUIS: Well, I think maybe that issue and the risk assessment burden may be issues your group may want to look at at least, and then come back and tell us whether you have a position, because there are a lot of ramifications to those two, and they are very, very controversial.

As I see it, it is something within the purview of this Commission, if the Commission opts to deal.

MR. EDEN: The risk assessment or the domestic violence is-- We are having a lot of trouble with that, because if you cut someone off in a risk assessment, and send

in the risk assessment, it could be three or four months down the road, they are still deprived of their child. As the previous speaker said, it could have been based on harassment, it could have been based on a false charge. We don't know. Does that rise to the level of violence? I don't know. Does criminal trespass rise to the level of violence if you are going back to the house to get your clothes? That is a question that has to be addressed here. I think the Commission has to look at that, and it has to look at the false allegation problem.

What I would really like to quickly discuss is the problem within the court system and how there are some possibilities for correction. Many of the judges sitting in the family courts have no concept of what the family is all about. Many judges sitting in the family courts have never experienced matrimonial law. Many family judges use their awesome power capriciously and arbitrarily because they don't know what is going on in family court.

I, for one, know of judges in Passaic and Morris Counties who were political appointees. In fact, it was an Appellate Division decision that just came down that stated the one judge was so wide of the mark that it was beyond all comprehension. That was the judge I am talking about in this case.

Judges are getting paid \$106,000 a year in New Jersey, and we don't want them in a position of this kind of power to get on-the-job training. Taxpayers are paying this money. We are fed up with the way they are operating in the court system. Judges are arrogant; they are biased; they're idiots; they're incompetents; and they do not want to be in family court. I mean, if you are going to put a judge in family court, give him \$200,000 a year, make it worth his while. If you are going to have the court system the way it is now, judges had better know everyting that is going on with the

family, because the taxpayer is not going to stand for incompetence anymore. We've had it. In fact, it is obvious because of the Maryanne Espinosa Murphy thing and the Judge Martin Herman thing that this is just the beginning.

Judges must undergo intensive training in family dynamics and child psychology before they can sit on the bench in family court. Judges are creatures of the Legislature, and if the Legislature can't make the right choices, then the legislators should also be replaced. I don't want to be adversarial, but this is the kind of system we are involved with right now. We want mandatory mitigation. All issues have to be mediated, not just custody and visitation. That includes: child support, equitable distribution, alimony, and whatever else -- domestic violence.

According to Maine, they have a system up there that no one gets divorced, no one gets anything except for support, temporary support, unless and until they address all the issues. Then it goes before the judge. If everybody agrees, the judge stamps it final. That's it.

We need the courts, or some kind of committee, or a chief justice, or somebody to do it here, to make mandatory mediation all inclusive. It cannot be run of the mill. It has to have the same authority and force as a court order, because in many cases mediation and agreements are being overturned. Even in arbitration situations we have seen it happen where it has been overturned.

The mediators have to be educated properly. They have to be degreed in the field. They must know every detail and check and double check every detail in any kind of a divorce arrangement. They must frequently update their education. Mediators have to pass extensive tests before licensing. They are dealing with people's lives here. If they don't do that, we might as well not even have that system. We don't need to replace one problematic toxic system with another.

Also, one last final point on the issue of the courts: Currently as the system exists, Ann Marie Ackley, who I know because she is in my county -- she is 15 minutes away from my house, and I have talked to her at length about her case and tried to help her-- She, being pro se, cannot afford an attorney. She goes in and she gets wumped by the system because there is no -- she has no education, as she said, in this field. Most Americans do not have that education. I spent 10 years through the divorce process. I self-educated myself on this. In fact, I have taken paralegal courses in college, and I intend to go to law school, at this point.

Pro ses who are well-versed in the law should be allowed to help other pro ses in the court; in fact, to the point of even representing them in front of a judge as an advocate. People who are pro se usually don't have money and can't afford an attorney anymore. If there are other pro ses out there who are willing to do it, who have the education and a little expertise, they should be able to help and represent those people in front of the family courts. They can do it in a municipal situation; they can do it at administrative hearings. I can't see why they can't do it in a family court situation if they have the integrity and the knowledge.

I want to make a few points on what I heard before. I don't want to turn this into a male/female gender issue, because the problem is, it is the courts. It is the legal system; it is the industry; it is the moneymaking thing. But I have to take offense to some of the things that Myra Terry said about NOW. I know she is advocating in the best way she can about women's issues and children's issues, but there are three people here. There is the man, the woman, and the child, or children.

UNIDENTIFIED PERSON FROM AUDIENCE: (comment indiscernible to transcriber; no microphone)

MS. VON SEYDEWITZ: Excuse me, Mr. Eden.

I know you (speaking to unidentified person in the audience) just directed something to me. Did you just say, "You are the next one off"?

UNIDENTIFIED PERSON FROM AUDIENCE: Yes.

MS. VON SEYDEWITZ: May I ask what that has to do with interrupting Mr. Eden and what that remark is in reference to?

UNIDENTIFIED PERSON FROM AUDIENCE: May I ask what that is for, one minute?

MS. VON SEYDEWITZ: Well, I was asked to sit here because the Chair and the Cochair left.

UNIDENTIFIED PERSON FROM AUDIENCE: (several words indiscernible here) --all walked out on us.

MS. VON SEYDEWITZ: I confirmed with Ms. Nagle how much time Mr. Eden had given in testimony versus how many times he was interrupted in an exchange of conversation. I am going by her watch.

UNIDENTIFIED PERSON FROM AUDIENCE: You don't have to defend yourself, Miss.

MS. VON SEYDEWITZ: I just wanted to know what you meant.

UNIDENTIFIED PERSON FROM AUDIENCE: You don't have to defend yourself.

MR. BRODERICK: She is asking why you made the remark.

UNIDENTIFIED PERSON FROM AUDIENCE: You don't have to defend her either.

MR. BRODERICK: I am not defending her.

UNIDENTIFIED PERSON FROM AUDIENCE: Oh, okay.

MR. BRODERICK: She is asking why you said to her, "You are the next one off."

UNIDENTIFIED PERSON FROM AUDIENCE: Do I understand that?

MR. BRODERICK: I don't know.

UNIDENTIFIED PERSON FROM AUDIENCE: Do you understand it?

MR. BRODERICK: I don't know.

UNIDENTIFIED PERSON FROM AUDIENCE: Oh, okay.

MR. EDEN: I would like to finish my testimony, if that is all right?

UNIDENTIFIED PERSON FROM AUDIENCE: Go ahead.

MR. EDEN: Ms. Terry mentioned that women need alimony. I don't know who she was married to or what her situation is or who she is married to now. She is coming from a position that I can't see. I am a middle-class American male. I made \$35,000 a year when I was working. To ask a middle-class American male -- \$35,000 gross at a 38 percent tax rate -- to pay for two households is absolutely absurd. It is virtually financially impossible for the middle class to pay. President Clinton said the middle class is \$36,000 and down. Has anyone here ever tried to support two households on \$36,000 a year gross? I don't think so, unless it was in 1970.

She talked about the financial worth of the homemaker. The man's financial worth has to be taken into consideration also if that is the case. What is his worth as a plumber, a carpenter, a mechanic, a landscaper, an electrician? I mean, no one has addressed that issue. Sometimes there are men who are handy around the house who save a lot of money by not hiring these people. No one has ever sat down to what that worth is.

Parenting was an issue that was addressed. It was said that parenting should not be based on support. It definitely relates to support, absolutely. Parenting definitely relates to financial ability. If a parent has to go out and work and leave children home as latchkey kids, it has a definite effect. So financial issues relate definitely to parenting. One cannot be without the other.

The Census Bureau stats-- I don't want to get into being a statistical fool here, because liars figure and figures lie. The only point I am going to make is that she said that

women are making 52 cents on a dollar and they can't seem to break through in certain positions, but more women are graduating college than men than ever before. More women are getting more graduate degrees than ever before, and more women are getting more Ph.D.s than men than ever before.

I can understand her position that if you are a homemaker for 20 years you are entitled to something. You are entitled to some of the assets and possibly alimony at this point, if she makes nothing and he makes \$200,000 a year. But if you are both making \$20,000 a year, I don't see it. I think that position is irrelevant and absurd because I think it is gender biased, and that is exactly what we do not want to do here. We don't want to bias the situation.

MS. VON SEYDEWITZ: Mr. Eden, I'm sorry, but I did confirm with Ms. Nagle that the 10 minutes are up. Of course, the other Commission members, if they have any questions, are welcome to continue and have those questions answered. And you, Mr. Eden, of course, are welcome to testify at other hearings.

Does anyone have questions?

MR. BRODERICK: Yes, I have a question.

You said something about mandatory mediation. How would that work? For instance, let's say-- Would you want there to be a system where people who want to get a divorce would go to an attorney and say, "We want a divorce," and the attorney would refer them to a mediator?

MR. EDEN: Well, the way the attorneys advertise, there should be a mediation profession set up the same way. I mean, there should be specific areas for mediation, specific institutes, or whatever.

MR. BRODERICK: So before people could go to the courts, they would have to go through a mediation system first?

MR. EDEN: Yes. They do in Maine, and I think they do it in Delaware, too, the same way. They have to litigate all issues.

MR. BRODERICK: They have to?

MR. EDEN: I mean, they have to mediate all issues.

MR. BRODERICK: Do you have material on what happens in Maine?

MR. EDEN: Yes.

MR. BRODERICK: Can you send it to us? Can you send it to staff?

MR. EDEN: Yes.

MR. BRODERICK: Thank you.

MS. VON SEYDEWITZ: Does anyone else have anything? (no response) Thank you, Mr. Eden.

The next person to testify will be Mr. Robert Morehouse. Let me just get a time check before you start, okay?

R O B E R T M O R E H O U S E: I will be brief, believe me.

My name is Robert Morehouse. I come from Bridgeton in Cumberland County. This is the first time I have been able to address this panel. What I am about to speak to you about-- In my conversations with other people, I have never had anyone say to me that what was going on with me was fair.

I have heard testimony that people have not seen their children for a year. To date -- I have two sons aged 19 and 17 -- I have not seen them for seven years.

I hear a continuous argument concerning the rights of parents, fathers namely, getting to see their children. I find it very difficult to believe that you can force a child to see you. I have a problem with that.

Currently, I am involved in litigation. I had to hire counsel. Up until a response that I couldn't afford to pay him for, I decided to respond pro se. I also felt I did a better job than he did.

My oldest son, aged 19, in a phone conversation with him in 1991, told me that I was not his blanking father anymore, and you can put that to your own test as to what you think that might have been.

MR. BRODERICK: May I interrupt you just for a second? Do you have a written copy of what you're saying, or are you just working from notes?

MR. MOREHOUSE: I have motions and cross motions to the Atlantic County Court.

MR. BRODERICK: No, I mean, do you have a copy of what you are saying now, or are you just reading from notes?

MR. MOREHOUSE: From notes, from a shopping list, on my wife's paper, as a matter of fact.

I have remarried. On January 27, my wife just had our fourth child.

In September of 1993, due to the fact that my oldest son graduated from high school in June, I filed for emancipation. Then I found out that he was attending college -- prelaw, as a matter of fact -- and my ex-wife filed a countermotion to request the cost of tuition. Now, due to company downsizing -- and I am also experienced with that problem -- I was forced to take a reduction in income, which started in September. My income went down drastically by 33 percent starting in September. Along with my motion, I also attached income statements showing my income going down.

She, in turn, filed a countermotion requesting my son's tuition, and that is still in litigation. It is now March 31. I called the Atlantic County Court. I understand that a ruling was made by Judge Armstrong. I am still awaiting that, anticipating Appellate Court, because due to my income loss I cannot afford to -- like I have heard so many times -- raise two families. To date, I owe exactly zero in child support. My arrears are up-to-date, and they always have been.

When I filed my motion-- With this countermotion about tuition, there is absolutely no way I can raise my family and support a child in college -- he is now a freshman -- and he says to me, after not seeing him for seven years, that I am

not his blanking father anymore, due to the fact that my ex-wife remarried.

I have some notes, but please bear with me. I am a little bit nervous concerning this. My second son is now 17 years old. He is a sophomore in high school. Two months prior to his graduation from grammar school, I called the, what was then a parochial school which he was attending, to find out that in seventh grade he was removed from that school and put into a public school. I never knew about that; I was never informed. I called to get information on his grammar school graduation. I sent requests, when my oldest son graduated from high school, concerning his graduation, but never received an answer. I never got an invitation; I never got tickets. I have sent birthday money; no thank you cards. My parents have also-- Their natural grandparents have not seen them for seven years. Actually, it will be seven years come this Christmas.

My ex-spouse has never contributed any financial support to the children. As it stands right now, she is receiving tax-free child support money to the tune of over \$10,000 per year, which must be reduced. If it is not, I am going to lose my home. I find it difficult to believe that the court system in the State of New Jersey would, due to its ruling -- I feel irresponsibly -- force a family to become homeless.

MR. LOUIS: Excuse me. Did you get a ruling from Judge Armstrong?

MR. MOREHOUSE: Not yet, sir.

MR. LOUIS: Did you, in your papers--

MR. MOREHOUSE: It is being typed.

MR. LOUIS: --outline that you have four children from your second marriage?

MR. MOREHOUSE: Yes, sir. My original filing was in September, as I said before. It finally went to court on November 29. My attorney informed me three weeks prior to that

that the judge was not going to hear oral argument. I, in turn, told my attorney that that is against due process of law.

MR. LOUIS: It is against court rules.

MR. MOREHOUSE: Well, we got into an oral argument. Consequently, there was no emancipation. My wife, at the time, was 30 weeks pregnant. Her attorney called that hypothetical. There is nothing hypothetical about a woman being 30 weeks pregnant.

MR. LOUIS: May I just give you a little free legal advice?

MR. MOREHOUSE: Yes, sir.

MR. LOUIS: Did you do a guideline calculation?

MR. MOREHOUSE: Yes, sir.

MR. LOUIS: Did you use the other dependency exemption to calculate?

MR. MOREHOUSE: I don't-- Do you mean my sons?

MR. LOUIS: Yes.

MR. MOREHOUSE: I don't claim them; her new husband does.

MR. LOUIS: Did you say you remarried and that you have four new children?

MR. MOREHOUSE: Yes, sir.

MR. LOUIS: When you did your guideline calculation, did you back out the child support for the four--

MR. MOREHOUSE: No. When I went to court originally in November with this motion, it was with the understanding that they were going to emancipate my 19-year-old now -- who is now an adult. With that calculation, if the court were to emancipate him, my guideline, as far as child support, would be where it should be.

MR. LOUIS: Listen to my question: Did you, when you did your calculation, factor in the fact that you now have four children, because that would reduce your guideline?

MR. MOREHOUSE: I understand that, but these guidelines-- My child support payment was set up in a divorce that I went through in 1988. I have been to court four or five times, and it has never been reduced. My understanding was to have that reduced, which I have also--

MR. LOUIS: It is just a little archaic thing -- a little minor-- Not everyone knows how to do that. I just wanted to make sure that you gave the judge the right information in the calculation.

MR. MOREHOUSE: Without question.

MR. LOUIS: I can tell you, I don't know how to do it.

MR. MOREHOUSE: I have been through it with Judge Seltzer, who I understand is now on the Appellate Court, and I anticipate going through that, also. There was a motion filed in 1991 by my ex-wife to get an increase in child support, and Judge Seltzer ruled and gave a decrease. So I understand where the calculation comes from. Judge Armstrong has not made a ruling. Her statement in her papers was pending the birth of my sixth child. Now that child has been born; now I am waiting for the ruling.

If she rules that I have to contribute to college expenses, I am going to be in contempt of court, because I cannot afford any college. If my now 12-year-old daughter wanted to go to college, she would be needing a job first.

MR. LOUIS: Are you saying that your objection to the college order is predicated on your inability to afford it, or that even if you had the ability you should not be responsible to contribute to the college educational expenses of a child who says to you what that child has said, and with whom you have no relationship?

MR. MOREHOUSE: Without question.

MR. LOUIS: Two different questions.

MR. MOREHOUSE: Yes.

MR. LOUIS: If I understand you, we are going to work on a statute that has standards for college and you want us to say that there is no parental obligation if there is no relationship?

MR. MOREHOUSE: That's correct.

MR. LOUIS: That's what I'm saying. I thought you were saying that. I just wanted to--

MR. MOREHOUSE: I wrote Governor Whitman a letter on Monday concerning the violation of the 14th Amendment, as far as parents of intact marriages versus-- I mean, the Amendment does not say "equalized under the law, except if you are divorced or separated." It does not say that.

If I look at you and say, "Well, if you have a son and the son says you are not my blanking father," are you going to reward this young man? How do you do that? Here is a person who can vote. Here is a person who can sign himself out of high school. Here is a person who can be drafted by the military. About the only thing he can't do legally is drink. And I am going to support that?

My main situation is, the Pennsylvania law, 18 and out, that is what brought me here, because that is going to solve a lot of problems. Now, if I had the wherewithal financially, I would help him.

MR. LOUIS: I don't know how it is going to come out.

MR. MOREHOUSE: I don't know.

MR. LOUIS: I can tell you that the Subcommittee that deals with finance is going to deal with that very issue.

MR. MOREHOUSE: I hope so.

MR. BRODERICK: Did you say--

MR. MOREHOUSE: Excuse me. My concern is, when I read family law as far as child support, college tuition, the financial resources of both parents, the financial resources of the student, the receipt of educational loans -- which is something I will bring up -- any willful estrangement-- This

is estrangement due to him, not me. I called two months ago to speak to my 17-year-old. "Would you like to get together, son, to go and see your grandparents?" My ex-wife got on the phone and said, "He's busy." I said, "How about next Sunday?" "He's busy." "Well, how about the following Sunday?" I could do this for 52 Sundays, and he is always busy. There is a problem there. I hear one year, but seven years? And I owe zero in child support. And he wants to go to college, over which I had no say whatsoever. I found out that he was in college.

MR. BRODERICK: Did you say that your ex-wife's new husband has now taken deductions for the two children?

MR. MOREHOUSE: Yes, he has, in coordination with the fact that-- My oldest son is receiving a State grant in the amount of \$5000, due to the fact of my ex-wife's situation as far as being a product of divorce. She has not worked since God knows how long -- 1985, I believe, was the last time she worked. She has six years' experience with banking. At age 21, she was a branch manager of a savings and loan. She is now age 44, and hasn't worked. Why should she work? She is getting \$10,200 a year in tax-free child support. She is getting a \$5000 grant from the State of New Jersey for my son's college, and the reason she is getting that grant is because she is divorced, from what I can understand. He is a product of divorce, and she is not working. Why should she work?

MR. LOUIS: May I ask you a difficult question?

MR. MOREHOUSE: Sure.

MR. LOUIS: Put yourself out of your position. Make believe you are sitting over here.

MR. MOREHOUSE: Yes?

MR. LOUIS: And assume, for the purpose of argument, that the Subcommittee concludes that it is in the State of New Jersey's interest to assure that children have the best education they can receive to maximum their abilities. Assume that to be true. Also assume that we also believe it is unfair

to the parent to require the parent to pay for a child with whom that parent has no relationship. Those two things are true. Which side of the scale do we fall on -- would you fall on if you were over here and not over there? Both of those are true.

MR. MOREHOUSE: Do you mean how would I rule?

MR. LOUIS: Yes. If I could make you a judge.

MR. MOREHOUSE: That I would not be responsible for college tuition, if I had no relationship for a seven-year period of time.

MR. LOUIS: Even though it is in society's best interest for the child to be educated?

MR. MOREHOUSE: Correct.

MR. LOUIS: Okay.

MR. MOREHOUSE: Let me address that a little bit further. I hear about college tuition. I never went to college. My father never went to college. He didn't have the wherewithal. But does that mean that now, if I become 19 years old, I can sue my father, say, "I want to go to college. I am going to sue you for that"? I mean, that is where the 14th Amendment scenario comes in.

Here is a situation where I asked my ex-wife for photos of my son. This is a copy of a yearbook photograph that I got from a policy -- I work for Prudential -- where I happened to serve as their insurance. A copy of a yearbook photo? Her statement was, "They don't like having their picture taken." Come on!

I understand where you're coming from, should they be able to go to college? There are multitudes of ways for a child to go to college. I was involved in Vietnam. I got out of Vietnam and I could have had four years of free college. I chose not to go; that was my choice. There are "work study" programs. I mean, he chooses to go to a school out-of-state. I had no input whatsoever concerning him going to college. He

chose to go to college in Philadelphia. Why? He could have gone to college at Stockton, which he lives 15 miles from, and he could have lived home. No input whatsoever.

MS. FLOHR: Is Frank gone? (referring to Mr. Louis)
I wanted to make a point. Oh, there you are.

MR. MOREHOUSE: In my papers I asked for dependency status. In my response I said, "Let her have the dependence, because it is going to mess up the State grant." But why should I be responsible for paying college tuition for a child I have not seen in seven years? Every time I call, they don't want to talk to me. Also, my parents-- What are the grandparents' rights?

Forgive me for getting a little bit upset about this, but--

MS. FLOHR: My answer to you, Frank, would be: If it was the policy of the State, or if the State adopted a policy that it would be in the best interest for the children to be college educated, the system would be different. Perhaps college education would be public education, just as high school and elementary school are public education. The law of the State would be different if it was the policy of the State that every child is entitled to a college education.

MR. MOREHOUSE: There is no law in the State that forces a child to go to college either. Secondary education is not forced by law. High school--

MR. LOUIS: I don't know what the number is, but taxpayers spend a lot of money to fund public education in the college education system here. They do not do that without making the judgment that that is in the long-term best interest of the State and the students. So it is a counterargument.

MR. BRODERICK: Yes, but all the citizens of the State share that burden equally.

MR. LOUIS: Correct.

MR. BRODERICK: Yet, in this case you're asking one individual to pay--

MR. MOREHOUSE: One hundred percent.

MR. LOUIS: It is going to be an interesting debate.

MS. VON SEYDEWITZ: Does anyone have any questions or comments for Mr. Morehouse?

MR. BRODERICK: I would just encourage you to put this down on paper and send it to--

MR. MOREHOUSE: I have. I sent a letter to Governor Whitman on Monday, and I would like to give you a copy of that.

I would also like to add--

UNIDENTIFIED PERSON FROM AUDIENCE: Fax it to her.

MR. MOREHOUSE: --that as far as my income situation, I have lost 33 percent of my income since September. Without the help of my wife's family and my family, I would have lost my home. I cannot continue to allow my parents to help me pay a mortgage payment.

MR. LOUIS: You may win your motion.

MR. MOREHOUSE: Pardon me?

MR. LOUIS: You may win your motion.

MR. MOREHOUSE: May I give this to you, Mr. Broderick? (no response)

MS. VON SEYDEWITZ: Robert, I want to also follow through on a comment that Frank made.

MR. MOREHOUSE: I don't have a lot of faith in possibly winning that motion, unfortunately.

MS. VON SEYDEWITZ: Do you have written testimony from today? Did you submit written testimony?

MR. MOREHOUSE: No, I did not. I was not aware that written testimony could be submitted.

MR. BRODERICK: That is what I was saying. Type up what you have or write it out and send it to staff. Then staff will copy it so each of us will have a copy of it.

MR. MOREHOUSE: What I would like to do, if it is possible, is send you a copy of the-- I was asked by Judge Armstrong to furnish a response to my ex-wife's cross motion, which I did pro se. I could send you that, which basically put into words this whole, long, drawn-out mess.

MR. BRODERICK: Whatever you think we should look at, send to us.

MR. MOREHOUSE: As far as, Mr. Louis, you saying I might win the appeal, I have a problem, sir, with not having too much confidence in the court system. I listened to the fellow who is the President of the American Bar Association yesterday on C-SPAN. He said that one of the major problems with laypeople today is not having trust in attorneys or having trust in the court system.

I anticipate having to appeal, pro se, this Judge's ruling because of the fact--

MR. LOUIS: Don't forget the other dependency exemption in the calculation guideline.

MR. MOREHOUSE: To date, right now, my ex-wife receives 50 percent of my income for two boys, one 19 and one 17, and I am trying to raise a family of six now on an average take-home of \$300 a week.

MS. FLOHR: I want to make you aware that if you do use your current dependents in the calculation -- your children that you have with your present wife--

MR. MOREHOUSE: Right?

MS. FLOHR: --in calculating your child support obligation, your current wife's income will be required to be incorporated--

MR. MOREHOUSE: My wife has a two-month-old baby. She is breast feeding. She does not work now.

MS. FLOHR: I just wanted to make you aware that it goes a little beyond--

MR. MOREHOUSE: Oh, yes, I understand that.

I think there is a tremendous problem that I hope this panel can address with remarriage. My ex-wife told me in her papers that I should have been required by law to wait a time gap before I started another family. You know, this is ludicrous. You are forcing people, good people-- It never ceases to amaze me that in a family court the best of people are made to look the worst. In criminal law, the worst people are made to look the best. It amazes me. They have nice haircuts and nice suits on. They sit in front of the court and they say, "Oh, he just raped a woman," but he looks wonderful. In family court you are at each other's throats because there is no set program of what it should be.

I read this, the "financial wherewithal." I don't have the financial wherewithal, but I have a judge entertaining my possibility of contributing to a college education.

MS. FLOHR: I guess throughout this period of time, since last fall, he has been-- He is unemancipated.

MR. MOREHOUSE: Yes.

MS. FLOHR: Pending a decision and you are continuing to pay support?

MR. MOREHOUSE: Right.

MS. FLOHR: The longer it drags out--

MR. MOREHOUSE: Well, I am not paying an attorney anymore, fortunately. I get to do this free of charge, which I find interesting. You hear, "Well, if you go pro se you have a chance." I tend to believe I do, because if I have to go to the Supreme Court, I will. That is precisely where I am going to go. You read these laws, or these protocols, or what's normal and customary in a family court. Maybe they don't amount to a hill of beans, unless financial hardship results in the parent. If I have to do this, I am going to lose my home, and I cannot rent a three-bedroom apartment for what my mortgage payment is.

So the judge says, "Well, I want you, Mr. Morehouse, to spend \$3000 in contributory college costs," and I am forced to be in contempt of court. I don't think so.

MS. VON SEYDEWITZ: Mr. Morehouse, we thank you for giving your testimony.

Does anyone else on the panel have any questions? (no response)

MR. LOUIS: Good luck.

MR. MOREHOUSE: Thank you.

MS. VON SEYDEWITZ: The next person to testify will be Daniel John Hudson.

D A N I E L J O H N H U D S O N: Good afternoon, Commission members, or what may be left of you.

I am going to be speaking specifically about interference of visitation and custody, specifically the 2C:13-4(a) law. Ladies and gentlemen, this law is not working. My experience with this law is that it is not working because a prosecutors will tell a noncustodial parent right to his face, "I am going to decide in a back room what a judge should be deciding on a bench, what your rights are and, more specifically, what the right of this very child is." Who gives this person the power to do that? The law is put on the books for a reason.

Now, there is a two-sided issue here on how a noncustodial parent and how a custodial parent are treated under this very same law. The custodial parent will be routinely brought in, a quick phone call made to whatever county you are in to speak to a judge, and immediately released on their own recognizance. They are told, "Do not bother to show up for the arraignment. This is not going any further."

I have been in these courthouses with other members of our group where the prosecuting attorney will gladly announce for the record, "We are not going to drop this charge at this time. We are going to hold it over until the trial, and we are

going to drop it then." They have already found that there is no guilt, and they are placing these statements on the record. This is not even behind closed doors. These are the people we all employ to protect us. These are the people we all employ to legislate these laws into effect so these people can be paid to protect us. This is abuse of the taxpayer system, and a gross injustice as far as the 14th Amendment goes.

Now, if a noncustodial parent happens to be found in violation of this very same order, they will usually be placed on bail of from \$1000 to \$2500, most often without the 10 percent. Mandatory arraignment; mandatory trial date. If this person happens to be found guilty, this person is subject to a fine and/or possible jail time. Mandatory probation comes along with this. Very often, there are restrictions placed on the noncustodial parent as far as contact with the minor child. This is not what I feel the intent of this law is.

We are talking about intent and application. If they are going to adjudicate this matter amongst themselves -- they are going to grant themselves this power to adjudicate this matter amongst themselves behind closed doors -- it must be equal. I recognize that in two parents there is obviously a gender issue. That is how the child got here. But we cannot just routinely allow the system which we hope protects us to just decide how often they are going to prosecute a case, and most particularly, which gender they are going to use this case on.

Now, in follow-up to Mr. David Marcks' comments earlier, I have had a reasonable amount of problems getting this law enforced. And to answer Mr. Louis' questions, the police will enforce it. They will run the paperwork. However, the more often you enforce it -- request them to enforce it, the longer it takes you to be processed. What used to be a half hour process is now a two and a half hour process, and it sets you up so that you are reluctant to ask the law

enforcement agency in your municipality to enforce the laws, which they are there to do. They get discouraged. They realize that this is going to be passed from municipal court out to the Monmouth prosecutor's office. They are going to wash their hands of it and hand it to family court, and it is going to be dropped.

Now, I am sure you have all done something in your lives where you have done it repeatedly, and it just did not prove effective. You became disgusted or you decided to do it a different way. Now the different way you spoke of was speaking for compensatory time in front of a judge. Well, I have had the pleasure of standing in front of a judge in Monmouth County -- my son's mother's motions -- about a dozen times in the last year. Each time, this judge has ridiculed me for even broaching the situation of compensatory time, while the same individual is in the court who is committing these alleged crimes. I am accused of being a tit-for-tat person and I am the cause of the constant eruptions. I find that there is no truth in that, first of all, and the reasoning behind that escapes me.

I feel we need more enforcement on this law at the prosecutor's office. The paper trail that someone else spoke of-- I have invested heavily in that theory. Once again, it proved fruitless. I do have some suggestions, but I think that is the way to go.

I believe this law is there for a reason. I believe it does have its valid points. I believe it should be enforced as it is, but I also believe there must be some mandatory guidelines that are set up upon this law, where it is beyond the power of whichever judge who answers the phone to decide what he or she may feel to set bail at, what he or she may feel to set restrictions on, because as we have heard, with a lot of these issues there are restraining orders involved. Now, if you have a problem with a restraining order, the first thing

out of the judge's mouth at the county level is, "No contact." What does "no contact" mean, no contact with the child? You have to contact the other parent to get to the child.

I happen to be dealing with a very friendly police department which has had, on occasion, to go to his mother's house, and bring him and her down to the police station. I have to be the exception on that. I speak to a lot of people who just don't see their child. That is the reason we are all here. It sounds very good -- redefine the rules and laws of divorce in the State of New Jersey. The product of divorce is a big moneymaker, but as society will experience today, has experienced yesterday, and will experience more tomorrow, the effects are going to be felt by, and will show up on the children. That is the reason we are all assembled here; not to lobby with sexist remarks or anything else that I heard.

I was outside with my child listening to every word that was said. I did not feel it was proper. I actually was bumped a few times, or I would not have disturbed everyone with the presence of my child.

Some people may tend to get off the issue, but there is a law on the books. For someone to say that they are not going to enforce it-- It would be just like saying, "I am not going to follow my court order." I, too, am a parent who is up-to-date with his child support. I never had a problem with child support. So there is not one balance trying to fight out the other balance. It is very easy to see how people tie them together. How I could fix that-- It would take some time, because I do not believe in buying the right to see my own flesh and blood, nor would I sell it.

I am open to anyone's questions, suggestions, or comments -- anyone on the Commission. I will answer them now, and bring back possible future proposals, working with the Commission.

I feel this is a very important issue. Most people fight like cats and dogs in court, and they spend an awful lot of money. But what most people do not realize is that enforcement is twice as difficult. There are an awful lot of women out there, and men, who do not get their child support, and that is the most difficult part about it, the enforcement. You can adjudicate all you want, but once that is done, the process does not go away unless someone ceases to breathe. Most of us are going to be around for quite a long time.

MS. VON SEYDEWITZ: Does anyone have any questions?

MR. BLITZ: Yes, Madam Chairperson.

Are you suggesting in the criminal complaint of interference with custody that there should be no prosecutorial discussion, and that all complaints that are filed must be prosecuted in Superior Court as criminal cases?

MR. HUDSON: If they would be prosecuted in Superior Court as a criminal case-- That sounds like a nice scenario, but I believe that right now I am being robbed of the opportunity of having a kickback to the municipality and letting a minor court judge deal with it.

MR. BLITZ: The question is: Are you suggesting that there should be no prosecutorial discretion, and that every criminal complaint that is filed must be tried? Is that what you are asking us to do?

MR. HUDSON: That sounds to me like a little more than a yes or no answer. I will answer "Yes," with an explanation. There are obviously people who file complaints which are not warranted. I think in any course of life we are going to have to deal with that, because there are people who do it, not just in family cases. Whether the answer is to try them at the county level-- I don't know if that is really the answer.

My suggestion is: Someone must take responsibility and accountability for seeing to it that, first of all, our amendments are protected; not mine, but here is a person who

can't even speak for himself, except "da da." He knows warm love and affection. He does not know the legal process. He knows when he is being robbed of his other parent, though. But what can he do about it, except ask me to do it for him.

So, yes, there should be some remuneration for this. There is a statute on the books, so it is a crime. Why do the prosecutors grant themselves the godly and judicial power to say, "I am dropping the case, because I represent the State of New Jersey"?

MR. BLITZ: Are you disagreeing with the authority of the prosecutor to exercise discretion in these cases?

MR. HUDSON: Well, discretion is an arbitrary term. It doesn't say in the statute that this law may be prosecuted with discretion. It says in the statute that if this happens, it is in violation of the statute.

MR. LOUIS: Mr. Hudson, if I may, just so you understand, I think, what the prosecutor is really asking-- Prosecutors as to all statutes have a certain amount of discretion as part of their job. They can choose not to indict, not to prosecute, indict for a different charge.

MR. HUDSON: Yes.

MR. LOUIS: That is really the issue you have to deal with, that you are raising for us now. We, as a legislative Commission, can't tell the executive branch how to do their job. I just want you to understand that in the broad context of every single criminal statute, they don't have any more rights or less rights than this one. Prosecutors always have discretion, and they exercise it essentially on their own. There is not much we can do about this.

MR. HUDSON: Well, that power is not without notice by myself. As we heard from other testimony by David Marcks, who lives in another county -- that got pushed back to the municipal level, and it was dealt with. There is now a record of an offense, multiple offenses.

MR. LOUIS: The Legislature can't say to the prosecutor who lives in Atlantic County, "You must do this, whether you like it or not." We just can't do that. Even if we were to agree with what you're saying, we can't do that.

MR. HUDSON: Must I follow my court order?

MR. LOUIS: Yes, because there is a difference between the prosecution -- the prosecutor's discretion -- and the obligation of a person to follow a court order.

MR. BLITZ: I am not so sure I completely agree. I suppose the Legislature has the authority to limit executive branch authority. It has never come up, but I suppose there could be such legislation.

MR. LOUIS: They might oppose that, if they could.

MS. FLOHR: I think the point I heard -- and correct me if I am wrong -- was that you are opposed to the use of discretion with gender bias.

MR. HUDSON: Well, I believe the terminology I used was custodial and noncustodial parent. Now, defying a custodial and noncustodial parent will, more or less, fall into line with custodial parent male or female. I have witnessed in court a half a dozen noncustodian male parents being arraigned and sent down for a hearing, and found guilty, one out of six times, but never the other way around. So that discretion is an abused discretion.

MS. FLOHR: So you are talking about custodial versus noncustodial?

MR. HUDSON: I believe that is the stronger issue. I am not here to promote or inhibit general rights, because we all have our own.

MS. FLOHR: No, I may have been misled because--

MR. HUDSON: No, but it is the issue within the issue because of the way all the orders streamline down the funnel that the noncustodial parent, more often than not, is identified as being male. But now when the prosecution end of

it comes into play, that is where discretion falls down, with noncustodial and custodial. That baffles me.

MS. FLOHR: You see that discretion being applied differently to noncustodials versus custodials?

MR. HUDSON: Yes, and that does baffle me. This is done on the record, too. That is when it gets a little too close, the abuse of the 14th Amendment -- equal protection -- and also transposes into equal prosecution.

Yes, sir?

MR. BLITZ: I understand your question now.

MS. VON SEYDEWITZ: Is that it? (no response) Thank you.

MR. HUDSON: Thank you for your time.

I would like to be apprised of your next meeting. As I said, I do have some suggestions, and I would like to have the opportunity to work them up into a formal order and submit them prior to the next hearing. Once again--

MR. BRODERICK: You can get on the mailing list.

MS. VON SEYDEWITZ: We have your address.

MR. BRODERICK: You might want to advise people that this is being taped and will be transcribed. So in spite of the fact that some of the members have had to leave, they will be getting copies of this hearing.

MR. HUDSON: Thank you.

MS. VON SEYDEWITZ: Before I call on Stewart Way, I just want to apologize. The time has been going, and I don't know how many other Commission members want to leave, or have to leave because they have other commitments.

You are welcome to testify and you certainly will be given the opportunity, but if you think you will feel better by coming back when we are all here, you are welcome to do that. You have that option.

The next person to testify will be Stewart Way.

S T E W A R T W A Y: (speaking from audience) I would rather speak when everyone is here. That way, if they have questions on my comments, they can ask them. If I am not here they can't ask them.

MS. VON SEYDEWITZ: It is something that Assemblyman Kavanaugh coordinates with Legislative Services and when the room and location are available. As long as you are signed up, you will be on the mailing list. So the fact that you have already signed up-- I will just note this, so you can be put at the top of the list as a priority, because you waited all this time and you are going to come back next time. Okay?

MR. WAY: All right. Thank you very much.

MS. VON SEYDEWITZ: You're welcome.

Richard Gorish.

R I C H A R D G O R I S H: Good evening. My name is Richard Gorish, and I am from Roebing, New Jersey, in Burlington County. I have a prepared statement I was going to read, because the people behind me, you know, would probably miss out on everything I wanted to say. I would probably just forget the most important recommendations.

Before I start, I am not here for a debate, but I do want to make just three comments on some of the things that were said today. Perhaps if there are any questions at the end--

One is, I sort of disagree with Dr. Barnes when he says the family courts create deadbeat dads. I would like to make it a little bit stronger than that. I would like to say they manufacture them. They belt them out week after week, time after time. It is not really a divorce court; it is a kangaroo court. There is really no justice being done here at all.

The support payments -- and I don't mean just child support, which guidelines weren't even talked about at this meeting, which are inflated and terribly out of range. I am

talking about other kinds of support, like alimony, for example, which brings me to the other comment I wanted to make about alimony. To me, to comment on alimony, if there is permanent alimony, the only time permanent alimony should be allowed is if there is a disability. Other than that, it just encourages one to be complacent, lacking in motivation, and expecting to be supported for the rest of his or her life.

There is just nothing to do about permanent alimony, unless there is a disability, or where a person cannot possibly take care of themselves.

Mr. Broderick made a comment about one of the reasons we are here is because parents are not responsible to meet some of the responsibilities they have if we are not here. I thought the reason we were here was for parents who want to maintain responsibility in their children's lives. That is what some of my comments are about.

There are many parents-- I started out saying there are many fathers desperately fighting for their rights, fighting to be a part of their children's lives. Well, I know there are mothers fighting to be a part of their children's lives also. I did not mean to specify fathers as a gender issue, but just as a fact of life. That is usually the way it is.

I am one of those parents, and I will attest that continuing parenting is a losing battle in Burlington County, and apparently throughout the State. So here is my first suggestion, or first point I want to make:

Family courts relegate the noncustodial parent to the status of visitor. I think most of us, as noncustodial parents, agree on this, and we are trying to make it known to the courts that it shouldn't be this way. Hence comes the term "visitation."

The parenting issue must be addressed before any other issues are discussed, except for maybe domestic violence, of

course, something of an emergency type situation. The reason I say that is because in my situation, there was no parenting schedule whatsoever for nine months after separation. The first weekend that mediation was signed and agreed to, my spouse, at the time, denied me visitation, and took the child to the grandparents in Atlantic City -- the first weekend. It took four more months after that to get an appointed-- I requested an evaluator, a psychologist. It took an additional 12 months after that for the evaluation that I requested.

There are some new guidelines out from the Board of Psychologists. The comments in here that I just had an opportunity to read from the "New Jersey Psychologist," Winter 1994 -- and I only brought one copy with me-- Looking at it, basically there was hardly anything that was followed in there whatsoever. So when it comes to child custody, parenting, I believe it is one of the first things that should be discussed.

The next point is-- I wrote down something about parenting classes. Well, I think it was Mrs., or Ms. Parker, was it? She mentioned that there are such things as mediation workshops. That is the point I wanted to make. There should be some type of classes involved between parents who have children and are involved in divorce. It is very important to do this, because when a child is with one parent, perhaps that parent will poison the child against the other parent; use the child for a weapon. I believe that such classes -- perhaps six, eight, ten hours, I am just making an arbitrary number of hours -- should be required to instruct the parents about the negative effects of divorce on children, and the negative effects of arguing and bickering in front of the children, the possible harm that can lead to, one aspect of which is alienation.

If there is no cooperation from a parent during this process, an issue of this should be made by the court-appointed mediator or counselor to the court. For example, I have had

certifications, journals, tape recordings of the visitation blockages, and none of it was rementioned at all in the reports to the court. After three and a half years, there is no custody hearing so far.

On a different topic, it is time for the domestic relations bar to take a long, hard look at the unconstitutional treatment of fathers. The current gender bias should be denounced as pervasive and unconstitutional. The point I would like to make -- or the suggestion -- is that resulting from this Commission, there should be a formation, or at least a recommendation for a gender bias commission to document the nature and extent of gender bias in all domestic relations matters. This would have to do with custody, for example; the amount of jail sentencing for nonsupport payments; visitation interference and enforcement of laws; and this can be documented.

Another item I would like to talk about would be to provide workable legislation for professional accountability for lawyers; that is, consumer protection and ethics, and judges, ensuring that our laws are followed, and that litigants have equal protection under the laws. Unless attorneys are caught with a smoking gun in their hands, our current method of review, that is, lawyers protecting lawyers, will find virtually all actions "within the standards of reasonable diligence and promptness." We, as hard-working citizens, need consumer protection from greedy and neglectful representation.

The point I am making is: Remove the cloak of secrecy currently existing in ethic reviews, and place caps on how much it should cost to get a divorce based on family income, not the total assets of the family. My example, just briefly: In 10 months, my first lawyer took -- I shouldn't say that word -- he charged me \$20,000, and I had no parenting rights -- the first 10 months. Right now, my legal fees are about \$50,000, so that is about \$100,000 per family. I want my daughter to go to

college, and I don't know how I am ever going to be able to make up the \$100,000 of equity in my lifetime, that have gone to legal fees. I don't think that is going to happen.

Judges: They are not in their position to destroy lives. I assume it is not their job to do so. They are placed in a position of trust to protect fairness and apply the law. It is common for a judge to order the breakup of a father/child relationship. Judges have the ability and the duty to stop this tragedy. When judges use discretion that hardly resembles the laws of our State, they must be held accountable for not following their entrusted oath of office. Victims like myself are routinely victimized. Judges ignore existing laws; that is, to encourage frequent, regular contact between parents and children; visitation interference laws; alimony and maintenance award combinations that are reasonable and just, causing individuals to go through endless litigation, denying them their rights as individuals and parents. Case files are existing proof that family savings are depleted, are reduced to near poverty existence, as in my situation. Also, parents have had their previously healthy parent/child relationships severely compromised, if not lost due to a decisions that unnecessarily limits or ends relationships with their own children.

The current process routinely ignores the merits of individual cases, and the presence of existing laws that protect all of the parties involved. We must hold our government officials accountable for their professional conduct -- period.

Another point: Judicial reappointments should not be a rubber-stamp process. A system of judicial review needs to be implemented from the ground up, and that includes training and education for judges.

The impact of total support: That means total support -- alimony, medical bills, colleges, all of these things have

to be taken into consideration, along with the taxes and borrowing power of the noncustodial parent. The net result should end up in a comparable standard of living, which it does not.

Enforceable penalties, also, for visitation interference. I just wrote that down. We talked about that before.

I did add something on here, the idea that the State seems to go to great lengths to separate parents and children. Is it in the best interest of the child to financially destroy the noncustodial parent? I had to put this in, this phenomenon I call involuntary servitude while making a visitor. And I had to put this other added comment: You just can't put a man out in the street, and say, "Here, take care of yourself."

Basically, what I am trying to get at, at the very end here besides the suggestions, is that if it was required to have fair, reasonable support, as the laws state -- fair, reasonable, and just -- and to allow both parents to be involved with their children, I venture to say that the support collection problems would decrease, and it would be a benefit to the children.

That is all I have. Are there any questions? (no response)

MS. VON SEYDEWITZ: Okay, thank you.

The last person to testify will be Mark Chernek.

M A R K S. C H E R N E K: It has been a long day.

Divorce is a disease that plagues this nation, a growing epidemic that is killing the traditional family unit and destroying many lives.

MS. VON SEYDEWITZ: Excuse me. Could you please speak up a little bit into the mike? Thanks.

MR. CHERNEK: Okay, let me try this again.

Divorce is a disease that plagues this nation, a growing epidemic that is killing the traditional family unit

and destroying many lives, engulfing all who cross its path. The startling statistic that nearly one out of two marriages ultimately ends in divorce is enough to warn us that something is wrong. The alarm bell is ringing; it is time to wake up.

The emotional trauma that accompanies divorce is a nightmare. The happiness and dreams that spouses once shared are forever lost in the blink of an eye. It is at this point when our lives are in turmoil that decision making is at its worst. When the legal profession enters our lives, we entrust lawyers to guide, advise, and instruct us as to what the laws and the rights are in divorce. My separation was the first time that I had encountered the legal system. Other than high school and jury duty, I am getting an awful taste of how the American judicial system works; finding myself entangled in a spider web of legal bureaucracy from which there seems no escape.

From a citizen experiencing how the divorce system works, I can honestly conclude that not only are the laws of divorce unfair, but totally dysfunctional and in dire need of reform. The legal profession is the only winner of the divorce war, and the battles waged by the parties involved are almost always lost. The lawyers know a good deal when they have one. Give them an inch, and they'll take a mile. So why reform a system that only seems to line the pockets of lawyers we have employed to make decisions regarding our lives, which will ultimately affect us forever?

Divorce law reform must start at the top. Judges must be educated and experienced in dealing with people and their emotions. Judges must be held accountable for their decision making, for no judge is above the law. Judges are very powerful people. We trust them to set the example and give them the responsibility of making fair and sound decisions that affect the lives of us all. Judges must follow one set of laws, and not their own. They must be patient, impartial, and

nondiscriminatory in their judgments. Enforcement of laws must be equal and without prejudice. For those people who willingly disobey the orders of the court, punishment and sentencing must be carried out. The courtrooms of this State belong to the people, not the judges. Incompetence and wrongdoing by appointed officials should not be tolerated. Any judge that is found abusing his or her power has no business serving the good people of this State, and should be held accountable for his or her actions.

Lawyers must also be held accountable for their actions, for they are not above the law either. But the attitude I see tells a different story. Lawyers are like hawks, sitting on their perches just waiting for another meal to cross their path and be consumed. Laws must not be written so the lawyers can use them as tools or weapons. Laws are made to guide us and give us a sense of direction, so that we can live our lives as decent and honest people.

The domestic violence law is an example of a law that is abused by the legal profession and/or warring spouses. This law is the weapon of choice for lawyers, and when the bomb is dropped it causes mass destruction. All a person has to do is cry "Abuse," whether physical or sexual, and without any proof or evidence of wrongdoing, the accused now finds himself guilty of a criminal charge just by word of mouth. The domestic violence law was incorporated to help people where abuse or violence in the home was actually occurring. I don't think this law was intended to be used by lawyers to gain the upper hand in a divorce.

Another aspect of this law also deals with restraining orders. This, for the lawyer, means no communication between the spouses, which, in turn, means no reconciliation. The lawyers are laughing all the way to the bank.

Today, with the erosion of wages, many families depend on two incomes to maintain a middle-class lifestyle. It is no

longer the man's responsibility to bring home the bacon, but both husband and wife working together, equally, to maintain this standard of living. But in separation and divorce, men are forced to pay outrageous child support payments set forth by a guideline that is totally discriminatory towards the father, and does not take into account all the other monetary responsibilities the father has -- health care, life insurance, schooling for the children, such as college, child care expenses, and everyday basic living costs. Fathers are raped of their incomes, while mothers and children maintain a lifestyle that, in all reality, is equal to, or better than it was in the marriage. If a father tries to recuperate the difference in money lost to support through working a part-time job, then the mother is entitled to some of that income also. This practice is not only senseless, but so unjust and lopsided that this trend cannot continue.

Child support must be shared equally by both parties and must be reasonable and fair. Child support should only be based on a 40-hour workweek, and nothing more. Why should a wife be allowed to apply for more support on the hard work and sacrifice of the husband, who is just trying to rebuild his life and better himself?

Children are this country's most valuable resource. Watching a child interact with other children is a sight to see. They are honest, caring, and for the most part do not discriminate against one another. If we adults would just sit back and take the time to observe their behavior and learn from them, maybe, just maybe, this world would be a better place.

Being a parent is a huge responsibility. Child custody should be awarded to the parent who has taken a more responsible role in raising the children and doing what is in the best interest of the children. The automatic practice that mothers maintain custody must stop. We are doing more harm

than good. The children deserve much better attention by the courts than what they are currently offering.

With custody comes visitation. The child or children deserve to spend an equal amount of time with both parents; not this "weekend dad" syndrome, but quality time. Children deserve all the love and affection that a mother and father only can give. When a parent denies another parent visitation of his or her children, this is not only cruel to the parent, but has severe effects on the children with long-term ramifications. Why mothers are allowed to get away with refusing visitation to the father is beyond my understanding. Spouses who willingly deny visitation and use the children as pawns should be punished to the full extent of the law. Judges are very quick to incarcerate fathers for not paying child support, and at times it has been through no fault of their own. But these same judges seem to shy away from incarcerating mothers who willingly deny parenting time to the father. This double standard of enforcing laws has to end. This is pure discrimination, and it is happening every day.

In my opinion, it is easy to get a divorce. Why don't we just open up a store selling divorce kits, just like the papers advertise, and start selling all kinds of divorce products. We could even have free giveaways. This store, I assure you, would never go out of business. Now, I am not saying that people should not be allowed to divorce. There are many reasons for divorce, and many times divorce is justified and best for all parties concerned. What I am suggesting is that before a person can even file for a divorce, there should be some form of mediation. Then, if reconciliation is not possible, at least maybe the spouses will be more reasonable with one another. There should also be some type of marriage counseling system that tries to deal with the problems the couples are having. Maybe a few marriages can be saved.

Rather than encouraging divorce, we should try to get into the practice of discouraging divorce.

In closing, I would like to thank the Commission for your efforts in stirring up the laws of divorce. We, as residents of this State, must join together in finding a more equal solution to the divorce epidemic, and stop pitting men against women. The practice must stop, and it is time that we, as a people, start to take responsibility for our own actions, not just in divorce, but also in our everyday lives.

To my two beautiful daughters, Melissa and Rebecca, I hopefully set an example for you, so that some day you will not have to endure the pain and suffering that I have. I pray and hope that as you grow and mature, your lives will blossom in a nation that stands strong on its foundation. A house divided amongst itself cannot stand. It is time to build a new home, rebuilding a system that works and that does not destroy the family foundation.

I, also, have been a person falsely accused of domestic violence. It was not easy for me to come up here and testify today. I would just like to say that one of my suggestions to the Commission, to get down to the route of the problem, is that child support should be equal between both parties. Money that comes from both parties has to go into some kind of an escrow account, not just into-- My wife gets the money, and I don't even know how it is spent. I don't even know if it is being spent on our children. There has to be some type of system set up where we know where that money is going.

I also think child support should be tax deductible. If a wife does not work and she was not trained -- she was a house mother -- then it is our responsibility to get her back in the workforce and get her into the job market. Women fought very hard for equal rights. They are just as much a part of

the job market today as men are. They have every responsibility to work just as a man does. The pressures are on them, too.

As job income goes up and down in the economy we see failing, so should our child support payments. If I lose my job, then the child support payments should come down. If I get a job that is better, that pays more money, then I would be apt to give more money.

Domestic violence and false accusations must be punishable. If people make false accusations, you must punish them. It is too easy to just go down to your local police station and say, "This man hit me," or, "He did this, he did that," whatever. There are always arguments in marriages. We all have had arguments. This has to stop.

College education: If the parents cannot afford it, you shouldn't have to pay -- period. Fathers should not be forced into paying college expenses. In a marriage, when you cannot afford to pay, you don't pay. When the child-- At that time, he is old enough to be on his own, or whatever. This is unconstitutional. At 18 you are of legal age, and that's it. Done. You are legal to be an adult, then be an adult and take the responsibility of an adult.

The other thing I would like to suggest is, let's try to keep the time limits to 10 minutes in these hearings, because you can just go on and on and on and on and on and on.

MS. VON SEYDEWITZ: Ten minutes is the limitation.
(laughter)

MR. BRODERICK: That is not counting the time that people are asking questions.

MS. VON SEYDEWITZ: Right. We try to take that into consideration.

MR. CHERNEK: Right, right, but what I am saying is, just keep the people to 10 minutes. You know, if you have questions, then it goes over.

MS. VON SEYDEWITZ: Right, that is pretty much what we have determined. Thank you.

MS. FLOHR: Have you submitted a copy of your written testimony?

MR. CHERNEK: I will submit this in typed form to this Commission. I will get you 15 copies.

MS. FLOHR: I would appreciate that.

MR. CHERNEK: Okay. Are there any other questions?

MS. VON SEYDEWITZ: No, but I also want to say -- I know that Ms. Flohr made that recommendation -- for those people who cannot, whether it is time or they do not have access to a typewriter, or whatever, we will all have copies of your testimony via the transcript.

MR. CHERNEK: I just needed to get this off my chest, because I'll tell you, the frustrations in the legal system are unbearable. It has to stop.

MS. VON SEYDEWITZ: Right. I just said that because Mr. Morehouser is very concerned that he did not have testimony to hand out. But we will all get it back in the transcript.

MR. CHERNEK: Thank you.

MS. VON SEYDEWITZ: The meeting is adjourned.

(MEETING CONCLUDED)

APPENDIX

#1
Bonnie Parker

PROPOSAL TO CHANGE THE TERMS CUSTODY and VISITATION

As an employee of Ocean County Probation working in the Dispute Resolution Unit, I have had the opportunity to work with families going through the agonies of separation and divorce, as a mediator and an evaluator. What I have heard and seen in most of the several hundred cases I have dealt with is the battle over who will have custody of the kids. Some of these battles rage on for years, destroying people's lives financially, mentally and emotionally. The casualties of these wars are always the children. Some of them never recover.

The Court works hard to encourage parents to settle their cases through Early Settlement Panels and/or mediation, but very often the litigants are back in court, struggling to change or keep from changing the arrangements that were stipulated in the Final Judgement of Divorce. There are many problems connected to the divorce process that affect entire families, most of which the legal system has no ability to address, and some of which it is limited to remedy. Offering mediation, parenting education, case conferencing and other court services can be helpful in many cases and may expedite a painful experience and provide alternatives to Court imposed orders and sanctions, but I believe there is something else that needs to be done. Something basic, something organic.

I propose that, in order to effectively carry out the public policy of the State to assure minor children of divorced or separated parents frequent and continuing contact with both parents and to encourage parents to share the rights and responsibilities of child rearing (1) is to change the words "custody" and "visitation" to a word or words that more accurately reflect the meaning and intention of that policy in the Court Rules and State laws governing divorce and separation. A term that encompasses the rights and responsibilities of child rearing is "PARENTING".

Perhaps some of the power struggle that ensues in an adversarial divorce action is due to the assignment of terms to one parent as "custodian" and to the other as "visitor". The parent who gets to be custodian usually has greater power by being able to control the children and many of the decisions consequent to having possession of the children. Even when joint custody is awarded, there is usually one parent who is assigned as "primary" residential custodian. The "primary" residential custodian makes most of the day to day decisions for the children. Those decisions may not seem to be of any great consequence, but taken as a whole, constitute a great influence and control over the children. There is, quite simply, more power implied in the terms "custodian" or "primary".

Being assigned to the role of visitor for a parent automatically strips that parent of an equal share of the rights as well as the responsibilities of that parent. If the "custodian" has ownership and control, what does the "visitor" have? Usually the "visitor" has the obligation to pay support to the "custodian". The laws and Court rules governing child support require both parents to share in the financial support of the child, each in proportion to their income. While it is true that most fathers who have been designated "visiting" or worse yet, "absent" parent, have a greater income than most mothers who have been designated "custodial parent" and therefore, are obligated to pay their share of the child support to the custodial parent, there is evidence of a direct correlation between failure to pay or problematic payment of child support and visitation problems. The connection between these problems suggest that there is a struggle to balance the power structure between the parents. The visiting parent, feeling powerless to be an influence over the child he helped create, can wield some leverage over the custodial parent economically by withholding support.

Another complaint often voiced, but by the custodial parent, is that the visiting parent has all the fun and none of the work or problems associated with child-rearing. This may be true in some cases, but most "visiting" parents will tell their version of being the visitor means feeling left out of their children's lives in very meaningful ways. Their relationship with their children is often superficial and sometimes strained. It is not true that it is the quality of time spent with the children that counts, not the quantity. The quality is important, of course, but relationships take time to develop and to be able to nurture a relationship, one needs quantities of time.

I believe that by changing the terms "Custody" (to Parenting Responsibility) and "Visitation" (to Parenting Time), a shift in thinking can take place. By using these new terms, a message is sent that society expects and assumes that both parents will continue to parent their children, even though their relationship as a couple is ending. Using these terms can create a psychological frame of reference to the proper roles of parents which children have a right to expect to continue, no matter how their parents feel about each other.

By calling the time each parent spends with their children "parenting time", mothers and fathers can expect to spend that time doing the things that one does as a parent- feeding, clothing, teaching, nurturing, healing, soothing, relaxing, playing, disciplining, protecting, encouraging and loving. Every child has the right to a

private relationship with each parent, a relationship that should be honored by the other parent. If each parent's relationship is seen on an equal basis, which the term "parenting time" implies, the sacredness of that relationship is more likely to be respected.

Not all couples with children who are dissolving their relationship will be able to work out an arrangement that honors the parenting relationship, but perhaps some, who have heretofore been caught up in the power struggle defined by the terms "custody" and "visitation", can start from a point of equal footing as parents and work out an arrangement that is in the best interests of the children. Perhaps some children will no longer be embarrassed by having to admit that one of their parents is a "visitor". Instead, they can feel safe, secure and loved by having two homes and a parent in each home.

Visitation should be reserved for grandparents, aunts, uncles, and siblings, not parents. Custody is a term that should be reserved for ownership of material goods and property, not children. Parenting is an obligation to guide children into maturity. It is not a title of ownership, it is a title of stewardship. Changing the language of the laws regarding parenting can change the way of thinking about what parenting really means, and, hopefully, change for the better the way parents relate to each other and their children after they end their union.

Let us begin today to use new language in our conversations with and about separated and divorcing parents. Let us begin to think in terms of how the parenting relationship can be preserved, for the sake of the children. As professionals who are in a position to influence the thinking of our clients, we have an obligation to impart the essence of the public policy regarding children. Let the State of New Jersey be among those states, including Colorado, Vermont, Washington and New Mexico who have changed their laws to reflect a new understanding and attitude toward divorcing and separating parents and their continuing responsibilities to their children.



(1) New Jersey Transaction Guide; Eds: E. Judson Jennings,
Christopher Clancy, James Boskey

2.A X

JOHN GRACE
558 WEST SCOTT AVENUE
RAHWAY, NEW JERSEY 07065
(908) 388-8606

March 1, 1994

Dear Honorable *Walter J. Kavanaugh,*

I would like to arrange an appointment, at your convenience, to clarify the contents in this letter:

Biological fathers who run from their responsibilities are truly "deadbeats" and should be held responsible to the fullest extent of the law. However, **NOT ALL** biological fathers who discover they are "fathers" through DNA testing "run." Also, DNA testing is not performed on **ALL** parties involved.

The current system can easily deny biological fathers basic parental rights of visitation and the omission of their name on their child's birth certificate. The current system also allows an option to waive parental rights provided the biological father pays the biological mother \$50,000 instead of child support.

The moment the biological mother moves out of state, verbal agreements (as advised by an attorney) to visit the child ends. If the mother chooses to marry, she could use her husband's name, without the husband legally adopting the child and notifying the biological father. A happy, healthy child deserves a "Mom" and "Dad". In most instances, the "Stepdad" wants a fresh start with no involvement with the biological father. A step parent chooses to **ACCEPT AND ASSUME ALL** responsibility for his wife and stepchild. The stepparent's acceptance of responsibility is recognized in New Jersey through the legal mechanism of adoption and in Wisconsin through marriage, thereby terminating **ALL** parental rights and child support obligations - a fresh start.

If a biological father is denied **ALL** legal ties to his biological child, why is the biological father legally responsible? Why does marriage and adoption not carry the same legal weight in New Jersey?

I would like to amend existing child support laws with the following:

ALL parties involved, within 40 days of conception, be given a DNA test.

The DNA tested parent is to be offered:

1. The right to be included on the birth certificate, retroactively.
2. Discussion of visitation.
3. Realistic child support arrangements in line with current economic circumstances.

ALL DNA tested biological fathers, who have made contributions to fulfill their obligations; beginning and included in the year 1989 are to be Grandfathered, such that parental rights of visitation, recognition as a parent on the birth certificate and child support obligations will be retroactively and legally terminated under the following provisions:

1. The child is legally adopted.
2. The biological mother legally married.

Once the law is amended, separation from spouse, divorce, or death of spouse will not be cause to reopen the case. It is final, unless mutually agreed upon by both parties and that payments are warranted in line with the then current economic circumstances.

Your comments and suggestions are greatly welcomed and appreciated. **PLEASE** notify me of the outcome of the above amendment. Feel free to contact me at the address above, however, if you call it is best to call before 11a.m.

Sincerely,


John Grace



NOW - NJ

NATIONAL ORGANIZATION FOR WOMEN OF NEW JERSEY

NOW-NJ TESTIMONY FOR THE COMMISSION TO STUDY THE LAW OF DIVORCE MARCH 31, 1994

Hello, my name is Myra Terry and I am President of the National Organization for Women of New Jersey. NOW-NJ represents 12,000 women and men in every county of this state.

Before I begin, NOW-NJ would like to go on record to request that this commission meet in various easily-accessible locations, at various times of the day and evening, and that the hearings be announced at least one month in advance. Because many people who could contribute relevant testimony are often burdened with work and child care responsibilities, we ask that everyone is given ample time to free their schedules. If you're going to be sensitive to the issues that affect women, the first step would be to make these hearings other than at 2:00, the most difficult time for women with school-aged children to attend.

The National Organization for Women of New Jersey is pleased to address this newly founded commission that will identify and correct the many injustices that exist in family law.

Before becoming President of NOW-NJ, I worked as a divorce mediator and divorce counselor for over ten years. All too often I saw families emotionally and financially devastated by break-ups. Prompted by what I saw first-hand, I also became head of NOW's Divorce Reform Task Force.

NOW's primary focus today is to establish a wide range of goals for this commission. We believe its agenda should be identifying ways that the divorce system can be made fair and equitable for *everyone* involved, including, but certainly not limited to, non-custodial parents.

Women and children, especially those in single parent households, are the fastest growing segment of our population in poverty. Female-headed families in the U.S. are four times as likely to be poor as male-headed or couple-headed families. At the present rate by the year 2000, the poor will be made up almost entirely of women and children.* NOW refers to this phenomenon as the "feminization of poverty."

One reason for this is that women's contributions to their families have not been financially valued and compensated. Time spent in the home rather than in the job market prevents equal access to education, work experience, pay parity, seniority, promotions, pensions, social security benefits, and health insurance.

This coupled with other social ills - such as being "mommy-tracked," juggling career, child care, and elder care, battling harassment and discrimination in the workplace - results in New Jersey's working women earning \$.52 for every dollar men earn.**

Divorce often results in a steep drop in income for the ex-wife and a rise in income for the ex-husband.*** The economic change in children's lives often alienates the affection for the poorer parent and creates artificial value and admiration for the parent that can provide more. Many women drop to poverty level and below due to the failure of the court system to award women an equal share of the disposable income. Even if they are awarded their fair share, they aren't guaranteed to ever see it.

Alimony is equally vital to the survival of women and children after divorce, therefore the state must enforce alimony awards as rigidly as it enforces child support awards.

Many pieces of legislation which have attempted to correct the problem of child support enforcement have ignored the enforcement of alimony orders. *Any attempts to improve enforcement, such as garnishing, tax refund intercepts, and liens on property, must address both child support and alimony as equally valid and crucial to the survival of women and children after divorce.* New Jersey should also study the example of states like New York to find ways to make enforcement more efficient, by cutting through bureaucracy and making one agency accountable.

Popular music often reflects what's going on in the world around us. One of the current top Country Western songs really describes the reality many women experience after divorce. It's by Mary Chapen Carpenter:

When she was 21 she wore her mother's lace,
At 29 she delivered number three,
At 36 she met him at the door
She said she doesn't love him anymore,
Now she's in the typing pool at minimum wage.

This commission and the legislature must be fair, honest, and thorough in understanding the short and long-term needs of families going through divorce, and make awards that are livable and just. The feminization of poverty must be addressed. With your fairness and help, we can make New Jersey a more equitable place to live.

* National Advisory Council on Economic Opportunity

** US Census, 1990 ("Boxed in and Breaking Out," NJ Women Count)

*** Seager, J. and Olson, A., Women in the World: An International Atlas, 1986 ("More and More on their Own," NJ Women Count)



JEFFREY A. BARNES, D.M.D.

941 White Horse-Mercerville Road
Trenton, NJ 08610
(609) 585-2700

3-29-94

Ms. Patricia K. Nagle
Commission to Study the Laws of Divorce
Legislative Office Building
135 West Hanover St.
CN-067
Trenton, N.J. 08625

Dear Ms. Nagle and other commission members:

I was divorced in 1981 and am a 48 year old Trenton dentist with \$20 in my savings. I have been in family court in 1979,80,81,83,84, 85,93, and 94, and have spent about \$100,000 in child support and legal fees.

My ex-wife has over \$200,000 in equity and has income of about \$70,000/year. We have one 20 year old child from our marriage that refuses to get a regular summer or vacation job having worked last year no more than 3 weeks having 5 months off during the year and who is a college student that last semester went to school for 1 1/2 days during the week and hasn't past a liberal arts course in a year.

We're in a system that pays the same child support whether the custodial parent earns 5 or 50 thousand dollars that seems to be more obsessed with supporting women than children and alienates men from their children by encouraging alienation because it is more profitable for women the further fathers are away from their kids.

I have a sick wife and 2 sick kids at home.

This information qualifies me as an expert through experience. Any testimony today from "militant women's groups" goes to justify what I've said. "Dead beat Dads" are created by this system. They pay 50% in taxes, 30% for lodging, about 15% in child support for one kid, leaving about 5% for food, clothing, transportation, insurances, etc. No wonder there is a problem with child support.

I'm not only here to complain but because I have the answer.

Parents should be considered equal at the time of divorce. Keep gender out of this. Custody goes to the parent(s) that want it and/or can afford it just as the decision to have children is made by mature adults when they can afford the responsibility. If both can afford it by their own decision, then one takes summer and one the school year. If neither wants it the child goes to the state. Equitable distribution of marital assets can make up for disparity of \$ worth. This is not tough! It is only made complicated by people trying to get over!

Sincerely,


Jeffrey A. Barnes DMD

Bruce Eden
Chairman, Board of Directors
P.O.Box 615
Wayne, N.J. 07474
1 201 696-5448



March 31, 1994

RE: Testimony Before the Commission
to Study the Laws of Divorce

To the Commission:

The right of parents to the care, custody and nurture of their children is of such character that it cannot be denied without violating those fundamental principles of liberty and justice which lie at the base of all our civil and political institutions, and such right is a fundamental right protected by the First Amendment of the Constitution of the United States of America as well as Amendments 5, 9, and 14.

Article I, Paragraph 5 of the New Jersey Constitution:

"No person shall be denied the enjoyment of any civil or military right, nor be discriminated against in the exercise of any civil or military right, because of sex."

CUSTODY, VISITATION AND CHILD SUPPORT ISSUES

In New Jersey over 95% of all custody in divorce cases is given to women. (See Attachment #1) Even the New Jersey Chief Justice, Robert Wilentz, is biased against men. In a Star-Ledger article, dated Tuesday, January 5, 1993, pg. 14 (See Attachment #2), he was quoted as saying "In the courts of this state you had better not mistreat a woman. You had better not harm her, or hurt her or there is going to be trouble, and not just from women." What about men and children, Mr. Chief Justice? Are they just cannon fodder in the divorce war?

Federal Government statistics show that over 75% of non-

custodial fathers pay child support in full or in part. Last year alone over \$11 billion out of an owed \$14 billion was paid nationally. Yet, the Federal General Accounting Office released a report, "Interstate Child Support—Mothers Report Receiving Less Support From Out-Of-State Fathers", GAO/HRD-92-39FS at page 19, which showed that fathers were unable to pay child support. (See Attachment #3).

Almost 50% of non-custodial mothers don't pay child support. (from Custodial Fathers: Myths, Realities and Child Support Policy, Technical Analysis Paper No. 42, Meyer and Garansky, U.S. Dept. of Health and Human Services, Office of Income Security Policy, October 1991). (See Attachment #4).

Who goes to jail for failure to pay child support? 98.5 percent of those arrested and jailed are men. There have been six statewide child support raids to date since October 5, 1989. On average 511 men have been arrested in each raid and only 9 women have been arrested in each raid. These statistics can be verified by the numbers arrested in each raid and reported in the 10/5/89, 5/10/90, 12/12/90, 6/2/92 and 12/15/93 Star-Ledgers and reported in the 12/11/91 and 6/2/92 Bergen Record.

In New Jersey, approximately 300-400,000 children are denied access to the non-custodial parent. This is based on Federal statistics of a median figure of 38% interference and at least one million divorced families in New Jersey at this time. Federal statistics show that approximately 50% of non-custodial fathers are denied visitation rights which is discriminatorily condoned by the Courts. (See Attachment #5). In New Jersey our organization is surveying visitation interference and preliminary indications with over 250 people responding to our survey show that there is over 75% visitation interference in their relationships with their children or grandchildren. The New Jersey Family Courts condone this behavior and refuse to enforce visitation rights because they say they do not know how.

When fathers have enforced visitation rights and/or joint custody they pay child support on time and in full 80% and 90% of the time, respectively. (See Attachment #5). There is a significant correlation between seeing one's children and paying child support consistently. A large part of juvenile violence can be attributed to visitation interference and removal of the father from the childrens' lives.

There is one catch to the collection of child support under the Federal Title IV-D program. The Tenth Amendment of the Constitution of the United States of America bars the Federal government from imposing coercive and therefore unconstitutional regulations upon the individuals of the states that it seeks to fund for child support enforcement

programs. In a recent U.S. Supreme Court case, South Dakota v. Dole, 107 S.Ct. 2793, 2798, 483 U.S. 203, 210-11 (1987), the Federal government's spending clause and commerce clause power may not be used to induce states to engage in activities that would themselves be unconstitutional. A grant of federal funds conditioned on invidiously discriminatory state action or the infliction of cruel and unusual punishment would be an illegitimate exercise of the Congress' broad spending powers. It is obvious that there is discriminatory action going on by New Jersey and other states, in that state courts routinely award women custody of children in 90-95% of all divorce cases, order that men pay child support in at least 85% of all cases, incarcerate only men (98-99% of the time as evidenced by discriminatory "deadbeat dad" raids) in child support arrearage cases, aid battered women extensively while refusing to help battered men in divorce situations, deny visitation access of children to their fathers in over 50% of cases, provide court paperwork, regulations, forms, etc. that is geared against men in divorce actions. The discriminatory incarceration of men for nonsupport is in direct conflict with every state constitutions' mandate that there is no imprisonment for debt. Unless so stated specifically in each state constitution, there can be no imprisonment for child support or alimony debt in any action or upon judgment founded upon contract. Since obligors and obligees (support payors and receivers) are legally defined as parties to a contract, any support arrearages become a judgment or debt and falls under the purview of each states' constitutional axe prohibiting imprisonment for debt. Imprisonment for child support or alimony debt are further deprivations of liberty and are denials of Due Process and Equal Protection of the Laws, depriving individuals of basic human rights which is cruel and unusual punishment.

Furthermore, applying the U.S. Supreme Court holding in South Carolina v. Baker, 108 S.Ct. 1355, 1361, 485 U.S. 512-13 (1988), the Tenth Amendment will act as a bar against the Title IV-D child support enforcement program because the political process failed when instituting these federal laws and regulations upon the states. Child support enforcement laws were imposed by the vote of an uninformed Congress relying upon incomplete information. The states also were involved. Unequivocally, fathers rights groups, family rights groups and many individuals were shut out of presenting their testimony and evidence at these hearings to pass child support enforcement laws. Only women's groups and child support enforcement advocates and personnel were allowed to testify. Many groups were told there wasn't enough time for their testimony. Subsequently, these laws were rammed through Congress without balancing amendments protecting the rights of non-custodial/payor parents. The laws have yet to do the job they were intended for and, thus, the political process operated in a defective manner.

The Federal government is further violating the Tenth Amendment by usurping its authority in imposing child support laws and regulations upon the states which has caused significant and direct interference with family choices because the Federal laws are an enticement to break up families. The Federal support enforcement laws do not impose "reasonable" regulations upon the states. Federal laws are supposed to "induce and encourage" states to follow the federal mandates in order to get federal funding. Instead the laws "coerce" the individual and are therefore unconstitutional. The child support laws have become an insidious mechanism to destroy families by making it easy for divorce and single parent families.

CHILD SUPPORT -- IMPRISONMENT FOR DEBT ISSUES

Fathers are routinely jailed unconstitutionally for non-support and other financial issues. They are then unconstitutionally co-mingled with hardened criminals in violation of the 8th Amendment of the U.S. Constitution: "No cruel and unusual punishment shall be inflicted". This co-mingling of fathers or any other non-criminal or pretrial detainee has been ruled unconstitutional by the United States Supreme Court in Jones v. Diamond, 636 F.2d 1364 (5th Cir. 1981).

These jailings for non-payment of support (for whatever reason including but not limited to layoffs, strikes, unemployment, underemployment, catastrophic illness or disability) violate:

Article I, Paragraph 13 of the New Jersey Constitution:

"No person shall be imprisoned for debt in any action, or on any judgment founded upon contract, unless in cases of fraud..."

The controlling case on this is one the New Jersey Supreme Court made very clear— State v. Madewell, 63 N.J. 506 at 512 (1973):

"Statutes or ordinances, designed as debt collecting devices under the guise of penal laws, contravene the constitutional prohibition against imprisonment for debt. Thus, the legislature may not circumvent the prohibition by rendering criminal a simple breach of contract, the nonpayment of debt, or the failure to use one's own money for a purpose other than for payment of debts."

The Constitutional prohibition against Imprisonment for Debt is very clear and not ambiguous. Saying it is a civil contempt or violation of a court order doesn't matter. If it involves money judgments it involves debts. In fact under

N.J.S.A. 2A:17-56.23 and N.J. Court Rule 5:7-4 (b) child support or alimony payments become a judgment by operation of law on their due date. Since child support payors are called obligors and those who receive are obligees, these two terms indicate that they are parties to a contract.

The Probation Services Division, Administrative Office of the Courts put out pamphlets that Child Support is a DEBT. (See Attachment #6).

Even the Federal statutes declare child support to be a debt. Title 42, Section 656 (2) (b) of the United States Code states: "A debt which is a child support obligation assigned to a State under section 602 (a) (26) of this title is not released by a discharge in bankruptcy under Title 11". (See Attachment #7).

Furthermore, jailed fathers are placed in immediate danger and immediate threat to their lives. AIDS and TB epidemics are running rampant in the jails. Passaic, Essex, Camden are some of the worst conditions. (See Attachment #7).

AIDS has now been declared a DEADLY WEAPON by a U.S. jury in Miami, Florida. (See Attachment #8). If a father is being threatened with jail for non-support and is placed into this environment, it is ATTEMPTED MURDER by the judge.

ALLEGATIONS OF DOMESTIC VIOLENCE IN DIVORCE

False allegations of Domestic Violence have become an obvious truth. (See Attachment #9). It is becoming a growing problem because of the ease which the law is used as a "First Strike" weapon to get a spouse, usually the husband, out of the house, to gain possession of the property and the children. It is used and recommended by unscrupulous attorneys to terminate parental rights of the father in most cases involving a divorce action.

According to the Administrative Office of the Courts, almost 40% of cases are withdrawn, dismissed or denied. (See Attachment #10). The figure is probably closer to 75% based on re-litigation.

Domestic violence by women against men is becoming a major problem, but no one wants to address it. (See Attachment #11). There are many studies to prove domestic violence is a two-sided issue and not just a women's issue. (See Attachment #12).

In New Jersey, the Legislative intent of the Domestic Violence Laws are described in N.J.S.A. 2C:25-18:

"The Legislature finds and declares that domestic violence is a serious crime..."

Yet, in another section of the law, N.J.S.A. 2C:25-29 (a) it states that proving allegations of domestic violence in the complaint shall be by a preponderance of the evidence.

If Domestic Violence is a crime, beyond a reasonable doubt standard must apply to the thirteen (13) underlying criminal charges (ranging from Homicide to Harassment), and not preponderance of the evidence standard which only an allegation is necessary for proof in New Jersey. This is an unconstitutional application of the law and the law should be declared as such.

State taxpayer monies are given out liberally for Domestic Violence programs to help battered women, but not 1-cent has been given out to help battered men.

Where are the battered men's shelters in New Jersey? Where does a father and his child go when the wife is out of control? Where are the programs for out-of-control women?

Do men have to kill in self-defense on an "irresistible impulse" to bring attention to this issue?

No state or federal funding should be made available for Domestic Violence programs until the "battered husband" issue is as extensively and equally addressed as the "battered women's syndrome".

Anyone making an allegation of Domestic Violence should put up collateral in the form of cash, bond, or some other security, to protect against the deprivation property and liberty rights and/or costs and damages that may be incurred by the allegedly accused if falsely accused or found innocent. False allegations of Domestic Violence should be punished with jail time, heavy fines, civil damages and loss of custody.

ALLEGATIONS OF CHILD ABUSE IN DIVORCE

False allegations of child abuse and child sexual abuse in divorce cases is a serious problem. When a person is accused, it immediately terminates the parental rights of the accused, even without ever being found guilty.

Federal and state statistics (See Attachment #13) show the highest rates and numbers of child abuse are done by mothers. In the recently released 1992 Annual Report on Child Abuse and Neglect in New Jersey, the N.J. Division of Youth and Family Services disclosed that mothers account for 58% of all abuse of children, whereas fathers account for only 18% of abuse of children. In fact, mothers comprise 89% of the total of female perpetrators of child abuse. Step-fathers and male paramours were perpetrators of child abuse

in 21.3 percent of child sexual abuse reports.

Therefore, giving sole custody to mothers in divorce increases the odds of children being abused by more than 3 to 1. If the mother has a paramour or re-marries, the odds of abuse happening go up substantially more. The obvious solution is to give fathers custody of the children, except where abuse is proven beyond a reasonable doubt, for the ultimate protection of the children.

False allegations of child abuse should be punished with jail time, heavy fines, civil damages and loss of custody. Anyone making an allegation of Domestic Violence should put up collateral in the form of cash, bond, or some other security, to protect against the deprivation property and liberty rights and/or costs and damages that may be incurred by the allegedly accused being falsely charged or found innocent.

COSTS OF DIVORCE

Divorce costs American business between \$60-\$80 Billion annually. By extrapolating figures from the Ohio Psychological Survey on drug abuse in the workplace, conducted in 1991, it found that divorce was higher on the list of lost productivity in the workplace than drug and alcohol abuse.

Divorce is the single greatest cause of defaults on home mortgages in the United States and one of the greatest contributors to Chapter 7 bankruptcies.

The cost to children will be much greater. We already see Juvenile crime on the upswing. Juvenile crime is a product of broken homes and single-parent female heads of households. It is no longer an inner city problem but is rapidly becoming a middle class problem as divorce becomes more prevalent.

Three out of four juveniles in youth correction facilities are from single-parent families (Bureau of Justice Statistics, 1988).

Children of divorce are 5 times as likely to be suspended from school; 3 times as likely to need psychological counselling; 2 times as likely to repeat a grade. (Dr. Gene Brody—Study of Competence in Children and Families).

Children from single-parent families are absent from school more; late to school more often; and show more health problems. (Dr. Gene Brody—Study of Competence in Children and Families).

75% of adolescent patients at chemical abuse centers are

from single-parent families. (Center for Disease Control, Atlanta, Georgia).

63% of youth suicides are single-parent children. (F.B.I. Law Enforcement Bulletin--Investigative Aid).

Every 78 seconds a child attempts suicide; every 90 minutes one succeeds. (National Center for Health Statistics).

70% of teen pregnancies are single-parent children. ("Children in Need: Investment Strategies for the Educationally Disadvantaged"--Committee for Economic Development).

50% of non-custodial parents are forced out of their children's lives by the custodial parent and/or the courts. (National Institute of Child Health and Human Development).

Ongoing parental conflict is associated with poor school performance, lower grades, less social competence with peers, and more behavior problems at school, and self perceptions that they were less intelligent and popular than their classmates. (House Select Committee on Children, Youth and Families--Dr. Neil Kalter).

1987 Harvard University Study: 18-23 year olds whose parents recently divorced:

- 66% felt alone, angry, sadness
- 73% women had trouble with studies
- 33% men had trouble with studies
- 20% increased consumption of alcohol
- 37% had sleeping problems
- 27% had eating problems

There are approximately 300-400,000 children in New Jersey who are denied access to their non-custodial parent.

In order to "stop the bleeding" caused by divorce, we must first get rid of NO-FAULT divorces. We've seen how NO-FAULT insurance works--it doesn't. Only the legal industry profits on anything that is NO-FAULT. No-fault is everybody's fault except the lawyers. Approximately \$1 Billion per year is spent on divorce in New Jersey. The average cost of a divorce in New Jersey will run \$30,000 per person. There are between 35,000-45,000 divorces per year in New Jersey. Mediation and arbitration is the only answer to stop divorce. Force both parties into mediation and arbitration. Sanction the uncooperative party if they cannot reach an agreement. By all means keep divorce and children of divorce out of the Court system and away from the legal industry.

SCANDAL UNCOVERED GOVERNMENT RESISTS EXPOSURE

Divorced Dads Against Discrimination, which is based in Waukesha, Wisconsin, has uncovered a scandal within the Department of Health and Social Services here in Wisconsin which makes the Watergate Scandal look like a walk in the park. The problem is occurring within the Bureau of Child Support Enforcement and the results is the dissemination of erroneous child support information with hyper-inflated statistics relating to, number of children not receiving support, amount of monies which exist in arrearages, number of delinquent payers and the overall percentage statistics which are extrapolated from these false figures. The DDAD president, David A. Nowicki, has confirmed, by the admissions of the Milwaukee County Clerk of Courts, Gerald Barczak, and the Waukesha County Child Support Division program coordinator, Carol Anderson, that the information transmitted to the State Legislature, State Senate, Wisconsin DHSS, Federal Agencies, and ultimately to the Federal Legislators is false. The information given to the Federal Legislators is used to create laws which are in fact based on over exaggerated or blatantly false facts. DDAD has attempted to access this information so as to set the records straight and have met with severe resistance from the Wisconsin DHSS and its Bureau of Child Support. The Child Support Bureau's director, Joseph Stafford, has refused to turn over the data.

Some of the above mentioned inaccuracies which severely skew statistical data are as follows; Names of deceased individuals and their arrearages remain on the list and continue to grow, Incarcerated individuals and their arrearages remain on the list and continues to grow, Unemployable and Disabled along with their arrearages remain on the list and continues to grow, Individuals paying directly are shown as not paying and false arrearages accumulate, Individuals in arrears are never notified of arrearages many of which have no knowledge of arrearages, Individuals unemployed for temporary periods and without income are continued on delinquent list even when they are back to work and paying support again. Along with these an individual may be counted as many as four times which inflates the number of individuals in arrears and severely distorts the number of dollars not paid as well as the number of children not receiving support.

DDAD has been in contact with members from other States and believes this problem may also exist in states other than Wisconsin. Taxpayers must ask themselves why is this occurring? Why is the DHSS refusing to assist DDAD in correcting these gross inaccuracies? Individuals should ask their congressmen why these problems are not being corrected? Is there a political reason for this scandal to continue and who benefits by it? Lets stop wasting our elected officials time with a problem which may be much smaller than previously portrayed. As a Nation, we may be looking at as little as 1% of non custodial parents are not paying out of choice. This is a far cry from the picture the Government has been led to believe exists with regards to the image of parents who pay support.

The only way to stop the dissemination of false information is for everyone to call their state and federal elected officials and demand a full investigation. Do It Now !!!!! Gov. Thompson, Senators Kohl & Kasten are aware of this problem. Contact them and demand a full investigation.

David A. Nowicki, President
Divorced Dads Against Discrimination
Box 2022, Waukesha, WI 53187

GAO

United States General Accounting Office
Fact Sheet for
Congressional Requesters

January 1992

INTERSTATE CHILD SUPPORT

Mothers Report Receiving Less Support From Out-Of-State Fathers



GAO/HRD-92-39FS

Selected Characteristics of Custodial Mothers in In-State, Interstate, and "Other" Child Support Cases

In this section, we provide information on the reasons given by custodial mothers for not having support awards, for not receiving regular support payments, and for receiving public assistance, IV-D child support services, and health insurance. In addition to comparing child support characteristics of mothers in IV-D and non-IV-D cases, we present selected socioeconomic and child support characteristics of all custodial mothers by noncustodial fathers' residence.

Some Mothers Do Not Want or Pursue Support; Some Fathers Refuse to Pay or Cannot Be Located

A surprisingly high percentage of custodial mothers indicated that they did not want or pursue support, and a fairly high percentage indicated that fathers refuse to pay. A much higher percentage of the custodial mothers who reported noncustodial fathers' residence as "other" (compared with mothers in both in-state and interstate cases) cited an inability to locate the noncustodial father as the reason for not having child support award and not receiving support payments regularly (see table 5.1).¹

Table 5.1: Reasons Cited by Custodial Mothers for Not Having Child Support Awards and Not Receiving Regular Support Payments, by Noncustodial Fathers' Residence (Spring 1990)

Reasons for lack of award	Noncustodial fathers' residence		
	In-state	Interstate	"Other"
Final agreement pending	6%	7%	
Other financial agreement made	7	4	
Wanted support but:			
Did not pursue award	21	19	
Father financially unable to pay	17	12	
Unable to locate father	7	17	
Unable to establish paternity	3	2	
Other	17	15	
Did not want support	22	24	
Total	100%	100%	1
Reasons not receiving payments^a			
Father unable to pay	66%	66%	
Unable to locate father	5	16	
Other	29	18	
Total	100%	100%	1

^aIncludes only mothers who were expecting payments.

^bNumbers do not add due to rounding.

¹This is not surprising considering the high percentage of these mothers who indicated that they did not know the residence of the noncustodial father.

#3

Child support performance: Males vs females*

Single-parent families headed by unwed fathers (1989, P.10):
 343,000
 Single-parent homes headed by fathers (1989, P. 8):
 1,057,000
 Remarried custodial fathers (1989, P.10):
 675,000
TOTAL CUSTODIAL FATHERS
 2,075,000
 Custodial mothers who receive a support award (1987, P. 23):
 79.6 percent
 Custodial fathers who receive a support award (1987, P. 23):
 29.9 percent
 Non-custodial mothers who default totally on child support
 (1987, P. 23):
 46.9 percent
 Non-custodial fathers who default totally on child support
 (1987, P. 23):
 26.9 percent
 Non-custodial mothers who pay child support at any level
 (1987, P. 23):
 20 percent
 Non-custodial fathers who pay child support at any level
 (1987, P. 23):
 61 percent
 Non-custodial mothers who pay more than award (1987, P. 23):
 10.2 percent
 Non-custodial fathers who pay more than award (1987, P. 23):
 22.5 percent
 Single mothers who work less than full-time (1989, P. 20):
 66.2 percent
 Single fathers who work less than full-time (1989, P. 20):
 36.8 percent
 Single mothers who work more than 44 hours a week (1989,
 P. 20)
 7.0 percent
 Single fathers who work more than 44 hours a week (1989,
 P. 20):
 24.5 percent
 Single mothers who receive public assistance (1989, P. 21):
 46.2 percent
 Single fathers who receive public assistance (1989, P. 21):
 20.8 percent

*From Custodial Fathers: Myths, Realities and Child Support Policy, Technical Analysis Paper No. 42, by Daniel R. Meyer and Steven Garasky. Prepared for the U.S. Department of Health and Human Services, Office of Assistant Secretary for Planning and Evaluation, Office of Income Security Policy. October 1991. For free copy of the 42-page report, call (202)245-6445.

#4

New Jersey Council for Children's Rights
 PO Box 618
 Wayne, NJ 07474-0618
 201-834-0222 / 201-834-1622

29x



CURRENT POPULATION REPORTS

Consumer Income

Series P-60, No. 173

by
Gordon H. Lester

Child Support and Alimony: 1989

#5

U.S. Department of Commerce
Economics and Statistics Administration
BUREAU OF THE CENSUS

30x

respectively. The poverty rate for women who actually received child support payments in 1989 was 21.8 percent.

The percentage of poor women who were awarded and due child support payments in 1989 was 37.1 percent, significantly lower than the 55.8 percent award rate for nonpoor women. Of poor women due child support payments, 68.3 percent actually received payments in 1989, not significantly different from the comparable 1987 receipt rate. The payment receipt rate for nonpoor women in 1989 was 77.4 percent.

Table C presents data on the award and receipt of child support payments, and the mean support payments and money income by characteristics of women with children from absent fathers. The child support award rate for never-married women was 23.9 percent as of 1990, about one-third of the award rate for ever-married women (72.0 percent). Of women due child support, the percentage of never-married women who received payments in 1989 (73.2 percent) was not significantly different from the comparable percentage for ever-married women.

The award rate for Whites (67.5 percent) was about twice that of Blacks (34.5 percent). The award rate for Hispanic-origin women was 40.6 percent.⁵ The percentage of White women who received the child support payments due them in 1989 was 76.5 percent, not significantly different than the receipt rates of Black or Hispanic-origin women (both around 70 percent).

Women with four or more years of college were more likely to be awarded payments than women with less than a college education. However, they were not more likely to have actually received payments that were due them.

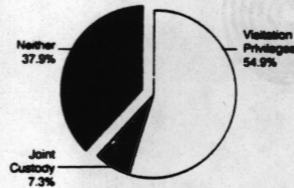
Absent Father's Visitation and Joint Custody Provisions

The majority of absent fathers, (54.9 percent), had visitation privileges as of spring 1990. (See table D.) An additional 7.3 percent of fathers had joint custody of their children; the remaining 37.9 percent of absent fathers had neither custody nor visitation rights. (See figure 3.)

A higher percentage of mothers of children whose fathers had visitation privileges were awarded child support (77.7 percent) than those who had neither visitation privileges nor joint custody (27.3 percent). The award rate for mothers of children whose fathers had joint custody was 65.3 percent, less than the rate for

⁵The percentage differences between Blacks and those of Hispanic origin were not statistically significant.

Figure 3.
Visitation and Joint Custody Provisions
of Absent Fathers
(As of Spring 1990)



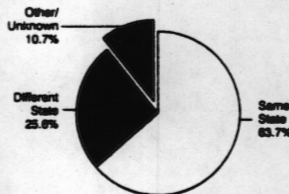
Base: 10.0 million women with children from absent fathers.

fathers with visitation only; however, in such situations it is likely that the absent father provided support functions in addition to, or in lieu of, cash payments.

A higher percentage of fathers with joint custody pay the child support due (90.2 percent) than fathers who have visitation privileges (79.1 percent) and those without visitation or joint custody provisions (44.5 percent).

The poverty rate in 1989 for mothers of children whose fathers had visitation privileges was 27.0 percent, significantly lower than the 41.0 percent rate for women when the father had no visitation or joint custody provisions. The poverty rate among women who had

Figure 4.
Residence of Absent Fathers
(As of Spring 1990)



Base: 10.0 million women with children from absent fathers.

joint custody of the children with the father was 25.6 percent, not significantly different from the poverty rate for mothers of children whose fathers had visitation privileges.

Absent Father's Residence

Over 60 percent of absent fathers resided in the same State as their children in 1990; an additional 25.6 percent of absent fathers lived in another State. The residence of the remaining 10.7 percent of absent fathers was either overseas or unknown. (See figure 4.)

Absent fathers who lived in the same State as their children and who were supposed to pay child support in 1989 had a payment rate of 81.1 percent, while fathers who resided in a different State had a significantly lower child support payment rate of 65.6 percent. Those fathers whose residence was overseas or unknown had a payment rate of 46.6 percent.

Child Support Received

The mean amount of child support received by all women who received payments was \$2,995 in 1989. This was not significantly different from the comparable 1987 amount after adjustment for inflation.⁶ (See table E.)

The mean child support payment received by divorced and separated women was the highest of any marital status (\$3,268). In contrast, payments to never-married women averaged \$1,888 in 1989.

The mean amount of child support received by White women (\$3,132) was about 36 percent higher than that of Black women (\$2,263) in 1989. The mean amount of child support received by women of Hispanic origin was \$2,965, not significantly different from that of White women.

Women with four or more years of college averaged \$4,850 in child support in 1989, about 67 percent higher than the mean of \$2,900 received by women with at least a high school education (or some college), and more than two and three-quarters times that of women with less than a high school education (\$1,754).

The mean child support payment received by poor women in 1989 was \$1,889, 57.2 percent of the mean payment received by nonpoor women (\$3,304). Child support payments, on average, were 37.4 percent of the total money income of poor mothers, compared with 17.1 percent for nonpoor mothers.

Women who were awarded and received support payments for their children had significantly higher total money incomes, on average, than women who were not

⁶Caution should be exercised when comparing year-to-year changes in mean child support received as these figures can be affected by extreme values.

U.S. Department of Commerce
Economic Research Administration
BUREAU OF ECONOMIC ANALYSIS

#5

31X

CREDIT REPORTING OF CHILD SUPPORT DEBTS

Probation Services Division
Administrative Office
of the Courts
Trenton, NJ 08625

STATE TAX SET-OFF OF CHILD SUPPORT DEBTS

Probation Services
Division
Administrative Office
of the Courts
Trenton, NJ 08625

#6

32X

Once your debt has been reported, CSES continues to report on a monthly basis until the debt is paid in full. Once the debt is paid in full, the credit report will show that nothing is due.

The money I owe is an amount set by the court. I have made all of my payments, just as I was ordered to, yet my debt still is more than \$1000. How do I keep this from being reported?

The court can issue an order saying that your case will not be reported, if the judge feels that this is fair. To get an order to stop your case from being reported, you must make a motion before the family court in the county in which your case originally was heard.

If you get an order saying that your case should not be reported, you should send a copy of that order to CSES.

I have asked for a copy of my credit report, and the report is wrong. How do I get it corrected?

If the credit report has the same information as probation records, and you disagree with probation records, you should contact the probation division that handles your case.

If the credit report does not agree with probation records, you should contact the credit reporting agency, and send a "consumer dispute" to them. You also can contact CSES at (609)-633-6173 for assistance.

I owe more than \$1000, and my debt has been reported to credit reporting agencies. I have been making my payments regularly, and a creditor or lender wants proof. What should I do?

The credit reporting cannot be removed from your record unless it was reported in error.

Contact the county probation division that handles your case. If you are making your payments as ordered, you will get a statement that shows this. Probation cannot give information directly to banks or other agencies. You will get a statement that you can give to your bank.

How can I get more information?

If you have questions about credit reporting, you can contact CSES at (609)-633-6173. If you have questions about your account, you should call the Child Support Hotline at (800)-621-KIDS, or the county probation division that handles your case.

This brochure is published by the
Administrative Office of the Courts,
Probation Services Division.

Robert D. Lipscher
Administrative Director

Harvey M. Goldstein
Assistant Director, Probation

Raymond R. Rainville
Chief, Child Support Enforcement Services

Patrick Nonaroberto
Assistant Chief,
Child Support Enforcement Services

Suzan Schlick
Research Analyst

(July 1992)

CREDIT REPORTING OF CHILD SUPPORT DEBTS

Probation Services Division
Administrative Office
of the Courts
Trenton, NJ 08625

If you are the person who owes a debt in a child support case in New Jersey, and if you owe at least \$1000, your debt will be reported to credit reporting agencies. This debt will then appear on your credit report. Your credit report will be available to creditors, lenders, employers, or others who contract with credit reporting agencies.

Will I be notified before information about my debt is reported to credit reporting agencies?

Yes. Before information about your child support debt is given to credit reporting agencies, the probation division that handles your case will mail you a notice if it has your address. You will be given a chance to appeal the reporting.

How can I appeal the reporting of my debt to credit reporting agencies?

You have 35 days from the date of the notice to submit an appeal. *The 35-day time frame starts as of the date of the notice, not the date you actually receive it.* Appeals must be in writing, and must be sent to:

Administrative Office of the Courts
Child Support Enforcement Services
CN-987
Trenton, New Jersey 08625

To appeal, you can use the form attached to your notice, or you can write a letter. It is important to state that you are appealing credit reporting, and the reasons why.

Letters, phone calls, or visits to the probation division which handles your case are not appeals, and will not stop credit reporting.

It is important to appeal within the 35 days. Appeals received after the 35 days cannot be

accepted. Your debt already will have been reported to credit reporting agencies.

What are acceptable reasons for an appeal?

You can appeal for only two reasons:

- 1) either you are not the right person, or
- 2) you owe less than \$1000.

You must prove that you do not owe at least \$1000. If possible, you also should send copies of records or documents to prove what you write in your appeal. *Do not send originals.* For example, if you claim you are not the right person, you should send a copy of your driver's license and/or social security card. If you say that you do not owe \$1000, you should send a copy of the court order, and copies to prove that you paid.

What happens after I send my appeal?

Each letter is reviewed by the Administrative Office of the Courts Child Support Enforcement Services (CSES) section. If you claim that you are not the right person or that you do not owe more than \$1000, the reporting is temporarily stopped. Your appeal letter is then sent to the probation division which handles your case. If your account can be adjusted based on the information that you sent, the probation division which handles your case will do so. If not, probation will schedule a hearing, usually within 30 days of when your appeal was reviewed. You must appear at this hearing.

After the hearing, the probation division will correct your account if needed, and notify CSES of the results of the hearing. If you still owe more than \$1000, the debt will be reported to the credit reporting agencies.

If you bring up issues that are not acceptable for an appeal, you will be notified by letter.

If there is a court motion pending which may change the amount of your debt, CSES will put a temporary hold on reporting. This will allow time for the motion to be settled. You should send proof of the pending motion (usually copy of the motion papers) to CSES within the 35-day appeal period.

I owe more than \$1000, but I am making my payments. Why is probation going to report me to a credit agency?

By law, all cases with debts of at least \$1000 can be reported. Reporting is updated monthly, so your credit report will be adjusted as your debt goes down. When the debt is paid in full the credit report will show that nothing is due.

Will reporting change how I should make my payments?

No. You will continue to make your payments through the probation division which handles your case. Credit reporting is updated monthly. It is important to continue to make your payments regularly, so that the credit report shows that your debt is going down.

How will this report affect my ability to get credit?

Each creditor or lender will decide on its own whether or not to give you credit. You should contact the creditor or lender if you want to know its policy.

How can I keep my debt from being reported?

Bring the debt to less than \$1000, and pay your support as the court has ordered. If you bring the debt to less than \$1000 within the appeal period (35 days from the date of the notice), it will not be reported.

344

96

210 of Pub.L. 94-88, set out as an Effective Date of 1975 Amendment note under section 602 of this title.

Effective Date. Section effective July 1, 1975, see section 101(f) of Pub.L. 93-647, set out as an Effective Date note under section 651 of this title.

Payments to States for Certain Expenses Incurred During July 1975. Section 206 of Pub.L. 94-88 provided that amounts expended in good faith by any State during July 1975 in certain ways in preparation for or implementation of the child support program under this part were to be considered for purposes of this section, to the extent that payment for the expenses incurred would have been made under the terms of this section.

PUBLIC HEALTH AND WELFARE

had the amendment by section 101 of Pub.L. 93-647 been effective on July 1, 1975, to have been expended by the State for the operation of the State plan or for the conduct of activities specified in this section.

Legislative History. For legislative history and purpose of Pub.L. 93-647, see 1974 U.S. Code Cong. and Adm. News, p. 8133. See, also, Pub.L. 94-88, 1975 U.S. Code Cong. and Adm. News, p. 884; Pub.L. 94-365, 1976 U.S. Code Cong. and Adm. News, p. 1726; Pub.L. 93-59, 1977 U.S. Code Cong. and Adm. News, p. 427; Pub.L. 96-178, 1979 U.S. Code Cong. and Adm. News, p. 2664; Pub.L. 96-265, 1980 U.S. Code Cong. and Adm. News, p. 1277; Pub.L. 97-248, 1982 U.S. Code Cong. and Adm. News, p. 781.

West's Federal Practice Manual

Social security number, see § 14221.

Code of Federal Regulations

Federal financial participation, see 45 CFR 304.10 et seq.
Standards for program operations, see 45 CFR 303.0 et seq.
State plan requirements, see 45 CFR 302.0 et seq.

Notes of Decisions

Purpose 1
Support orders 2

1. Purpose

Federal program of reimbursement for 75 percent of amounts expended by states for operation of plans that are approved under this subchapter to enforce support obligations and locate absent parents was not implemented for purposes of providing job training and employment opportunities for economically disadvantaged. Matter of Hudson County Probation Dept. Title IV-D Investigators, 1981, 429 A.2d 368, 178 N.J. Super. 362.

2. Support orders

Formula devised as a result of amendments to this chapter relating to support payments from responsible relatives for certain depen-

dents did not constitute an official regulation of the state and was not binding upon the courts of the state, and thus allegations that respondent was not paying support in accordance with the formula did not allege specific circumstances justifying change in earlier support order. St. Lawrence County Dept. of Social Services for Baxter v. Baxter, 1976, 385 N.Y.S.2d 704, 87 Misc.2d 508.

Fact that only one attorney handled various causes of county department of social services did not merit department special privilege and did not relieve department of its burden of showing change of circumstances in order to obtain modification of previous support order, particularly in view of provisions on amendments to this chapter authorizing additional federal reimbursement for staffing to investigate and prosecute support cases under such legislation. Id.

§ 656. Support obligation as obligation to State; amount; discharge in bankruptcy

(a) The support rights assigned to the State under section 602(a)(26) of this title shall constitute an obligation owed to such State by the individual responsible for providing such support. Such obligation shall be deemed for collection purposes to be collectible under all applicable State and local processes.

CH. 7 CHILD SUPPORT

Note 2

(1) The amount of such obligation shall be—

(A) the amount specified in a court order which covers the assigned support rights, or

(B) if there is no court order, an amount determined by the State in accordance with a formula approved by the Secretary, and

(2) Any amounts collected from an absent parent under the plan shall reduce, dollar for dollar, the amount of his obligation under paragraphs (1) (A) and (B).

(b) A debt which is a child support obligation assigned to a State under section 602(a)(26) of this title is not released by a discharge in bankruptcy under Title 11.

(Aug. 14, 1935, c. 531, Title IV, § 456, as added Jan. 4, 1975, Pub.L. 93-647, § 101(a), 88 Stat. 2356, and amended Nov. 6, 1978, Pub.L. 95-598, Title III, § 328, 92 Stat. 2679; Aug. 13, 1981, Pub.L. 97-35, Title XXIII, § 2334(a), 95 Stat. 863.)

Historical Note

1981 Amendment. Subsec. (b). Pub.L. 97-35 added subsec. (b).

1978 Amendment. Subsec. (b). Pub.L. 95-598 repealed provision declaring a debt which is a child support obligation assigned to a State under section 602(a)(26) of this title as not released by a discharge in bankruptcy under the Bankruptcy Act.

Effective Date of 1981 Amendment. Section 2334(c) of Pub.L. 97-35 provided that: "The amendments made by this section [amending this section and section 523 of Title 11, Bankruptcy] shall become effective on the date of the enactment of this Act [Aug. 13, 1981]."

Effective Date of 1978 Amendment. Amendment by Pub.L. 95-598 effective Nov. 6, 1978, see section 402(d) of Pub.L. 95-598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

Effective Date. Section effective Aug. 1, 1975, see section 101(f) of Pub.L. 93-647, set out as an Effective Date note under section 651 of this title.

Legislative History. For legislative history and purpose of Pub.L. 93-647, see 1974 U.S. Code Cong. and Adm. News, p. 8133. See, also, Pub.L. 95-598, 1978 U.S. Code Cong. and Adm. News, p. 5787; Pub.L. 97-35, 1981 U.S. Code Cong. and Adm. News, p. 396.

West's Federal Practice Manual

Social security number, see § 14221.

Notes of Decisions

Generally 3
Arrears accrued 8
Constitutionality 1
Construction with state laws 2
Dischargeable debts 7
Power of court 4
Reductions, right to 6
Reimbursable costs 5

1. Constitutionality

It was not unconstitutional to require that child support payments be paid to county department of public social services, where Aid to Families with Dependent Children constituted only support of mother and child and the classification was reasonable and made for

rationally purpose. *Simmons v. Simmons*, 1977, 139 Cal.Rptr. 832, 72 C.A.3d 205.

2. Construction with state laws

In light of subsec. (a)(1)(A) of this section, after which West's Ann. Welfare & Inst. Code, § 11477 was modeled, spelling out that support rights assigned to state constitute obligation owed to state by individual responsible for providing support and that amount of such obligation is amount specified in court order that covers assigned support rights, "rights to support" which are assigned to county by operation of law if custodial parent receives welfare aid embrace support rights reduced to judgment or court order. *Shore v. Shore*, 1977, 139 Cal.Rptr. 349, 71 C.A.3d 290.

INTRODUCTION

**REPORT ON THE
PREVENTION OF DOMESTIC VIOLENCE ACT**

**P.L. 1989, c. 426
(N.J.S.A. 2C:25-1 et. seq.)**

JULY 1990 - NOVEMBER 11, 1991

Submitted by:

**Robert D. Lipscher
Administrative Director
of the Courts**

Date: August 30, 1993

#10

#6x

INTRODUCTION

The Administrative Office of the Courts hereby submits this Report to the Governor, the Legislature and the Governor's Advisory Council on Domestic Violence pursuant to The Prevention of Domestic Violence Act, P.L. 1981, C. 426 (N.J.S.A. 2C:25-17 et seq.) This Report (the ninth compiled by the Administrative Office of the Courts since the adoption of the Prevention of Domestic Violence Act) encompasses the period from July 1, 1990 to November 11, 1991, and includes both the 1991 court year and the first 4½ months of the 1992 court year -- the time period which preceded the effective date of the Prevention of Domestic Violence Act of 1990. The amendments contained in the Act are of a significant nature, and affect the categories reported on herein. As a result, this report covers a 16½ month period, so that pre-amendment activity can be examined as such. Future reports will reflect activity subsequent to the amendments.

Similar to prior reports, this Report sets forth data regarding the number of complaints filed, and the relief sought and granted at final hearings or rehearings regarding these matters. The Report also provides statewide data as to the following: the sex of plaintiffs, the living arrangement of the parties, and the duration of final orders issued. Like the last report, this report also includes both state and county wide data concerning the number of cases disposed of prior to a final hearing. This information is broken down into two time periods: A-July 1990-June 1991; B-July 1991-Nov. 11, 1991.

Specifically, the Report indicates that 50,955 domestic violence

#10

47x

complaints were filed and added¹ statewide under the Act, representing an average annual increase of 1,892 (approximately 5%); and a 35% increase over the past five years. Eighty seven and one half percent (87.5%) of plaintiffs were female, and 12½% were male. Eighty eight percent (88%) of all defendants were male and 12½% were female. Approximately 60% of plaintiffs and defendants were residing together at the time complaints were filed.

Fifty thousand, seven hundred fourteen (50,714) disposed cases were of during the applicable time period. In 1557 cases (3% of the cases disposed) a temporary restraining order was denied. In 9,202 cases (18% of the disposed cases) the complaint was withdrawn by the plaintiff, in 32 cases the matter was transferred to another county and in 8,586 cases (16.9% of the disposed cases) the complaint was dismissed due to the plaintiff's failure to appear at the final hearing. Of the 31,369 cases which proceeded to final hearing, some or all relief was granted in 28,398 cases (90.5% of the cases). A statewide analysis broken down by relief type appears on page seventeen. A detailed county breakdown of the three most frequently sought forms of relief and the percentage of these forms of relief granted appears on pages eighteen, nineteen and twenty. In 2,396 cases (approximately 7.6% of the cases which proceeded to final hearing) all relief was denied on the merits (complaint was dismissed). Of the cases which proceeded to final hearing, in 543 cases (1.7%) the temporary

¹ This category includes new complaints, post-dispositional requests for modification and enforcement, and requests for dismissal of existing final orders.

#10

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FACTS ABOUT VIOLENCE AGAINST MEN AND WOMEN

- * For every 100 women who are murdered, 311 men will be murdered.
- * For every 100 women who are victims of violent crime, 184 men will be victims of violent crime.
- * For every 100 women who are seriously injured during a violent crime, 181 men will be seriously injured during a violent crime.
- * At some time during their lifetime:
 - 89 of every 100 men will be victims of violent crime.
 - 73 of every 100 women will be victims of violent crime.
- * Of every 100 rape victims:
 - 91.7 will be female.
 - 9.3 will be male.
- * During violent crimes, males are victimized by strangers 70% of the time; females are victimized by strangers 30% of the time.
- * In the National Survey of Crime Severity (a ranking of the public's perception of the severity of crimes), a wife stabbing her husband to death was rated 41% less severe than a husband stabbing his wife to death.
- * In the National Family Violence Surveys, female respondents (thus no male bias) reported that for every 100 husbands who assaulted their wives, 103 wives assaulted their husbands.

Sources:

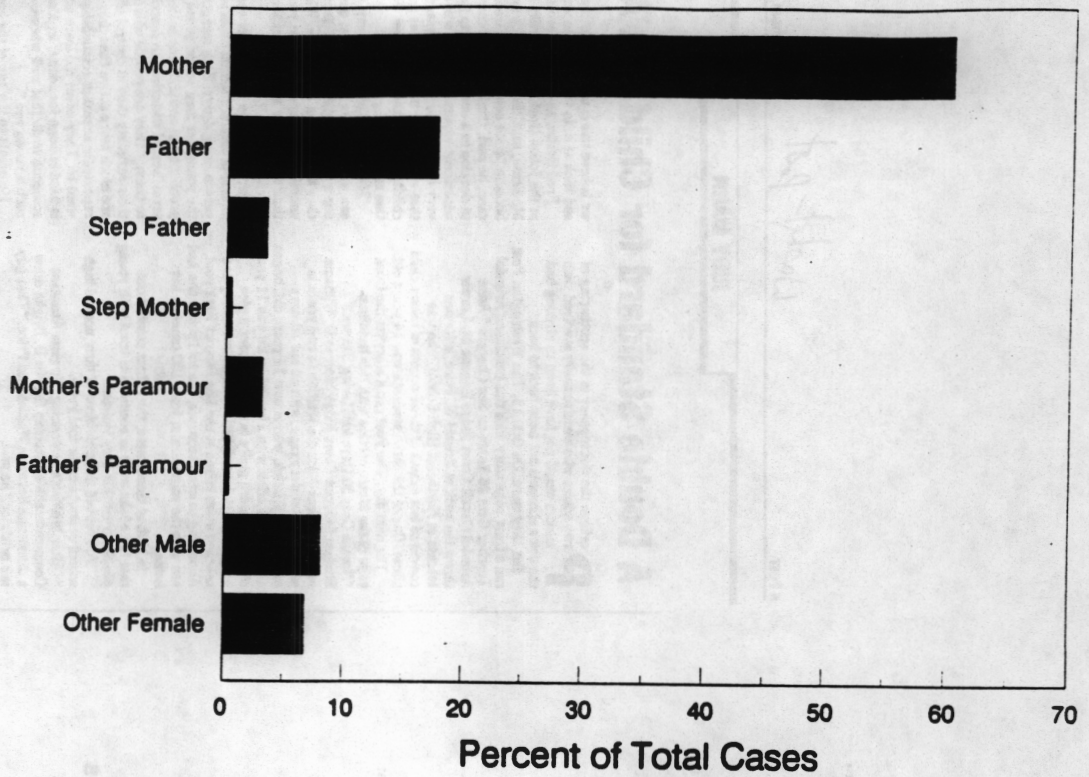
Criminal Victimization in the United States, 1973-1988
FBI Uniform Crime Reports 1975-1987
Report to the Nation on Crime and Justice, Second Edition
Family Violence Surveys, 1985
National Survey of Crime Severity, 1977

Statistics compiled by the National Coalition of Free Men (NCFM), Committee on Gender Bias in the Courts, P.O. Box 1993, Baltimore MD 21203; (301)243-3986. September 1990

#12

New Jersey Child Abuse Statistics

Relationship to Child

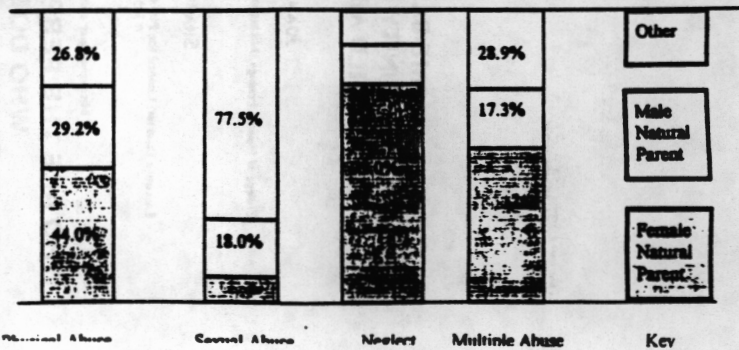


CHILD ABUSE IN NEW JERSEY

According to the the Division of Youth and Family Services (DYFS), the incidence of child abuse and neglect went down in 1991, just slightly:

Year	Total Reports	Substantiated Reports	% Substantiation
1991	53,750	19,489	36.3
1990	54,366	19,546	36.0

The following graph was derived from DYFS data, and indicates whether the "perpetrator" of substantiated child abuse was a male natural parent, a female natural parent, or other. Source: *Child Abuse and Neglect in New Jersey, 1991 Annual Report*. N.J. Department of Human Services, Division of Youth and Family Services, Bureau of Research, Evaluation and Quality Assurance, April, 1992.



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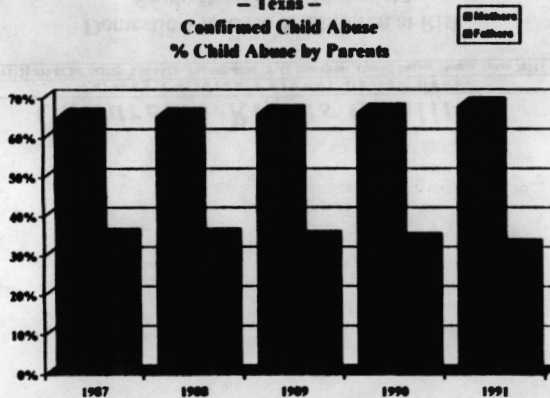
Texas: Child Abuse Committed by Parents

Statistics compiled by the Texas Department of Protective and Regulatory Services (DPRS), Child Protective Services (CPS) indicate that mothers are over 2x as likely to abuse a child as are fathers. In 1991, 44.9% of the confirmed child abuse in Texas was committed by the mother, 23.1% by the father. The remaining 28% was committed by step-parents, siblings, relatives, and substitute caregivers.

This trend has increased over the past several years (see graph). Among parents, in 1991 mothers committed 68% of the abuse, fathers committed 32%. (1991 State Report, DPRS)

A study of inner city families in Michigan found that 49% of the confirmed child abuse was committed by single parent mothers. In the intact home, 26% of child abuse was found to be committed by mothers, 28% by fathers, and 37% by both parents. (1984, Ditson and Shay, *Child Abuse and Neglect*, 8: 503-509)

- Texas -
Confirmed Child Abuse
% Child Abuse by Parents



Implications for policy makers:

In light of these data, policy makers might wish to relieve the burden on single parents by more evenly distributing responsibility and parenting time among parents who have separated or divorced. Policy makers might also consider training programs which teach young parents how to deal with the pressures of parenthood.

For additional information, contact:

512-499-8CRC (8272)

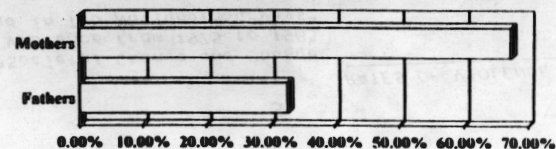
The Children's Rights Coalition (CRC) advocates for children who have been abused or neglected, or whose parents have separated or divorced. CRC analyzes research in these areas and makes that data available to policy makers, the media, and others who are concerned about children's issues. Based in Austin, Texas, CRC has members in 15 states.

Virginia: Child Abuse Committed by Parents

Statistics compiled by Virginia's Child Protective Services Program indicate that mothers are 2x as likely to abuse a child as are fathers.

In the reporting year July 1, 1991 to June 30, 1992 39% of the confirmed child abuse in Virginia was committed by the mother, 19% by the father, and 21% by both parents. The remaining 22% was committed by step-parents, siblings, relatives, and substitute caregivers. (Statistical Report of Virginia's Child Protective Services Program, compiled by Child Protective Services Unit Division of Services Program)

Virginia
When parents are the abuser
Confirmed Child Abuse



These data are consistent with those in other states:

State	Year	Mothers (%)	Fathers (%)
Alaska	1987	46.4	24.7
	1988	47.1	25.0
	1989	47.2	24.3

For additional information, contact:

512-499-8CRC (8272)

The Children's Rights Coalition (CRC) advocates for children who have been abused or neglected, or whose parents have separated or divorced. CRC analyzes research in these areas and makes that data available to policy makers, the media, and others who are concerned about children's issues. Based in Austin, Texas, CRC has members in 15 states.

57-1

#13

Children's Rights Coalition

Turning Children's Frowns Upside Down
 (512) 499-8CRC (8272) : 836-6621 : Fax 499-8256 : P.O. Box 12961, Capitol Station : Austin, Texas 78711

Domestic Violence & Children at Risk Study Provides New Insight

A large continuing study of fathers who seek assistance from self-help organizations indicates that children may be at risk if courts make hasty decisions about custody arrangements.

A survey of 350 fathers from 51 Texas cities revealed that mothers initiate family violence at rates exceeding that of fathers. These findings are supported by child abuse statistics indicating that mothers abuse children at a rate 2x that of fathers. Policy makers might consider that very young children are at risk if either parent is violent.

The data indicate that both parents might be candidates for family violence counseling and that policy makers might wish to rethink custody arrangements pending the outcome of a hearing on family violence.

The Study:

Respondents were asked if there had been family violence in the home.
 61% answered "Yes."

Of this group: To the question, "Who hit first?"
 70% responded that "she" always hit first.

Of this group, most said that she was the only violent parent.

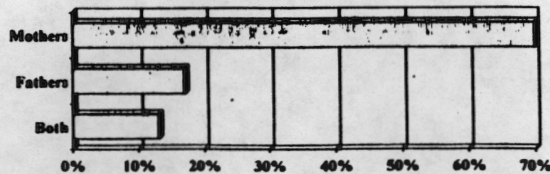
13% responded that sometimes she hit first, and sometimes him.

In all, 83% responded that she initiated the violence all or part of the time.

17% responded that he always initiated the violence.

These families consisted of 168 children, 84 girls and 84 boys
 115 children were under age 10, several aged 9 to 18 months.

Spouse Abuse in Families With Children Perpetrator Defined



For additional information, contact:

512-499-8CRC (8272)

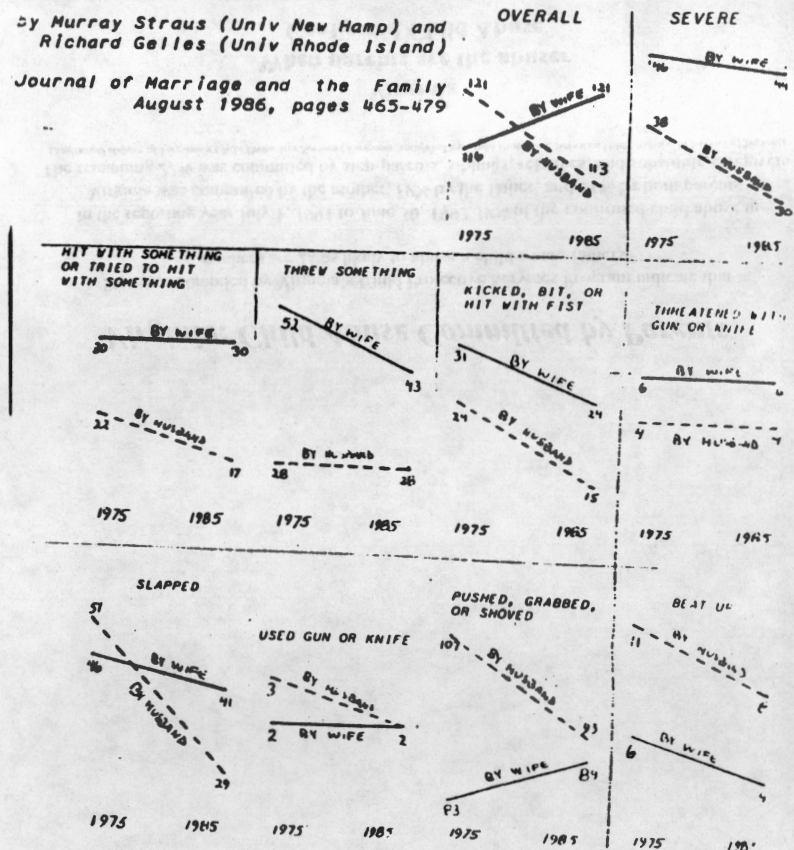
The Children's Rights Coalition (CRC) advocates for children who have been abused or neglected, or whose parents have separated or divorced. CRC analyzes research on these areas and makes that data available to policy makers, the media, and others who are concerned about children's issues. Based in Austin, Texas, CRC has members in 13 states.

RATES OF VIOLENCE per 1000

Source: "Societal Change and Change in Family Violence from 1975 to 1985 As Revealed in Two National Surveys"

by Murray Straus (Univ New Hamp) and Richard Gelles (Univ Rhode Island)

Journal of Marriage and the Family August 1986, pages 465-479



March 31, 1994
Mark S. Chernek
65 Falmouth DR.
Mt. Laurel, N.J. 08054
(609) 273-8577

New Jersey State Legislature
Office Of Legislative Services
Commission To Study The Laws of Divorce
Legislative Office Building, CN-068

Dear Commission:

Divorce is a disease that plagues this Nation, a growing epidemic that is killing the traditional family unit and destroying so many lives, engulfing all who cross its path.

The startling statistic that ~~nearly one out of two~~ ~~Marriages will ultimately end in divorce, is enough to warn~~ us that something is wrong. ~~The alarm bell is ringing, it's~~ time to wake up!

The emotional trauma that accompanies divorce is a nightmare. The happiness and dreams that spouses once shared are forever lost in a blink of an eye.

It's at this point when our lives are in turmoil, and decision making is at our worst when the legal profession enters our lives. We entrust lawyers to guide, advise and instruct us, as to what the laws and rights are in divorce.

My separation, was the first time that I have encountered the legal system, other than High School, and Jury duty, I am getting an awful taste as to how the American judicial system works, finding myself entangled in a spider web of legal bureaucracy that seems there is no escape.

From a citizen experiencing how the divorce system works, I can honestly conclude, that not only is the laws of divorce unfair, but totally dysfunctional and in dire need of reform.

The legal profession is the only winners of the divorce War, and the battles waged by the parties involved, are almost always lost.

The Lawyers know a good deal when they have one, "give them an inch and they take a mile!" So why reform a system that seems to line the pockets of lawyers, who we have employed to make decisions regarding our lives that will ultimately effect us forever.

Divorce law reform, must start at the top. Judges must be educated and experienced in dealing with people and their emotions. Judges must be held accountable for their decision making, for no Judge is above the Law. Judges are very powerful people. We entrust them to set the example and give them the responsibility of making fair and sound decisions that effect the lives of us all.

Judges must follow one set of laws and not their own. They must be patient, impartial and not discriminatory in their judgements. Enforcement of laws must be equal and

without prejudice. For those people who willingly disobey the orders of the court, then punishment and sentencing must be carried out.

The court rooms of this state belongs to the people not the judges. Incompetence and wrong doing by appointed officials should not be tolerated. Any judge that is found abusing his or her power, has no business serving the good people of this state, and should be held accountable for his or her actions.

Lawyers must also be held accountable for their actions, for they are not above the law either, but the attitude that I see tells a different story. Lawyers are like hawks sitting on their perches, just waiting for another meal to cross their path and be consumed.

Laws must not be written so the lawyers can use them as tools or weapons. Laws are made to guide us and give us a sense of direction so that we can live as descent and honest people.

The domestic violence law is an example of a law that is abused by the legal profession, and waring spouses. This law is the weapon of choice for lawyers, and when the bomb is dropped, it causes mass destruction. All a person has to do is cry abuse, weather physical or sexual, and without any proof, or evidence, of wrong doing. The accused now finds themselves guilty of a criminal charge just by word of mouth.

The domestic violence law was incorporated to help people where abuse and violence in the home was actually occurring. I do not think this law was intended, to be used by lawyers to gain the upper hand in the divorce. Another aspect of this law also deals with restraining orders. This, to the lawyer, means, no communication between the spouses, which intern means no reconciliation. The lawyers are laughing all the way to the bank.

Today with the corrosion of wages, many families depend on two incomes. To maintain a middle-class life style. It is no longer the mans responsibility to bring home the bacon, but both husband and wife working together equally to maintain this standard of living.

But in separation and divorce, men are forced to pay outrageous child support. Payments, set forth by a guide line that is totally discriminatory towards the father, and does not take into account all the other monetary responsibilities that the father has. Health care, life insurance, schooling for children, such as college, and child care expenses and every day basic living cost. Fathers are raped of there incomes while mothers and children maintain a life style that in all reality is equal too or better than it was in the marriage. If a father tries to recuperate the difference in money lost to support, through working a part time job, then the mother is entitled to some of that income also. This practice is not only senseless but so unjust and lopsided, that this trend can not continue.

Child support must be shared equally by both parties, and must be reasonable and fair. Child support should only

be based on a 40 hour work week and nothing more. Why should a wife be allowed to apply for more support on the hard work and sacrifice of the husband, who is just trying to rebuild his life and better himself. Children are this country's most valuable resource. Watching a child interact with other children is a sight to see. They are honest, caring, and for the most part do not discriminate against one another. If we adults would just step back and take the time to observe their behaviors and learn from them maybe, just maybe, this world would be a better place.

Being a parent is a huge responsibility, child custody should be awarded to the parent who has taken a more responsible role in raising the children, and what is in the both interest of the children. The automatic practice that mothers maintain custody must stop. This is doing more harm than good. The children deserve much better attention by the courts, than what they are currently offering.

~~With custody, comes visitation. The children or child, deserve to spend an equal amount of time with both parents. Not this weekend dad syndrome. But quality time, children deserve all the love and affection that, only a mother and father can give.~~

When a parent denies the other parent visitation of his or her children, this not only is cruel to the parent, but has severe effects on the children with long term ramifications. Why mothers are allowed with getting away with refusing visitation to the father, is beyond my understanding. Spouses who willingly deny visitation, and use the children as pawns, should be punished to the full extent of the law.

Judges are very quick to incarcerate fathers for not paying child support, and at times its through no fault of their own, but these same judges seem to shy away from incarcerating mothers who willingly deny parenting time to the father. This double standard of enforcing laws has got to end. This is pure discrimination and its happening everyday.

In my opinion, its to easy to get a divorce. Why don't we just open up a store selling divorce kits, just like the papers advertise, and start selling all kinds of divorce products, we can even have free giveaways! This store, I can assure you, will never go out of business.

Now, I am not saying that people should not be allowed to divorce. There are many reasons for divorce, and many times divorce is justified and best for all parties concerned.

What I am suggesting, is that before a person can even file for a divorce, there should be some form of mediation. Then, if reconciliation is not possible, then at least maybe the spouses will be more reasonable with one another. Their should also be some type of marriage counseling system that tries to deal with the problems that the couples are having. Maybe a few marriages can be saved and rather than encouraging divorce, we should try to get in the practice of

discouraging divorce.

In closing I would like to thank the commission for your efforts in studying the laws of divorce. We as residents of this state must join together in finding a more equal solution to the divorce epidemic, and stop pitting men against woman. The madness must stop. It is time that we as a people start to take responsibilities for our own actions, not just in divorce but also our everyday lives.

For my two beautiful daughters, Melissa and Rebecca, I hopefully set an example for you. So that someday you will not have to endure the pains and sufferings that I have. I pray and hope that as you grow and mature, your lives will blossom in a nation that stands strong on its foundation.

A house that is divided amongst itself, can not stand! It is time to build a new home, rebuilding a system that works, and that does not destroy the family foundation.

Sincerely

Mark S. Chernek

Mark S. Chernek

LETTER TO: DIVORCE

DATE: 5 JANUARY 1994

WM. F. LAWLER:

PO. BOX. 2646:

PLAINFIELD, NEW JERSEY -07060-:

WK. (908)-302-4272:

HM. (908)-722-0758:

1710 BRECKENRIDGE DRIVE

BRANCHBURG, NEW JERSEY -08876-

MS. PATRICIA NAGLE

OFFICE OF LEGISLATIVE SERVICES

135 WEST HANOVER STREET

TRENTON, NEW JERSEY

(609)-292-5526

REF: NEW JERSEY DIVORCE REFORM 1993/1994

HONORABLE MEMBERS OF THE DIVORCE REFORM PANEL;

PLEASE FIND ATTACHED TO THIS DOCUMENT A REJECTED APPEAL, AND APPLICABLE CASE LAW, CONCERNING A PENSION DISPERSAL TO MY X-WIFE JANET, UPON MY RETIREMENT VIS A VIS OUR DIVORCE AND THE PROPERTY DISTRIBUTION. ALTHOUGH INTIMIDATING IN SIZE, THE GREAT MAJORITY OF ENCLOSURES ARE REFERENCE MATERIAL. SEVERAL ISSUES ARE TOUCHED ON IN MY BRIEF, HOWEVER THEY ALL REVOLVE AROUND THE PENSION BENEFIT AWARDED TO JANET, UPON MY RETIREMENT.

BECAUSE OF THE VOLUME OF MATERIAL INVOLVED IN THIS DOCUMENT, AND THE FACT THAT MOST OF IT IS REFERENCE MATERIAL, I WOULD RESPECTFULLY SUGGEST THAT ONLY THIS LETTER, THE FIRST FOUR SECTIONS (APPEAL BRIEF, RESPONSE, REBUTTAL, AND DECISION), AND THE THREE RELEVANT CASES (MOORE, INFANTE, AND RIVERVALE), BE COPIED FOR THE PANEL'S REVIEW. THE ORIGINAL DOCUMENT, AND ALL REFERENCE MATERIAL SHOULD THEN BE CENTRALIZED FOR INFORMATIONAL PURPOSES.

WHEN READING THIS BRIEF, JANET'S RESPONSE, MY REBUTTAL, AND THE APPELLATE COURT'S DECISION, THINK OF IT AS A CHRONOLOGY OF EVENTS LEADING UP TO, AND THROUGH A DIVORCE. IT IS IMPORTANT THAT YOU READ AND UNDERSTAND THIS CHRONOLOGY, IN ORDER TO UNDERSTAND MY PROBLEM WITH PRESENT CASE LAW AS IT PERTAINS TO PENSIONS, AND APPEALS. TO WIT:

- (1) MOORE v. MOORE 114 N.J. 147; (COPY ATTACHED)
- (2) INFANTE v. GOTTERMAN 233 N.J. SUPER 310; (COPY ATTACHED)
- (3) RIVERVALE v E&R OFFICE INTERIORS 241 N.J. SUPER 391; (COPY ATTACHED)

AND HOW THEY ARE ROUTINELY, AND (I BELIEVE) UNFAIRLY APPLIED IN DIVORCE COURT.

IF YOU HAVE NOW READ THE CHRONOLOGY, YOU KNOW THAT MR. AND MRS. MOORE WERE MARRIED FOR EIGHTEEN YEARS, THAT MRS. MOORE WAS UNEMPLOYED AND FOR ALL INTENT AND PURPOSE, HAD NO RETIREMENT BENEFITS. AT DIVORCE TIME, MRS. MOORE SUED FOR LIFE ANNUITY BENEFITS FROM HER HUSBAND'S PENSION (TO RECEIVE A PORTION OF HER HUSBAND'S PENSION UPON HIS RETIREMENT FOR LIFE, OR A LUMP SUM BUY OUT IN THE AMOUNT OF MONEY IT WOULD COST TO PURCHASE AN ANNUITY FOR HERSELF OF THAT VALUE) AS OPPOSED TO A DIVISION OF DONATIONS

INTO THE PENSION FUND, WHICH WOULD BE CONSIDERABLY LESS VALUABLE. THE COURT AWARDED THIS LIFE ANNUITY VALUE TO MRS. MOORE, AND THERE AFTER (SINCE 1988) THE (NJ) COURTS IN DIVORCE (EQUITABLE DISTRIBUTION) VALUE PENSIONS BASED ON LIFE ANNUITY VALUE, AND NOT DONATION VALUE.

AN INTERESTING COMMENT IS MADE, IN THE NARRATIVE OF THE MOORE DECISION WHICH I WOULD LIKE TO QUOTE (MOORE v. MOORE 114 N.J. pp 157, LAST PARAGRAPH) "HERE MR. MOORE EARNED THE MAJOR PORTION OF HIS PENSION DURING THE SHARED ENTERPRISE OF HIS MARRIAGE". IF THE LIFE ANNUITY FORMULA APPLIED TO MOORE IS BASED IN PART ON THIS STATEMENT, WHAT ABOUT SHORT TERM MARRIAGES LIKE MINE (SEVEN YEARS) TO A FULLY EMPLOYED SPOUSE? SHOULD THERE NOT BE ANOTHER FORMULA? APPLYING THE MOORE FORMULA, WHICH IS BASED (ALWAYS) ON LIFE ANNUITY BENEFITS DOES NOT REALISTICALLY TAKE INTO ACCOUNT YEARS OF MARRIAGE. ACCORDING TO THE MOORE FORMULA, I COULD BE MARRIED ONE YEAR, OR EVEN LESS AND STILL HAVE TO PROVIDE A LIFE ANNUITY BENEFIT TO AN X-SPOUSE, OR IN A BUY OUT SCENARIO, PROVIDE A EXTREMELY LARGE SUM OF MONEY TO AN X-SPOUSE AT AN EXTREMELY DIFFICULT TIME. THIS IS NOT FAIR, NOR IS IT EVEN REASONABLE.

MY POSITION IS THIS, WHEN A MARRIAGE IS OF SHORT OR MODERATE DURATION THE COURTS MUST LOOK CLOSELY AT BOTH SUPPORT AND PROPERTY ENTITLEMENTS. THESE ENTITLEMENTS SHOULD BE SUBSTANTIALLY LESS, THAN IF THE MARRIAGE WERE OF A LONG DURATION. NO MATTER HOW YOU LOOK AT THE SITUATION, SEVEN YEARS OF MARRIAGE SHOULD NOT EQUAL A LIFE TIME PENSION DISPERSAL FROM ANY PENSIONER TO ANY X-SPOUSE.

FOR ILLUSTRATION PURPOSES. I PRESENT THE MOORE FORMULA TO YOU, AS IT WILL BE APPLIED TO MY PENSION WHEN I RETIRE. I RESPECTFULLY REQUEST THAT YOU PRETEND THAT YOU ARE IN THE MIDST OF A DIVORCE, AND THAT THIS FORMULA IS BEING APPLIED TO YOUR PENSION OR 401K WHEN YOU RETIRE, (BECAUSE IT WILL BE. IF YOU GET DIVORCED IN NEW JERSEY NO MATTER HOW LONG YOU WERE MARRIED). NOTE HERE, THE TERM *FINAL BENEFIT IS DEFINED AS THE AMOUNT OF MONEY THE PENSIONER WILL RECEIVE ANNUALLY UPON RETIREMENT.

*FINAL BENEFIT MULTIPLIED BY YEARS OF MARRIAGE = _____

THIS NUMBER IS DIVIDED BY YEARS OF PENSION PARTICIPATION = _____

THIS NUMBER IS MULTIPLIED BY THE PERCENTAGE (1 THRU 50) THAT YOU AND SPOUSE DECIDE OR THE COURT DECIDES = (THIS NUMBER IS WHAT YOUR X-SPOUSE IS GOING TO GET ANNUALLY FOR THE REST OF YOUR LIFE) UNLESS YOU CAN AFFORD TO BUY YOUR X-SPOUSE AN ANNUITY THAT WILL PROVIDE THIS RETIREMENT BENEFIT.

(ADDITIONAL ILLUSTRATIONS APPEAR IN PARAGRAPH 63 OF THE ATTACHED BRIEF).

NOW IF YOU WERE MARRIED TO MS. MOORE, (WHO NEVER WORKED) FOR EIGHTEEN YEARS, MAYBE THIS FORMULA SOUNDS REASONABLE. BUT WHAT IF YOU WERE MARRIED TO MS. LAWLER (WHO ALWAYS WORKED) FOR SEVEN YEARS. STILL SOUND REASONABLE??? MY LUMP SUM BUY OUT WAS \$88,000 IN A TIME WHEN I COULDN'T AFFORD TO PAY MY DIVORCE ATTORNEY. (FOR SEVEN YEARS OF MARRIAGE?)

THE SOLUTION IS, THAT THERE HAS GOT TO BE A VESTED INTEREST CLAUSE IN THE MOORE FORMULA. THAT IS TO SAY, THE MARRIAGE HAS GOT TO LAST A CERTAIN PERIOD OF TIME. UNTIL DONATIONS INTO THE PENSION SYSTEM EVOLVE INTO LIFE ANNUITY BENEFITS WITH REGARDS TO EQUITABLE DISTRIBUTION IN DIVORCE CASES. IN MY CASE I MUST WORK AND DONATE INTO THE PENSION SYSTEM FOR TEN FULL YEARS, IN ORDER FOR MY PENSION TO EVOLVE FROM THE VALUE OF DONATIONS TO

LIFE ANNUITY VALUE. AS MENTIONED IN MY BRIEF, THE PUBLIC EMPLOYEES RETIREMENT SYSTEM AND THE U.S. SOCIAL SECURITY SYSTEM WORK THE SAME MANNER. (AS A MATTER OF FACT, I CHALLENGE EACH OF YOU TO FIND A PENSION SYSTEM OR 401K, THAT DOES NOT HAVE A VESTED INTEREST CLAUSE, YOU WILL NOT BE ABLE TO, BECAUSE THERE ARE NONE.) WHY THEN, AFTER SEVEN YEARS OF MARRIAGE, OR EIGHT AND A HALF, (IF YOU COUNT THE EIGHTEEN MONTHS SEPARATION) MUST I BE HELD TO A LIFE ANNUITY DISTRIBUTION. MY X-SPOUSE'S BENEFIT FROM MY PENSION, BECAUSE OF THE SIGNIFICANT SHORT FALL, IN THE LENGTH OF OUR MARRIAGE, SHOULD HAVE BEEN (UP TO) ONE HALF OF DONATIONS INTO THE PENSION SYSTEM, NOT (UP TO) ONE HALF OF THE LIFE ANNUITY VALUE.

YOU SHOULD ALSO NOTE, THAT EVEN WHEN VESTED INTO THESE TYPE OF PENSION SYSTEM/S, IF AN EMPLOYEE LEAVES THE SYSTEM WITH OUT WORKING A FULL TERM OF SERVICE (TWENTY FIVE YEARS FOR POLICE AND FIRE), THEY MAY ONLY COLLECT A PARTIAL (LIFE ANNUITY) BENEFIT, AND THEY CANNOT RECEIVE IT UNTIL AGE FIFTY FIVE (POLICE AND FIRE), OR SIXTY (PUBLIC EMPLOYEES RETIREMENT).

IF MY X-SPOUSE JOINED THE POLICE AND FIRE PENSION SYSTEM, AND SERVED (FULL DUTY) FOR SEVEN YEARS, EIGHT AND ONE HALF YEARS (OR ANYTHING LESS THAN THE FULL TEN), MY X-SPOUSE'S ENTITLEMENT WOULD BE ONLY DONATIONS INTO THE SYSTEM, IN THIS INSTANCE, \$9,148 FOR EIGHT AND ONE HALF YEARS. YET DIVIDE THIS EQUATION BY TWO, (\$4,574) IN A DIVORCE EQUITABLE DISTRIBUTION SCENARIO, THROW IN THE MOORE FORMULA, AND I OWE AN \$87,000 LUMP SUM BUY OUT. OR A LIFE ANNUITY PENSION IN THE AMOUNT OF \$4,599, (AT MY 1991 SALARY) TO BE DEDUCTED FROM MY PENSION, AND GIVEN TO MY X-SPOUSE ANNUALLY FOR THE REST OF MY LIFE. STARTING CONCEIVABLY AT THE AGE OF FORTY THREE FOR MY X-SPOUSE FOR BEING MARRIED FOR SEVEN YEARS?? DOES THIS SOUND RIGHT TO YOU?? GETTING MORE BENEFITS BY BEING MARRIED TO THE PENSIONER, (EVEN FOR A SHORT PERIOD OF TIME) THAN IF YOU WORKED ON THE JOB??

AM I BEING UNREASONABLE IN SAYING THAT A FORMULA BASED ON "HERE MR. MOORE EARNED THE MAJOR PORTION OF HIS PENSION DURING THE SHARED ENTERPRISE OF HIS MARRIAGE" (TO AN UNEMPLOYED HOUSEWIFE) SHOULD NOT BE APPLIED TO A PERSON LIKE ME, MARRIED FOR SEVEN YEARS TO AN ALWAYS EMPLOYED SPOUSE, WHO MADE MORE THAN ME. THE LAST YEAR WE WERE TOGETHER?. IS THERE NOT SOMETHING WRONG WITH THIS PICTURE??

ADDITIONALLY THE MOORE FORMULA FOR DISTRIBUTING MY PENSION IS BASED ON A PERCENTAGE OF MY FINAL BENEFIT, OR IN MY CASE, MY SALARY DURING THE LAST YEAR I AM IN THE RETIREMENT SYSTEM, NOT MY SALARY IN THE YEAR OF DIVORCE. SO EACH TIME THAT I GET A PAY RAISE (AFTER DIVORCE) MY X-SPOUSE'S BENEFIT GOES UP. NOW, I CAN UNDERSTAND THE CONCEPT, THAT IF THE PENSIONER CANNOT AFFORD THE BUY OUT FIGURE AT DIVORCE, (WHO CAN??) THEN THE VALUE OF THIS MONEY, THROUGH COST OF LIVING INCREASES. BECOMES MORE AT A LATER TIME. HOWEVER THIS DOES NOT TAKE INTO ACCOUNT THE POSSIBILITY OF PROMOTIONAL RAISES. I HAVE BEEN PROMOTED THREE TIMES SINCE SEPARATION, AND TWICE SINCE DIVORCE. THESE PROMOTIONAL RAISES HAVE, BY FAR, OVERSHADOWED MY COST OF LIVING RAISES. AS IT IS NOW, MY X-SPOUSE WILL SHARE THE BENEFITS, OF EACH ONE OF THOSE PROMOTIONS, AND FUTURE ONES SHOULD THEY OCCUR. IS THIS FAIR AND EQUITABLE?? IS THIS EVEN REASONABLE??

THERE IS ANOTHER CASE THAT I'VE QUOTED IN MY BRIEF, AND I BELIEVE THAT THIS IS WHERE I SHOULD REPEAT IT. LACEY v LACEY 45 WIS, 2d 378, 173 N.W. 2d 142, 145, TO WIT; "THE FORMULA FOR (EQUITABLE) DIVISION DERIVES FROM THE FACTS OF THE INDIVIDUAL CASE. IF IT IS ARGUED THAT THIS APPROACH GIVES GREAT LEEWAY, AND ALSO PLACES A HEAVY RESPONSIBILITY ON THE TRIAL COURTS IN DIVORCE CASES.

THERE IS NO GAINSAIYING THAT FACT. HOWEVER BOTH FLEXIEILITY AND RESPONSIBILITY ARE CALLED FOR BY THE ENDLESS VARIETY OF HUMAN SITUATIONS WHICH COME TO COURT IN FAMILY CASES. NO TWO ARE EXACTLY ALIKE". THE APPLICATION OF THE MOORE FORMULA AS IS, TO PERSON'S LIKE MYSELF IS NOT CORRECT. AND SHOULD NOT BE ALLOWED TO CONTINUE.

REGARDING MY APPEAL, AND IT'S REJECTION BASED ON THE FACT THAT I AGREED TO THE CONDITIONS. CAN ANY OF YOU, AFTER READING THIS CHRONOLOGY, (WHICH I HOPE YOU NOTICED DOES NOT CONTAIN ANY CONTRADICTIONS FROM MY X-SPOUSE) REALLY THINK THAT I VOLUNTARILY AGREED TO THIS. CAN ANYONE SAY THAT THEY HONESTLY FEEL THAT THIS WASN'T FORCED UPON ME. DID I HAVE A CHOICE IN THE MATTER, COULD I HAVE FOUGHT IT?

AT THE RISK OF BORING YOU, LET ME SUMMARIZE THE HI-LITES OF MY SITUATION.

- 1) MY X-SPOUSE AND I AGREE TO 18 MONTH NO FAULT DIVORCE. EIGHTEEN MONTHS LATER (TO THE DAY) I'M CHARGED WITH MENTAL CRUELTY?? INITIALLY, I HAVE NO IDEA WHY, THEN I'M TOLD EIGHTEEN MORE MONTHS (LIFE ANNUITY VALUE) PENSION IS WHY??
- 2) I TAKE A \$15,000 PENSION LOAN, A FULL ELEVEN MONTHS BEFORE OUR SEPARATION. THIS IS APP. \$6,000 MORE THAN MY TOTAL CONTRIBUTIONS INTO THE PENSION SYSTEM DURING THE 8.5 YEARS OF MARRIAGE MENTIONED (7 YEARS PLUS 1.5 YEARS SEPARATION TIME). THIS IS USED TO REPAIR A MUTUALLY OWNED OLDER HOME, AND FOR OTHER FAMILY MATTERS THAT I CAN PROVE. IT IS (STILL) BEING PAID OFF TO THE TUNE OF APP. \$400.00 PER MONTH TAKEN FROM MY PAY.
- 3) MY X-SPOUSE TAKES A \$15,000 PERSONAL LOAN A FULL FIFTEEN MONTHS AFTER OUR SEPARATION, TELLS THE COURT THAT SHE SPENT IT ON FAMILY MATTERS, AND CAN'T EVEN PROVE THAT SHE TOOK THE LOAN, NEVER MIND WHAT SHE SPENT IT ON. SO THE LOAN(S) MUST NOW CANCEL EACH OTHER.
- 4) MY X-SPOUSE IS EMPLOYED WITH A GOOD JOB (WITH BENEFITS AND A PENSION) THE ENTIRE TIME I'M MARRIED TO HER. SHE IS LAID OFF SEVEN MONTHS INTO OUR SEPARATION, AND GETS A \$27,610 SEVERANCE PACKAGE. I'M NOT TOLD OF THIS SEVERANCE MONEY UNTIL DIVORCE TIME.
- 5) DURING TRIAL, I'M TOLD THAT THE JUDGE FEELS THAT THE MOORE FORMULA FITS, EIGHT AND ONE HALF YEARS IS THE LENGTH OF MARRIAGE, 35% OF MY PENSION IS REASONABLE. ADD ON AN INSURANCE POLICY FOR MY X-SPOUSE (LEAST-I DIE, AND SHE BE SHORT SIDED ON PENSION) THE \$27,610 DOESN'T COUNT. I HAVE TO EAT MY PENSION LOAN, AND THEN HIGH SIDES ME ON THE CHILD SUPPORT GUIDE LINES BY \$30.00 PER WEEK, PLUS 56% DAYCARE EXPENSES.
 - a. NOTE HERE THAT, IN THIS CHILD SUPPORT SCENARIO, THE \$400.00 PLUS PER MONTH PENSION LOAN PAY OFF IS NOT CONSIDERED IN DETERMINING WHAT I WAS TO PAY IN THE GUIDE LINES, THEN THE JUDGE TACKS ON ANOTHER \$30.00 PER WEEK. (I WASN'T BANGED ON CHILD SUPPORT AS THEY SAY. I WAS WHALLUPED!!!)
- 6) OF COURSE I DON'T HAVE TO AGREED TO THIS DEAL, BUT THE JUDGE HAS ALREADY MADE UP HIS MIND, AND THE JEOPARDY I FACED WAS AN ADDITIONAL (MOORE FORMULA) 15% OF MY PENSION BEING AWARDED (FOR LIFE) TO MY X-

SPOUSE. ASK YOUR SELVES, WHAT WOULD YOU DO?? WAS I FORCED?? DO YOU THINK THAT I THOUGHT I WAS GETTING A GOOD DEAL (?) OR EVEN A REASONABLY FAIR DEAL??

- 7) AFTER I'M FORCED TO AGREE, (AND BELIVE ME, THE PRESSURE WAS ON) I THINK ABOUT IT, AND IN ALL HONESTY I CAN'T BELIVE IT. IF IT DIDN'T INVOLVE ME, I'D FIND IT FUNNY, AS A MATTER OF FACT, I WOULDN'T HAVE BELIEVED IT. I APPEAL IT, PRO-SE, (I CAN'T AFFORD A LAWYER) WITH IN THE FORTY FIVE DAY APPEAL PERIOD. IN THE APPELLATE COURTS RULING OR SHOULD I SAY LACK OF RULING, I'M TOLD, MOORE FITS, YOU AGREED TO IT, THATS THE END OF IT.
- 8) IS THIS HOW IT IS DONE IN DIVORCE COURT IN AMERICA?? THE JUDGE ALBEIT BEHIND CLOSED DOORS, INTIMIDATES A PERSON WITH ANCILLARY ISSUES UNTIL THEY AGREE TO WHAT EVER IS PRESENTED, LEAST THE JUDGE HAS TO MAKE A DIFFICULT DECISION. SHOULD A PROBLEM ARISE IN THE FUTURE, THE JUDGE LIFTS HIS OR HER HANDS IN DISBELIEF?? THEY HAD NOTHING TO DO WITH IT, RIGHT? IT WAS A MUTUAL AGREEMENT BETWEEN THE TWO PEOPLE GETTING A DIVORCE. RIGHT?? YEAH RIGHT!!!
- 9) HOW MANY OTHER PERSONS LIKE ME, HAVE BEEN LITERALLY FORCED INTO AGREEMENTS LIKE THIS, AND THEN ARE TOLD IN APPEAL, THEY AGREED TO IT, THATS THE END OF IT?? MINE WASN'T AN AGREEMENT, IT WAS A PLEA BARGAIN, I FELT LIKE A CRIMINAL. THE TERMS OF THE AGREEMENT WERE DICTATED TO ME (OFF THE RECORD NATURALLY) THEN I'M THREATENED WITH AN ADDITIONAL 15% BEING TAKEN FROM MY PENSION FOR LIFE FOR ONLY SEVEN YEARS OF MARRAIGE IF I DON'T BUY INTO IT, (OFF THE RECORD NATURALLY). THEN ON THE RECORD, "GEE WIZ, WHY DID YOU AGREE IF YOU LIDN'T LIKE THE DEAL. IT COULD HAVE GONE EITHER WAY" YEAH SURE!!! COME ON. PUT YOURSELF IN MY POSITION, WEAR MY SHOES, GET YOUR CALCULATOR WORKING WITH THE MOORE FORMULA ON YOUR PENSION, LET ME KNOW HOW IT FEELS. BETTER YET, LET THE COURTS KNOW HOW I FEELS.

IN MY REPLY TO JANET'S REBUTIAL, I COMMENT ON THE INFANTE V GOTTERMAN. AND THE RIVERVALE V EBR OFFICE INTERIORS CASES, AT GREAT LENGTH. I DON'T WISH TO BE REPETITIVE, BUT DO YOU REALLY THINK THAT THEY SHOULD BE APPLIED TO DIVORCE SETTLEMENTS??? ARE THEY THE SAME???

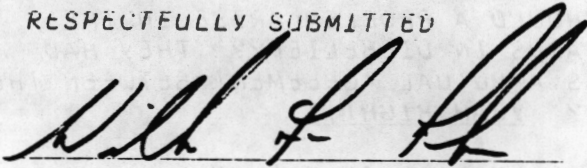
IN YOUR REFORM STATEMENTS, YOU MUST CONSIDER THE MOORE FORMULA. PLAIN AND SIMPLE, IT IS NOT REASONABLE TO APPLY IT TO EVERYONE. MOORE SHOULD HAVE A VESTED INTEREST CLAUSE WHICH MIRRORS THE PENSIONER'S VESTED INTEREST CLAUSE (i.e. IF IT TAKES TEN YEARS TO VEST IN THE PENSION SYSTEM, THEN IT SHOULD TAKE TEN YEARS OF MARRIAGE TO GAIN A DIVISION OF LIFE ANNUITY VALUE PENSION BENEFITS. OTHERWISE WE DIVIDE DONATIONS). TOO, MOORE NEEDS A POST DIVORCE PROMOTIONAL CLAUSE, OR DISCLAIMER. LASTLY, APPEALS MUST BE DEALT WITH ON MERIT, NOT ON THE FACI THAT AN AGREEMENT WAS FORCE FED, THEREFORE, "SO BE IT".

ALTHOUGH IT MAY NOT BE APPARENT, I'VE TRIED NOT TO EDITORIALIZE IN THIS LETTER. HOWEVER IN SUMMATION, YOU SHOULD KNOW THAT I AM A WAR VETERAN, AND I'VE SERVED TWENTY THREE YEARS AS A POLICE OFFICER, YET BEING IN DIVORCE COURT FOR TWO DAYS IN MARCH 1991, WAS THE SINGLE WORST EVENT IN MY LIFE. WHILE WATCHING THE LAW AT WORK, IT BECAME VERY APPARENT, THAT EQUITABLE DISTRIBUTION IN DIVORCE, WAS NOT GOING TO BE EQUITABLE FOR ME. TOO, CONTRARY TO THE THOUGHTS OF THE APPELLATE COURT, FUNDAMENTAL FAIRNESS WAS AN ISSUE IN MY DIVORCE, AND AS WITH ASSETS, IT WASN'T DISTRIBUTED, EQUALLY. THE COURTS LIKE TO TALK ABOUT IT A LOT, BUT I DIDN'T SEE TOO MUCH OF IT.

PERHAPS IN YOUR DELIBERATIONS ON ALL SUBMITTED ISSUES, YOU SHOULD KEEP THAT TERM IN MIND. IF IT IS APPLIED EQUALLY TO EVERY ONE, ON ALL ISSUES, THEIR MAY BE LESS PROBLEMS IN THE FUTURE.

I THANK YOU FOR YOUR TIME AND EFFORT IN UNDERTAKING THE TASK OF READING THE MATERIAL PRESENTED. IF I CAN BE OF ANY ASSISTANCE, OR ANSWER ANY QUESTIONS REGARDING THIS MATTER, UNDER OATH OR OTHER WISE, I AM AT YOUR DISPOSAL. THANK YOU AGAIN.

RESPECTFULLY SUBMITTED



WILLIAM F. LAWLER

Oliviero v. Porter Hayden Co. 241 N.J.Super.
Cite as, 241 N.J.Super. 381

allowance shall stand; on the other hand if it is determined that his presence was not warranted during the liability aspect of the trial, then the allowance must be vacated by the trial court.

II

[6] Plaintiffs' attorneys also argue that the trial court abused its discretion by imposing costs in favor of the Superior Court for the three days of the first aborted trial. In our mandate to the trial court, we directed that "the Law Division will assess reasonable costs payable by plaintiff's counsel to the Superior Court Clerk ... for the waste of publicly supported judicial resources occasioned by counsel's default and resulting in [a] mistrial." Plaintiffs' attorneys argue that the trial judge should have restricted her assessment of court costs to the statutory allowable tax costs and that actual costs are not expressly provided under the rules of court as required by R. 4:42-9(a)(7). They argue that costs over and above tax costs and costs of everyday running the court system is an expense that the State would have incurred in any event. We disagree.

As previously noted, if a party or counsel, "without just excuse" or for "failure to give reasonable attention to the matter" requires "an application ... for an adjournment, the court may order ... (a) the payment by the delinquent attorney ... of costs, in such amount as the court shall fix, to the Clerk of the County in which the action is to be tried" R. 1:2-4(a).

In assessing \$2,346 in court costs, Judge Reavey multiplied the three days which the first trial had taken by the estimated daily expense to the State. She obtained this figure in the following fashion:

I've gotten my figures from the Court Administrator which he indicated for each day that the trial would take just for the use of the courtroom facilities, the personnel would be—and first he said approximately \$800. And then he called me back to say it was \$782 per day. And I can't help but think that's a fairly accurate figure. And in light of the figure I've heard in other matters tried in other counties which are billable to the County of Middlesex, I think

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that comes within the parameter of ["reasonableness" set forth in the Appellate Division's interlocutory order]. Because in some instances in criminal trials where there's a number of Sheriff's officers involved, it runs to some three, four, \$500 an hour to try a case. And I think that \$782 has to be considered reasonable.

None of the parties has contested the accuracy of the per diem expense.

Where authorized, as here, the allowance of costs is generally committed to the court's discretion. *Fortugno Realty Co. v. Shiovone-Bonomo Corp.*, 39 N.J. 382, 396, 189 A.2d 7 (1963); *Hirsch v. Tushill, Ltd., Inc.*, 110 N.J. 644, 646, 542 A.2d 897 (1988). We find no abuse of discretion in fixing court costs occasioned by counsels' default.

The order allowing costs and counsel fees is modified and, as modified, affirmed. The matter is remanded to the trial court for further proceedings consistent with this opinion.

575 A.2d 55

RIVER VALE PLANNING BOARD AND MAYOR AND COUNCIL OF THE TOWNSHIP OF RIVER VALE, PLAINTIFFS-APPELLANTS, v. E & R OFFICE INTERIORS, INC.; MODERN OFFICE EQUIPMENT CO.; EUGENE TIETJEN, AND HERMAN STEENSTRA, RIVER VALE CONSTRUCTION OFFICIAL, DEFENDANTS-RESPONDENTS AND JON JERMAN HOLDING CO., INC. AND JON JERMAN, INDIVIDUALLY, DEFENDANTS.

Superior Court of New Jersey
Appellate Division

Argued May 7, 1990—Decided June 11, 1990.

SYNOPSIS

Township planning board, township council, and mayor sought enforcement of variance, site plan conditions, and devel-

APPELLATE DIVISION

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oper's agreement. The Superior Court, Law Division, Bergen County, granted motion for summary judgment filed by prior and current owners of property, and ordered township to return cash performance bond to current owner. Plaintiffs appealed. The Superior Court, Appellate Division, Petrella, P.J.A.D., held that: (1) site plan approval was not equivalent of "any ordinance or other regulation," within meaning of statute allowing institution of any appropriate action or proceedings when building or structure is erected, constructed, altered, repaired, converted, or maintained, or any building, structure or land is used in violation of statute or of "any ordinance or other regulation"; (2) installation of improvements contemplated by developer's agreement as condition of site plan approval was subject to implied or constructive condition that those improvements were required only if developer proceeded with project contemplated by application and approval; and (3) doctrine of res judicata did not apply to new application for site plan approval by current owner of property.

Affirmed.

1. Zoning and Planning ⇐761

Site plan approval is not equivalent of "any ordinance or other regulation," within meaning of statute allowing institution of any appropriate action or proceedings when building or structure is erected, constructed, altered, repaired, converted, or maintained, or any building, structure or land is used in violation of statute or of "any ordinance or other regulation." N.J.S.A. 40:55D-18.

2. Zoning and Planning ⇐382.1, 471.5

Municipality is free to rescind site plan approval in its entirety or to impose conditions on any occupier of land who seeks to obtain benefit of site plan approval.

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3. Zoning and Planning ⇐382.2

Installation of improvements contemplated by developer's agreement as condition of site plan approval was subject to implied or constructive condition that those improvements were required only if developer proceeded with project contemplated by application and approval.

4. Zoning and Planning ⇐471.5, 549

Upon developer's decision not to install improvements contemplated by developer's agreement as condition for site plan approval, township planning board could rescind site plan approval and related variance for parking spaces.

5. Zoning and Planning ⇐462

Doctrine of res judicata did not bar subsequent transferee of property from making new application for site plan approval, where transferor and transferee had abandoned prior approval.

6. Appeal and Error ⇐883

Appellants could not argue issues on appeal which were covered by stipulation of settlement and voluntary dismissal without prejudice.

7. Zoning and Planning ⇐382.2

Any knowledge by transferee of property regarding requirements of site plan approval did not require transferee to complete improvements contemplated by developer's agreement, which was entered into as condition of site plan approval.

Before Judges PETRELLA, O'BRIEN and HAVEY.

Frederick L. Bernstein argued the cause, for appellants.

Roger W. Breslin, Jr. argued the cause for respondents E & R Office Interiors, Inc., Modern Office Equipment Co., and Eugene Tietjen (*Beattie Padovano*, attorney; *Roger W. Breslin, Jr.*, on the brief).

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No one appeared or submitted a brief on behalf of any other respondent.

The opinion of the court was delivered by

PETRELLA, P.J.A.D.

The River Vale Planning Board and the Mayor and Council of the Township of River Vale (collectively referred to as River Vale) appeal from a judgment of the Law Division which dismissed that portion of their complaint which had sought enforcement of a variance, site plan conditions and a developer's agreement. The judgment also dismissed cross-claims among the various defendants. Defendant Jon Jerman Holding Company, Inc. (Jerman)¹ was the original applicant for preliminary and final site plan approval and ancillary variances for a nonconforming property located on 3.41 acres of land on River-vale Road in River Vale.

In the November 1988 judgment which dismissed the first and third counts of the complaint River Vale was ordered to refund a cash performance bond of \$10,208 to Jerman which it had deposited with the Township. The judgment also recited that Jerman waived any claim it may have had against the Township of River Vale or its planning board for the return of an \$8,575 deposit paid as reimbursement of expenses to River Vale. The allegations in other counts of the complaint were dismissed without prejudice by an agreement between the parties which was included in a "Stipulation of Settlement and Order of Dismissal" entered on November 16, 1988.

On this appeal River Vale argues that it is entitled to enforcement of the terms and conditions of a February 4, 1985 prelimi-

¹As used herein "Jerman" refers only to the corporation, unless otherwise stated. The complaint was dismissed as to defendant Jon Jerman, individually, in a January 4, 1988 order amending the pretrial order. We entered an order on November 30, 1989 dismissing the appeal as to Jon Jerman Holding Company, without prejudice, due to the fact that bankruptcy proceedings were instituted by it.

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nary and final site plan approval under N.J.S.A. 40:55D-18, notwithstanding that Jerman and the subsequent purchaser of the property from Jerman, E & R Office Interiors, Inc. (E & R) asserted abandonment of the benefits of the application. River Vale argues that the site plan requirements "run with the land" and bind subsequent transferees as a matter of law. It asserts that E & R had actual notice of the Developer's Agreement and waived any objection to the performance of the site plan conditions and thus became bound to perform as a matter of contract. It also argues that principles of *res judicata* should bind the developer and his successor in title where the attempted withdrawal is after site plan approval, after execution of the Developer's Agreement and after the posting of a cash performance bond.

Jerman applied as a contract purchaser to the River Vale Planning Board on October 24, 1984 for preliminary and final site plan approval and for certain variances with respect to a 43,200 square foot building on 3.41 acres of land at 634 River-vale Road and located in a light industrial "D" zone. The building, which covered 29% of the land, had previously been used by a fertilizer and garden supply firm. The applicable ordinance only permitted lot coverage of 25%. Jerman sought to use the property for multi-tenant occupancy and sought a variance to permit 64 parking spaces instead of the required 108 spaces.²

Hearings were held before the planning board which ultimately granted preliminary and final site plan approval on February 4, 1985, together with an ancillary variance which approved 64 parking spaces. The site plan approval was conditioned on execution of a Developer's Agreement containing a detailed schedule of site improvements, along with performance guarantees. The agreement included posting a performance

²The 29% lot coverage was not the subject of the variance because the building was preexisting.

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bond to insure installation of public improvements within two years at a cost of \$102,088, and the posting of a cash performance bond of \$10,208 with the township. Jerman entered into the agreement on March 28, 1985.

The Developer's Agreement provided in part:

WHEREAS, application for site plan approval and for a variance to allow 64 parking spaces (in lieu of the 108 required by the River Vale Zoning Ordinance) has been made by the developer for use of the premises ... for the tenants mentioned in a resolution of approval adopted by the Planning Board on February 4, 1985; and

WHEREAS, the premises are located ... in an industrial district, which developer proposes to convert from a single-use occupancy to multiple-use occupancy; and

.

WHEREAS, the BOARD on February 4, 1985, granted approval of the application subject to conditions, including conditions relating to the making of certain public and on-site improvements and the providing of performance guarantees therefore; and

WHEREAS, the DEVELOPER wishes to express by this agreement its acceptance of the conditions determined by the Board and its undertaking to make and perform the public and on-site improvements required; subject to inspection by the Township and to the terms and provisions of this agreement;

NOW, THEREFORE, IT IS AGREED:

1. The DEVELOPER shall, ... make and install all of the improvements (a) shown on the schedule made a part hereof, hereinafter called the "Site Improvement Schedule;" (b) shown on the site plan hereinabove mentioned; ...
2. All of the improvements referred to in paragraph 1 hereof shall be completed within two (2) years from the date of this agreement.

.

19. It is agreed that any assignment hereof or sale of the premises in whole or in part, shall not operate to relieve the developer from the obligations hereunder, without the express written consent of the Planning Board and Township Council of the Township of River Vale.

The performance guarantee for the improvements was never posted and none of the improvements were ever installed.

In the first half of 1985 E & R apparently entered into the lease with Jerman for 3,065 square feet of unheated warehouse space to store office furniture. A copy of the first page of the lease in the appendix is undated, but indicates that the lease is for two years, commencing February 1, 1985. On February 8,

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1985 E & R obtained a Certificate of Continued Occupancy (C.O.) for the 3,065 square feet of space it leased from Jerman. The C.O. was issued by defendant Herman Steenstra, the River Vale Construction Official. Jerman purchased the property on February 21, 1985 for \$860,000.

On December 13, 1985 E & R contracted with Jerman to purchase the property in question for \$1,500,000. The parties dispute whether E & R was aware of the site plan approval process while it was taking place in February 1985. In any event, the closing on the sale of the property to E & R took place on May 6, 1986. The day after E & R purchased the property, River Vale recorded the Developer's Agreement between Jerman and the township with the Bergen County Clerk in Deed Book 7007, at Page 970.

On May 20, 1986 Jerman requested return of its cash bond in the amount of \$10,208. River Vale did not return the bond, and on March 12, 1987 declared Jerman in default of the Developer's Agreement. On June 11, 1987 Steenstra, River Vale's Construction Official, informed the planning board that E & R had applied for a Certificate of Continued Occupancy for the premises and that he was prepared to issue same. River Vale then instituted suit against E & R, Jerman, and its principals, as well as its own construction official.

Jerman, the prior owner, and E & R, the present owner of the property, asserted that they abandoned any rights which they may have derived as a result of the grant of the variance and the site plan approval, albeit without River Vale's written consent. They therefore moved for summary judgment. River Vale cross-moved to bifurcate the trial on the issues of liability and damages, to strike E & R's demand for a jury as to certain issues, and for certain other relief. On January 4, 1988 these motions were denied, except that the complaint was dismissed as to Jon Jerman individually. The pretrial order was amended to provide that the trial would proceed in stages, with the first

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stage dealing only with the enforceability of the February 4, 1985 site plan resolution and related Developer's Agreement.

When the case came on for trial on the first stage issues, E & R and Jerman renewed their applications for summary judgment. The trial judge found that the operative facts were not in dispute, and granted their motions. The judge observed that River Vale was essentially seeking to enforce and obtain specific performance of the Developer's Agreement. He distinguished *North Plainfield v. Perone*, 54 N.J.Super. 1, 148 A.2d 50 (App.Div.1959), certif. den. 29 N.J. 507, 150 A.2d 292 (1959), since that case involved whether an intervening use consistent with existing zoning design interrupts the chain of circumstances so as to defeat the right to resume the use originally sanctioned by an exception. The judge concluded that a constructive condition to the agreement existed so that the developers' duty to install the improvements was conditioned on his going ahead with the project itself. Since the project was abandoned, the time for going ahead had run out, and the condition had not been met, the judge considered the approval no longer in effect. The judge construed the agreement against its drafters, relying on *Terminal Constr. Corp. v. Bergen Cty.*, 18 N.J. 294, 301, 113 A.2d 787 (1955); *Fletcher v. Interstate Chemical Co.*, 94 N.J.L. 332, 110 A. 709 (S.Ct.1920), aff'd o.b. 95 N.J.L. 543, 112 A. 887 (E. & A. 1921). He ordered the release of the \$10,208 cash bond since the municipality had already been paid some \$8,575 in connection with the variance and because no other parties claimed entitlement to the expenses for the abandonment of the zoning application.

The judge then prepared to move on to the next stage of the case which dealt with the second and fourth counts of the complaint along with the cross-claim against Steenstra. However, the parties entered into a stipulation of settlement and all of the remaining aspects of the case were dismissed without prejudice by an order filed on November 16, 1988. River Vale then filed an appeal from the judge's decision on the stage one

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aspect and obtained a stay of the portion of the judgment which ordered the return of the cash performance bond to Jerman.

[1,2] River Vale argues that the site plan conditions imposed on Jerman and the Developer's Agreement should be enforced against E & R as a transferee of the property. It relies on *N.J.S.A. 40:55D-18* which reads in pertinent part:

In case any building or structure is erected, constructed, altered, repaired, converted, or maintained, or any building, structure or land is used in violation of the Act or of any ordinance or other regulation made under authority conferred hereby, the proper local authorities of the municipality or an interested party, in addition to other remedies, may institute any appropriate action or proceedings to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use, to restrain, correct or abate such violation, to prevent the occupancy of said building, structure or land, or to prevent any illegal act, conduct, business or use in or about such premises.

Because the present owner proposes to occupy the entire 43,200 square feet and use the 3.41 acre land area without applying for site plan approval or a change of use approval, and without assuming the site plan improvements of the Jerman defendants, River Vale argues that they are in violation of the municipality's ordinances and resolutions. However, E & R does not assert that it need not comply with the Land Use Act or applicable ordinances and regulations, nor does it assert that it need not apply for a continued Certificate of Occupancy. Hence, we need not decide the appeal based on arguments addressed to these issues, particularly in light of the terms of the stipulation of dismissal. However, we do not consider a site plan approval as the equivalent of "any ordinance or other regulation."

The case of *Sansone Oldsmobile-Cadillac, Inc. v. Board of Adjustment, Shrewsbury*, 211 N.J.Super. 304, 511 A.2d 748 (Law Div.1986), relied upon by River Vale, does not support its position. That case dealt with the attempt by an applicant to withdraw an application for a variance before what it knew would be an unfavorable decision was rendered. It thus sought to prevent the future application of *res judicata* principles. The Law Division under those circumstances upheld the refusal

of the board to allow withdrawal of the application. *Sansone* does not address the issue of enforcement of site plan conditions where the applicant or a successor in title had determined not to pursue the project for which site plan approval was sought and obtained. Hence, we find *N.J.S.A. 40:55D-18* inapplicable to the abandonment of a site plan approval. The municipality is free to rescind the site plan approval in its entirety or to impose those conditions on any occupier of the land who seeks to obtain the benefit of the site plan approval. On the other hand, to the extent that E & R may be subject to the requirements for site plan approval and the obtaining of any additional Certificate of Continued Occupancy, the municipality is free to reasonably enforce its ordinances to the extent any violations exist or may occur.

[3] In our view the trial judge correctly applied legal principles in concluding that the installation of the improvements contemplated by the Developer's Agreement as a condition of site plan approval was subject to an implied or constructive condition that those improvements were required only if the developer proceeded with the project contemplated by the application and approval. See *Edwards v. Leopoldi*, 20 *N.J.Super.* 43, 54, 89 *A.2d* 264 (App.Div.1952), cert. den. 10 *N.J.* 347, 91 *A.2d* 671 (1952); *Duff v. Trenton Beverage Co.*, 4 *N.J.* 595, 604-606, 73 *A.2d* 578 (1950). The Developer's Agreement was entered into as part of the approval process of Jerman's site plan application. Once his application had been abandoned, there was no need for the developer to proceed under the agreement and no burden placed on the municipality because of increased facilities or higher density use. Jerman gave up the benefits and the burdens of the agreement. Since the site plan is not going to proceed as proposed, the municipality may not enforce that agreement.

[4] Under these circumstances, the board may, if it desires, rescind the site plan approval and variance. Cf. *Costanza & Bertolino, Inc. v. The Planning Board*, 360 *Mass.* 677, 277

N.E.2d 511 (1971) (where covenants to complete ways and install services within two years is not satisfied, automatic rescission provision provided in the covenant is operative); *Leventhal v. Dockser*, 358 *Mass.* 799, 261 *N.E.2d* 64 (1970) (board may insist on expiration date and conditional approval in subdivision plan); *New Windsor v. Inbro Development*, 112 *Misc.2d* 983, 448 *N.Y.S.2d* 99 (S.Ct. 1982) (condition of performance bond not actuated where developer fails to commence work). Obviously, if the municipality determines to rescind the site plan approval, it may also rescind the related variance for parking spaces. Since the advantages gained by the approval are not sought by E & R, or available to it at present, there is no prejudice to the municipality by the failure of the developer to proceed with the improvements.

[5] River Vale also argues that even absent the Developer's Agreement, and recognizing that E & R was not a party to it, nonetheless principles of *res judicata* should apply and be enforceable against a subsequent transferee of the property, relying on *Hackensack v. Winner*, 78 *N.J.* 404, 396 *A.2d* 591 (1978); *Russell v. Tenafly Board of Adjustment*, 31 *N.J.* 58, 155 *A.2d* 83 (1959), and *Restatement, Judgments*, § 83 (1942).

We reject River Vale's argument. E & R does not seek to apply for the same site plan approval with the same conditions previously attached. Indeed, E & R and Jerman have abandoned the prior site plan approval. Hence, the concept of *res judicata* does not apply to a new application.

[6] Although it is not conceded by respondents, River Vale also argues that E & R had actual knowledge of the River Vale site plan requirements prior to their purchase of the property. River Vale argues that E & R had notice that a certificate of occupancy would not be issued unless the improvements were installed. Thus, River Vale argues that the Developer's Agreement is binding on E & R as Jerman's successor. Under River Vale's Land Use Ordinance, § 44A26, a change in a nonconforming use requires site plan approval. Since the previous

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fertilizer and garden supply products business was nonconforming due to the 29% lot coverage (as opposed to permitted 25% coverage), River Vale takes the position that E & R may not use the entire 43,200 square foot building or any part of it without first acquiring site plan approval.

As noted, there appears to be a dispute about whether E & R's principal, Eugene Tietjen, attended any of the site plan application proceedings before the River Vale Planning Board. He has stated that he never attended such meetings. The minutes relating to the Jerman application do not seem to indicate that E & R was present. In any event, the issue of the necessity of site plan approval before occupancy of the building is a matter that was not embraced in the decision by the trial court in this matter in the first stage of the proceedings. It was the subject of the allegations of the fourth count of plaintiff's complaint. Under the stipulation of settlement the municipality undertook not to institute any proceedings for code violations against E & R until there was a decision by a court of civil jurisdiction. The issues encompassed by the fourth count of the complaint were covered by the stipulation of settlement and voluntary dismissal without prejudice. Since River Vale consented to this settlement and dismissal of that count of the complaint, it may not argue that issue on this appeal. See *Infante v. Gottesman*, 233 N.J.Super. 310, 318, 558 A.2d 1338 (App.Div.1989). Simply stated, the issue is not before us on this appeal.

[7] Finally, River Vale argues that Jerman agreed to take back a \$100,000 mortgage in order to create a reserve for the purchaser in the event that the town required it to go through with the site plan work. Thus, River Vale argues that since the parties knew about the requirements of the site plan approval they should be required to complete those improvements. We have already noted and essentially rejected these contentions by River Vale.

241 N.J.Super. East Mill Assoc. v. Township Coun.
Cite as, 241 N.J.Super. 403

Accordingly, and without regard to any requirements for current site plan approval, and subject to the stipulation of settlement agreed to by the parties, the decision of the Law Division is affirmed.

575 A.2d 61

EAST MILL ASSOCIATES, PLAINTIFF-APPELLANT, v. TOWNSHIP COUNCIL OF THE TOWNSHIP OF EAST BRUNSWICK AND THE TOWNSHIP OF EAST BRUNSWICK, DEFENDANTS-RESPONDENTS.

Superior Court of New Jersey
Appellate Division

Submitted May 30, 1990—Decided June 12, 1990.

SYNOPSIS

In its action in lieu of prerogative writ, landowner/developer appealed from judgment of the Superior Court, Law Division, Middlesex County, upholding ordinance reducing permitted density of dwelling units per acre. The Superior Court, Appellate Division, Bilder, J.A.D., held that ordinance was inconsistent with existing master plan and was invalid as it was not accompanied by resolution giving reasons for inconsistency.

Reversed.

Zoning and Planning ⇐131

Township ordinance, reducing density of residential property from 12 dwelling units per acre to nine per acre and thus inconsistent with existing master plan,

Infante v. Gottesman. 233 N.J. Super.
Cite as, 233 N.J. Super. 310.

ANTHONY F. INFANTE, PLAINTIFF-APPELLANT, v. MICHAEL H. GOTTESMAN, DEFENDANT-RESPONDENT.

Superior Court of New Jersey
Appellate Division

Argued March 14, 1989—Decided May 16, 1989.

SYNOPSIS

Claims investigator sued attorney to recover damages for alleged breach of partnership agreement, and on quantum meruit for services rendered. The Superior Court, Law Division, Ocean County, entered summary judgment for lawyer, and investigator appealed. The Superior Court, Appellate Division, Michels, P.J.A.D., held that: (1) purported partnership agreement between attorney and claims investigator was invalid, as an impermissible partnership between lawyer and nonlawyer, and (2) as agreement was invalid, no recovery could be had under quantum meruit for reasonable value of investigatory and claim services performed by investigator.

Affirmed.

1. Attorney and Client ⇄29

Agreement under which claims investigator and attorney purported to go into business with each other as equal partners was invalid because it violated professional conduct rule prohibiting lawyer from forming partnership or sharing legal fees with nonlawyer. RPC 5.4, 5.5; N.J.S.A. 2A:170-78.

2. Attorney and Client ⇄29

As express agreement between claims investigator and attorney to form partnership and share in income was void and unenforceable, claims investigator could not collect on quantum

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meruit theory for performance of investigative, paralegal and other services involving attorney's law practice. RPC 5.4, 5.5; N.J.S.A. 2A:170-78.

Before Judges MICHELS, LONG and KEEFE.

Robert M. Anderson argued the cause for appellant (*Gertler & Hanna*, attorneys).

Allan J. Shechet argued the cause for respondent (*Shechet & Spector*, attorneys).

The opinion of the court was delivered by

MICHELS, P.J.A.D.

Plaintiff Anthony F. Infante appeals from a summary judgment of the Law Division entered in favor of defendant Michael H. Gottesman, an attorney-at-law licensed to practice in the State of New Jersey, in this action to recover damages on theories of breach of contract and *quantum meruit* arising out of the performance of investigative, paralegal and other services involving defendant's law practice.

Plaintiff, who ran an investigation service specializing in workers' compensation and personal injury litigation, entered into an agreement with defendant whereby plaintiff was to receive 50% of the legal fees generated by the matters that he brought into defendant's law office. This agreement was memorialized by a letter dated August 5, 1975, which reads as follows:

Dear Tony

I will give you 50% of everything you bring in. If you go into business with me we will draw the same money. I consider us full and equal partners.

/s/ Michael H. Gottesman

Subsequently, the agreement was modified to provide that one-third of the gross receipts from these matters would be allocated to overhead and the remaining two-thirds would be shared equally by plaintiff and defendant. From the record, it is difficult to determine with any certainty the intended scope of the parties' business relationship. Plaintiff indicates, how-

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ever, that his paralegal and investigative services, which included "reviewing files, contacting insurance companies and talking to witnesses," were performed "in addition to [his] duties pursuant to his written agreement with defendant." In any event, plaintiff asserts that his employment with defendant was terminated in November 1981, at which time defendant "stopped making any and all payments."

Plaintiff instituted this action to recover damages in the sum of \$80,000. In the first count of the complaint, he charged defendant with breach of the August 5, 1975, contract and sought to recover, pursuant to the terms of the contract, his share of the gross receipts generated by the matters that he had originated. In the second count, plaintiff sought to recover on theories of *quantum meruit* and constructive contract for investigative and paralegal services that he had performed with respect to "approximately 40 investigations and other files." On July 8, 1986, the trial court granted summary judgment in defendant's favor on the first count of the complaint, reasoning essentially that defendant was prohibited from entering into an agreement by which a partnership was formed with a nonattorney for the purpose of practicing law. On the second count, the trial court granted partial summary judgment in defendant's favor, thereby barring plaintiff from recovering for any investigative or paralegal services performed with respect to all matters in which he had been the originating party. The trial court held, however, that plaintiff could pursue his claim for the reasonable value of the investigative and paralegal services performed with respect to all matters in which he had not been the originating party.

Thereafter, plaintiff furnished defendant with a list of the 40 matters for which he had allegedly performed services and served defendant with a subpoena ordering the production of all files dated from August 5, 1975, through November 30, 1981. On January 8, 1987, at a pretrial conference, the parties agreed that (1) defendant would make available to plaintiff his workers' compensation and personal injury-negligence files dat-

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ed from January 1, 1975, through December 31, 1981; (2) plaintiff would identify and itemize any claims with respect to these matters, and (3) plaintiff would execute a consent judgment in defendant's favor with respect to the 40 matters referred to in the second count of the complaint. On March 12, 1987, the trial court entered a consent summary judgment order with respect to plaintiff's claims on the 40 matters.

After an inspection of defendant's files, plaintiff asserted a claim for services that he had performed on approximately 139 matters. On February 19, 1988, defendant moved for summary judgment with respect to these matters. In his papers in support of this motion, defendant separated the 139 matters into categories and argued that the claims on these matters were barred (1) by the six-year statute of limitations under *N.J.S.A. 2A:14-1*; (2) by the consent summary judgment order of March 12, 1987; (3) by the partial summary judgment order of July 8, 1986, or (4) because plaintiff had already been paid for his services. Plaintiff neither appeared at oral argument on defendant's motion nor submitted a certification, brief or any documents in opposition to the motion. In fact, plaintiff specifically indicated prior to the court's disposition on the motion that he would not oppose defendant's motion. In his brief on appeal, plaintiff asserts that his failure to offer any opposition to the motion was due to the fact that he had decided to appeal the summary judgments once they became final. On March 31, 1988, the trial court granted summary judgment in defendant's favor, reasoning that the claims were barred by the earlier summary judgment orders and the six-year statute of limitations. Plaintiff appeals.

[1] Plaintiff acknowledges that the August 5, 1975, contract was void and unenforceable. He contends, however, that the trial court erred in granting summary judgment because it should have allowed plaintiff to pursue recovery on theories of *quantum meruit* and constructive contract for services rendered with respect to all matters that he had brought into the office. We disagree.

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vene[d] the public policy of the state." *Peraino v. De Mayo, supra*, 13 N.J. Misc. at 238, 177 A. 692. In reaching this conclusion, the court stated that "[t]he practice of soliciting negligence cases, commonly called 'ambulance chasing' . . . brings the entire profession into disrepute." *Id.* at 238, 177 A. 692. The court also noted that this practice was prohibited by statute:

Our legislature recognized the evil and sought to eliminate it by enacting chapter 96 (Pamph. L. 1923, p. 201), amended by chapter 85 (Pamph. L. 1930, p. 320), providing as follows: "Any person or persons who shall, for pecuniary gain, solicit any person or corporation to engage, employ or retain either himself, any lawyer or other person, to manage, adjust or prosecute any claim, cause of action or action at law, against any person or corporation, for damages for negligence, shall be deemed and adjudged to be a disorderly person, pursuant to the provisions of the act to which this is a supplement, and shall be punished pursuant to the provisions of the act to which the within act is a supplement."

By so making the solicitation of legal business for pecuniary gain in negligence cases offensive and subjecting the wrongdoer to the penalties prescribed therein, the legislature intended, for the public good, to discourage and prevent as far as possible the practice of "ambulance chasing," and as Mr. Justice Parker pointed out in *Arotzky [Arotzky] v. Kropnitzky*, 98 N.J.L. 344; 120 Atl. Rep. 921; affirmed, 101 N.J.L. 203; 127 Atl. Rep. 923: "If the court should undertake to enforce contracts made in such violation they would be aiding therein and encouraging the very mischief the act was passed to prevent."

Although this statute does not expressly declare agreements founded upon its disregard to be void, the inescapable and necessary implication is that they are void and unenforceable because they are founded upon a prohibited and penalized act. [13 N.J. Misc. at 239. (Emphasis added)].

In *Ready v. National State Bank of Newark, supra*, the plaintiff-layman and an attorney entered into an agreement whereby the attorney agreed to pay to the plaintiff one-half of the fee received on a matter that the plaintiff-layman had brought into the attorney's office. After the plaintiff-layman failed to receive his compensation pursuant to the terms of the agreement, he instituted an action to recover on the express contract or, alternatively, on *quantum meruit*. The *quantum meruit* claim was abandoned at trial. Thereafter, the trial court entered a directed verdict in favor of defendant, the executor of the attorney's estate.

On appeal, the Court of Errors and Appeals held that the plaintiff-layman could not recover under the contract any part

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of a contingent fee paid for legal services to an attorney for whom he had generated the case. The Court reasoned:

We take it to be a self-evident proposition that courts cannot approve a claim for participation in a legal fee by a layman, the sole basis of which is that the layman procured the case for, or brought the matter to the lawyer's office. Regardless of what contract was entered into between the lawyer and the layman, with such service as a basis, the evils that would result therefrom can well be imagined. We consider an agreement of this kind contrary to public policy.

In defense of the contract it is argued that it is neither *malum in se* nor *malum prohibitum*. It is true that certain of our statutes may not be broad enough to include the transaction under review within their inhibition. Soliciting actions in negligence cases for pecuniary gain has for some years been denounced by the statute as disorderly conduct. Pamph. L. 1928, ch. 94, p. 201; amended, Pamph. L. 1930, ch. 85, p. 320, and it is a misdemeanor for one to practice law without being licensed so to do (Pamph. L. 1913, ch. 198, p. 358); and it is unlawful for a layman to solicit, directly or indirectly, any claim or demand for the purpose of taking legal action thereon. Pamph. L. 1924, ch. 138, p. 308; 1 Cum. Supp. Comp. Stat., p. 874.

Yet these statutes make manifest the trend of the legislative mind in matters of this kind. The practice of law is not open to all as a business but is reserved to those possessing the prescribed qualifications which are attained after years of study and training, and who are licensed as persons of sufficient learning and integrity to prosecute and defend the rights of others. All others are excluded from practicing law directly or indirectly. The practice of law is the licit and exclusive domain of lawyers. Practice act, section 17; Comp. Stat., p. 4055. The law recognizes no silent partnership whereby one not a lawyer may legitimately share in the fruits of a lawyer's professional labors. Our statutes to which reference has been made, *supra*, indicate a policy of protecting litigants and the public, generally, from imposition which, if unchecked, would leave society to the mercy of the unscrupulous.

The abstract term "public policy" is impossible of definition in a statute. Nor can it be reduced to a formula for the reason that, like all abstract terms, it defies formularization.

In answer to the first alternative of the question before us, we have no hesitancy in saying that a contract between a layman and an attorney-at-law for part of a contingent fee to be earned by the attorney, based on a consideration of the layman procuring a case for the attorney, is void because it is contrary to public policy. [117 N.J.L. at 558-559. (Emphasis added)].

In the present case, the agreement entered into by the parties admittedly pertained to defendant's legal practice and appeared to call for the sharing of the legal fees generated by the matters that plaintiff would bring into defendant's law office.

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Unquestionably, this agreement was prohibited by the Rules of Professional Conduct and violated the statutory proscription against nonlawyers practicing law and soliciting law suits. Therefore, the agreement of August 5, 1975, is void and unenforceable. See *Ready v. National State Bank of Newark*, supra, 117 N.J.L. at 559; *Peraino v. De Mayo*, supra, 13 N.J.Misc. at 239, 177 A. 692. See also *In re Frankel*, 20 N.J. 588, 604-605 (1956) (Brennan, J., dissenting), where Justice Brennan noted that "[t]he breeding of litigation through use of lay runners compensated by payment of a sum contingent upon the recovery is an evil so vicious and so fraught with danger to the public interest that it has been classified as unprofessional conduct involving moral turpitude." Thereafter, Justice Brennan stated that "the contingent contract between [the attorney] and [the layman] was contrary to the public policy of this State" because it was in violation of N.J.S.A. 2A:170-83.

[2] Furthermore, since the express agreement is void and unenforceable, we are satisfied that plaintiff cannot recover for any of the investigative, paralegal or other services performed on any of the matters that he brought into defendant's law office pursuant to that agreement. Although contracts for investigative and paralegal services are ordinarily legal and enforceable, defendant cannot, by fractionalizing the illegal agreement, circumvent the statutory proscription and public policy against agreements of this nature. While we recognize that our decision may unjustly enrich defendant to the extent that he has received the benefit of any investigative and paralegal services performed by plaintiff, the pervasive proscriptions against such agreements require that we not render any assistance to these parties.

Additionally, plaintiff consented to the entry of summary judgment with respect to the 40 matters referred to in the second count of the complaint. He cannot now appeal from the summary judgment order that dismissed his claim with respect to those matters. See *Winberry v. Salisbury*, 5 N.J. 240, 255 (1950), cert. den. 340 U.S. 877, 71 S.Ct. 123, 95 L.Ed. 638 (1950);

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Cooper Medical Center v. Boyd, 179 N.J.Super. 53, 56 (App. Div.1981); *Zinkerman v. Taft Stores*, 30 N.J.Super. 322, 324 (App.Div.1954).

Finally, plaintiff cannot appeal from the summary judgment order with respect to the claims for services on the 139 matters. Since plaintiff offered no opposition to defendant's motion for summary judgment as to these matters in the trial court, he will not be heard to complain that the trial court accepted as true the uncontradicted facts in defendant's moving papers, and thus he cannot challenge the summary judgment order entered in defendant's favor. See *Judson v. Peoples Bank & Trust Co. of Westfield*, 17 N.J. 67, 75 (1954); *Baran v. Clouse Trucking, Inc.*, 225 N.J.Super. 230, 234 (App.Div.1988), cert. den. 113 N.J. 353 (1988); *Burlington County Welfare Bd. v. Stanley*, 214 N.J.Super. 615, 622 (App.Div.1987).

Accordingly, the summary judgment order under review is affirmed.²

ROSCOE D. FISHER, JR., PLAINTIFF-APPELLANT, v. THE
QUAKER OATS COMPANY, DEFENDANT-RESPONDENT.

Superior Court of New Jersey
Appellate Division

Argued April 26, 1989—Decided May 19, 1989.

SYNOPSIS

Former employee brought age discrimination action after discharge. The Superior Court, Law Division, Monmouth Coun-

²The Clerk of the Appellate Division is directed to forward a copy of this opinion and the entire file in this matter to David E. Johnson, Jr., Esq., Chief Ethics Counsel, Administrative Offices of the Courts, Hughes Justice Complex, CN-963, Trenton, New Jersey 08625, for review and such action as is deemed appropriate.

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person" for whom the public entity may not be held liable. [202 N.J. Super. at 576.]

Hence, the denial of recovery for Ross against Transit in these circumstances is consistent with the Tort Claims Act policy of protecting government entities from liability for damages when they are blameless.

The decision that Transit not be required to insure or be self-insured, however, implicates not only the policy of limiting liability of public entities but also the public policies expressive of the desire to compensate victims of uninsured motorists and of the need to protect the financial integrity of the UCJF. The public policy behind the Tort Claims Act and the N.J.S.A. 39:6-54 exemption is not inconsistent with the public policies favoring UM coverage and protection of the UCJF's financial integrity, given the statutory scheme involved in this case. The latter two public policies are so strong that they should be applied to all possible situations "in the absence of an unmistakable legislative declaration to the contrary." *Christy, supra*, 102 N.J. at 608. In this case, however, such an unmistakable declaration does exist in the N.J.S.A. 39:6-54 exemption clause. Therefore, this is a limited situation where the public policy for UM coverage is overridden by a statutory exception and the UCJF is called on potentially to satisfy any uncompensated damages.

There is nothing unjust about Ross not being able to recover from Transit since our state law provides an adequate safety net for individuals hurt in such cases through recourse to the UCJF. Therefore, even though the guilty party is uninsured and unable to pay and the State is not required to pay, the injured bus passenger still has a potential source of recovery in these circumstances. There is an obvious public benefit to protect the public treasury and instead require payment by the insurance companies who will contribute to UCJF to satisfy claims such as those of Linda Ross.

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III.

A fair reading of the statutory materials at issue provides an exemption under N.J.S.A. 39:6-54 for Transit, and other government entities, from being forced under the Motor Vehicle-Security Responsibility Law either to purchase insurance, establish self-insurance funds, or assume the legal status of self-insureds. As a consequence of this exemption, such public entities are not obligated to provide UM insurance coverage or protection. Any contrary interpretation of the relevant statutes that leads to the conclusion that the exemption was inapplicable would mean that every government entity would be obligated at public expense to insure their vehicles or to provide self-insurance with UM insurance coverage. Such a result should not be permitted without some clearer indication that the Legislature, in creating the Compulsory Insurance Law, intended to create an exception to the policy governing governmental limitations on liability reflected in such laws as the New Jersey Tort Claims Act.

The judgment below is reversed.

For reversal—Chief Justice WILENTZ and Justices CLIFFORD, HANDLER, POLLOCK, O'HERN, GARIBALDI and STEIN—7.

For affirmance—None.

CALVIN MOORE, PLAINTIFF-RESPONDENT, v. BARBARA MOORE, DEFENDANT-APPELLANT.

Argued November 7, 1988—Decided February 15, 1989.

SYNOPSIS

Husband sued wife for divorce and parties were awarded dual judgment of divorce. After the Superior Court, Appellate

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Division, reversed pension evaluation, the Superior Court determined it was too speculative to consider postretirement cost-of-living increases in husband's pension in making equitable distribution, revalued pension and permitted husband to pay wife's share within two years. Wife appealed. The Superior Court, Appellate Division, affirmed. The Supreme Court granted certification. The Supreme Court, Garibaldi, J., held that: (1) right to receive future postretirement cost-of-living increases payable to pensioners under New Jersey Police and Firemen's Retirement System qualifies as marital property subject to equitable distribution; (2) extent of inclusion of postretirement cost-of-living increases is limited to increases attributable to portion of pension that was earned during marriage; and (3) immediate payment of current valuation of such pension benefits is preferable.

Judgment of Appellate Division reversed.

1. Divorce ⇐252.3(4)

Right to receive future postretirement cost-of-living increases payable to pensioners under New Jersey Police and Firemen's Retirement System qualifies as marital property subject to equitable distribution; however, segment of cost-of-living increases qualifying as marital property is limited to increases attributable to contributions and services made during marriage from joint efforts of both parties; overruling *Barba v. Barba*, 198 N.J.Super. 205; *White v. White*, 136 N.J.Super. 552; *Mueller v. Mueller*, 166 N.J.Super. 557.

2. Divorce ⇐252.3(4)

Uncertainty of postretirement cost-of-living increases in pension does not render them immune from equitable distribution; uncertainties and contingencies inherent in such future benefits are issues that go to how and when such benefits are

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to be equitably distributed, not whether they should be distributed.

3. Divorce ⇐252.3(4)

Under "deferred distribution method" of equitably dividing employee-spouse's future postretirement cost-of-living pension increases, nonemployee spouse does not receive any benefit until benefits are actually paid to employee spouse.

4. Divorce ⇐252.3(4)

In situation where future contingent benefit is not likely to occur, "partial deferred distribution" approach to equitable distribution of future contingent benefits is appropriate; "partial deferred distribution" approach entails current valuation award of appropriate share of noncontingent portion of pension and deferred distribution of share of contingent benefits if and when they are paid to employee spouse.

5. Divorce ⇐252.3(4)

"Immediate offset or payment" method of equitably dividing employee-spouse postretirement cost-of-living increases and other contingent future benefits is to be preferred; however, in some instances "deferred distribution" or "partial deferred distribution" approach will be appropriate in resolving competing considerations of elimination of strife between parties, ease with which present value of pension may be ascertained, and ability of employee-spouse to pay nonemployee current cash value of pension.

6. Divorce ⇐252.3(4)

Future cost-of-living increases under New Jersey Police and Firemen's Retirement System are not so speculative as to make impossible calculation of their present value so as to provide for their immediate payout in equitably distributing marital assets.

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7. Divorce ⇐252.3(4)

Failure to award nonemployee spouse current valuation equitable award of future postretirement cost-of-living increases expected under employed spouse's New Jersey Police and Firemen's Retirement System pension as part of equitable distribution of property was error where possibility of employed spouse's not receiving cost-of-living increases was fairly remote and employed spouse possessed resources which were sufficient to warrant use of current valuation form of distribution.

8. Divorce ⇐252.3(1)

Difficulty inherent in placing present value on future benefit does not bar court from including that benefit as current valuation in equitable distribution of marital property.

9. Divorce ⇐252.3(4)

Postretirement cost-of-living increases attributable to that portion of pension earned after marriage are not subject to equitable distribution.

10. Divorce ⇐252.3(4)

To separate postretirement cost-of-living increases subject to equitable distribution upon divorce because they were earned through joint efforts of parties during marriage from portion of cost-of-living increases attributable to that portion of pension earned after marriage, "coverture fraction" should be employed in which numerator of fraction is total period of time that employee-spouse participated in plan during marriage and denominator is total period of time that employee-spouse participated in plan; fraction is then applied to postretirement cost-of-living increases to determine percentage of those increases that are attributable to employee-spouse's participation during marriage.

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11. Divorce ⇐252.3(4)

Allowing husband two years to pay wife's equitable share of his pension benefits was permissible where husband did not have resources to pay wife's share in one lump sum.

12. Divorce ⇐252.3(4)

Period of time in which to allow payment of current valuation share of employed-spouse's pension must be short in order to avoid destroying coherency of discounting to present value based on assumptions about future interest rates.

Ben J. Slavitt argued the cause for appellant (*Slavitt, Fish & Cowen*, attorneys; *Ronald G. Schechter*, on the brief).

Mitchell E. Ignatoff argued the cause for respondent (*Tutela & McKinley*, attorneys).

The opinion of the Court was delivered by

GARIBALDI, J.

We hold today that the right to receive future post-retirement cost-of-living increases payable to pensioners under the New Jersey Police and Firemen's Retirement system (NJPPFRS) qualifies as marital property subject to equitable distribution. The extent of inclusion of such post-retirement cost-of-living increases is limited to those attributable to the portion of the pension that was earned during the marriage.

Calvin Moore and Barbara Moore were married in December of 1961. Mr. Moore became a policeman in the City of Newark in March of 1963, which is when he enrolled in the New Jersey Police and Firemen's Retirement System. The Moores had two children.

The parties accumulated a number of assets during their marriage, including a nine-family rental property and a three-unit dwelling. They also acquired life insurance, bank accounts, and Mr. Moore's policeman's pension.

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In August of 1979 Mr. Moore filed for divorce on the grounds of extreme cruelty. Mrs. Moore counter-claimed on the same grounds. The trial court rendered a Dual Judgment for Divorce. Under the judgment Mr. Moore was awarded the nine-unit property and Mrs. Moore the three-unit property. Mr. Moore was required to compensate Mrs. Moore for the difference in value between the properties. No distribution of the other assets was ordered in this judgment. The trial court, however, acknowledged that the parties agreed to divide these assets equally. Mrs. Moore was awarded custody of the two children, then ages twelve and eleven, and support and alimony; the latter consisted of payments of \$30.00 per week running from August 1, 1980 to September 1, 1981.

In an order dated March 2, 1984, the trial court valued and distributed the remaining assets, including the pension. The pension was valued at \$3,874.36, an amount equal to Mr. Moore's contributions to the plan during the parties' marriage.

Mrs. Moore appealed, and the Appellate Division held that in light of *DiPietro v. DiPietro*, 193 N.J.Super. 533 (App.Div. 1984), the amount of the pension subject to equitable distribution was not limited to the amounts Mr. Moore contributed to the system. Thus, it reversed and remanded for a "valuation of the value of the pension consistent with the principles expressed in *DiPietro*."

On remand, the trial court and the parties referred to May 14, 1982, and May 18, 1982, expert valuation letters by Robert Davis, a consulting actuary. For purposes of his calculations Davis made assumptions regarding interest rates and mortality. He then calculated the discounted current value of the portion of the pension accruing from contributions made during the marriage of the parties. Davis stated that if Mr. Moore were to have retired after the parties' divorce but before completing twenty-five years of service, the pension would have three possible values: \$21,974 without recognizing future salary or post-retirement cost-of-living increases; \$47,441 recognizing fu-

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ture salary increases but not future post-retirement cost-of-living increases; or \$66,212 recognizing both future salary and post-retirement cost-of-living increases. Alternatively, Davis presented three additional figures to account for the possibility that Mr. Moore would complete twenty-five years of service and thereby receive a larger percentage of his average final compensation: \$32,325 without recognition of future salary and post-retirement cost-of-living increases; \$59,830 recognizing future salary increases but not future post-retirement cost-of-living increases; or \$84,951 recognizing both future salary and post-retirement cost-of-living increases. The parties accepted the methodology and accuracy of Mr. Davis' reports.

The trial court accepted the Davis valuations and chose \$59,830 as the value of the pension. The court determined that it would be too speculative to consider post-retirement cost-of-living increases since the Davis reports indicate they are not guaranteed by the retirement system but have been granted by the state outside of the system for the past ten years. Nevertheless, the trial court included future salary increases and accepted the calculation of Mr. Davis which recognized additional benefits flowing from Mr. Moore's completion of twenty-five years of service.¹ The trial court also ruled that "[b]ased on the history of this litigation it would be unfair to compel the plaintiff to pay one-half of \$59,830 (\$29,915) in a lump sum." Hence, the court allowed Mr. Moore to pay this sum over a period of time not to exceed twenty-four months. The court also held that the parties should pay their own counsel fees.

Mrs. Moore appealed on three grounds: (1) post-retirement cost-of-living increases should have been considered and the pension valued at \$84,951; (2) Mr. Moore should have been

¹The trial court was informed that Mr. Moore was just two years away from completing twenty-five years of service in 1986. The trial court, however, indicated the pension should be valued based on circumstances existing at the time the case was initially tried, that is, 1979-1980. Nevertheless, the court adopted the figure including these additional benefits.

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required to pay her share of the pension's value immediately; and (3) she should have received counsel fees. There was no cross-appeal. The Appellate Division affirmed, holding there was adequate credible evidence in the record to support the trial court's valuation of the pension. Further, it stated that the ultimate award, the two-year pay out and the denial of counsel fees did not constitute an abuse of discretion.

On May 24, 1988, we granted certification on the first and second issues. 111 N.J. 581 (1988).

I

[1] In 1971 the Legislature enacted a law to "effectuate an equitable distribution of the property, both real and personal, which was legally and beneficially acquired" during the course of the marriage on its dissolution. N.J.S.A. 2A:34-23 (emphasis added.) A major policy consideration underlying the statute was

to right what many have felt to be a grave wrong. It gives recognition to the essential supportive role played by the wife in the home, acknowledging that as homemaker, wife and mother she should clearly be entitled to a share of family assets accumulated during the marriage. Thus the division of property is responsive to the concept that marriage is a shared enterprise, a joint undertaking, that in many ways it is akin to a partnership.

[*Rothman v. Rothman*, 65 N.J. 219, 229 (1974).]

This statute, however, does not address the issue before us.²

Likewise, no case in New Jersey explicitly addresses the question of whether post-retirement cost of living increases are to be included in equitable distribution awards. However, a plethora of New Jersey cases, relying on the public policy underlying the equitable distribution statute, have held that the right to receive benefits accruing to a spouse subsequent to a divorce are subject to equitable distribution if they are related to the joint efforts of the parties. *Whitfield v. Whitfield*, 222 N.J.Super. 36, 47 (App.Div.1987); *Amato v. Amato*, 180 N.J.

²The same is true of recent amendments to the equitable distribution law. L.1988, c. 153.

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Super. 210, 219 (App.Div.1981); *Kikkert v. Kikkert*, 177 N.J.Super. 471, 475 (App.Div.1981), aff'd o.b., 88 N.J. 4 (1981); *Weir v. Weir*, 178 N.J.Super. 130, 133-34 (App.Div.1980); *McGrew v. McGrew*, 151 N.J.Super. 515, 518 (App.Div.1977); *Scherzer v. Scherzer*, 136 N.J.Super. 397, 401-02 (App.Div.1975), certif. den., 69 N.J. 391 (1976); *DiTolvo v. DiTolvo*, 131 N.J.Super. 72, 79 (App.Div.1974), superseded on other grounds, *Landwehr v. Landwehr*, 111 N.J. 491 (1988); *Blitt v. Blitt*, 139 N.J.Super. 213, 217-18 (Ch.1979).

In *Scherzer* the court held that future increases in the value of a husband's interest in a close corporation attributable to the efforts of either spouse during the marriage were eligible for equitable distribution. 136 N.J.Super. at 401. As noted in *Scherzer*, "[t]he theory is that a homemaker's contribution cannot be given a monetary worth and its value may be gleaned from the [efforts] of the employed spouse."³ *Ibid. Accord Weir, supra*, 173 N.J.Super. at 133-34; *McGrew, supra*, 151 N.J.Super. at 518; cf. *Dugan v. Dugan*, 92 N.J. 423, 433 (1983) (corporate good will subject to equitable distribution); *Stern v. Stern*, 66 N.J. 340, 346 (1975) (good will and accounts receivable considered in arriving at equitable distribution); *Grayer v. Grayer*, 147 N.J.Super. 513, 521 (App.Div.1977) (same).

Similarly, *Amato, supra*, 180 N.J.Super. 210, and *DiTolvo, supra*, 131 N.J.Super. 720, also allowed a former spouse to share in future benefits accruing to the other spouse that were related to joint efforts during the marriage. Both cases held that portions of future personal injury recoveries were subject to equitable distribution on a deferred payment basis. *Amato, supra*, 180 N.J.Super. at 219; *DiTolvo, supra*, 131 N.J.Super. at 82. *Amato* did state that such a distribution should not reach personal losses, like pain and suffering, but should be limited to losses that diminished the marital estate, such as past

³The record indicates that Mrs. Moore did not work outside the home throughout most of the marriage.

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wages and medical expenses. *Id.* at 219; accord *Landwehr, supra*, 111 N.J. at 502. Yet both cases acknowledge that an expectancy related to joint suffering by the parties during their marriage is subject to equitable distribution if and when it accrues.

The *Blitt* court came the closest to addressing the specific issues in the case at bar. Although the *Blitt* court decided to defer distribution of the non-employee spouse's share of a pension plan, it provided that the share set aside "shall participate in all gains and losses of the plan." 139 N.J. Super. at 219. Hence, arguably, *Blitt* implicitly supports the position that post-retirement cost-of-living increases are to be considered in determining equitable distribution awards.

In *Kikkert* the Appellate Division and this Court addressed the equitable distribution of pension benefits that could not be enjoyed unless and until the employee spouse lived another nine years and held such benefits were subject to equitable distribution. We reasoned that a pension plan asset "is the result of direct or indirect efforts expended by one or both parties to the marriage—it is additional compensation for services rendered for the employer and a right acquired during the marriage." *Kikkert, supra*, 177 N.J. Super. at 476. Further, we decided that "[e]ach spouse had the expectation of future enjoyment with the knowledge that the pensioner need only survive to receive it." *Id.* at 476-77. Thus, we have approved of the inclusion of a future, contingent pension benefit in an equitable distribution award.

Similar to *Kikkert*, the Appellate Division in *Whitfield, supra*, 222 N.J. Super. 36, ruled that a non-employee spouse could receive an equitable distribution award of pension benefits that her former husband would not be eligible to receive unless and until he served for four additional years after their separation and divorce. The *Whitfield* court stated that "[t]he inclusions of property in the marital estate does not depend on when, during the marriage, the acquisition took place ... [but] de-

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pends on the nature of the interest and how it was earned." *Id.* at 47. *Contra Barba v. Barba*, 198 N.J. Super. 205, 212 (App. Div. 1985); *White v. White*, 136 N.J. Super. 552, 554 (App. Div. 1975); *Mueller v. Mueller*, 166 N.J. Super. 557, 561 (Ch. 1979). These cases held that retirement benefits to which the employee spouse had not become entitled during the course of the marriage were future expectancies and hence not to be included in equitable distribution awards. To the extent *White, Barba*, and *Mueller* stand for the proposition that any future pension benefit is not subject to equitable distribution, they are overruled.

In this case Mr. Moore's post-retirement cost-of-living increases were paid by the government and are unrelated to his future personal efforts. They are similarly unrelated to Mrs. Moore's future efforts. However, although these increases are not attributable to future efforts, they are attributable to past contributions and service. There would be no post-retirement cost-of-living increases without the latter. The portion of contributions and services to the plan made by Mr. Moore during the marriage relate to the joint efforts of both parties. Therefore, the segment of cost-of-living increases attributable to those contributions and services made during the marriage from the joint efforts of both parties are subject to equitable distribution.

In many American families a major asset is the wage earner's pension. Both marriage partners rely on the pension to provide them with security for their future. In *Kruger v. Kruger*, 73 N.J. 464, 468 (1977) *superseded on other grounds, Landwehr, supra*, 111 N.J. 491, we held that "the right to receive monies in the future is unquestionably ... an economic resource" subject to equitable distribution. Here Mr. Moore earned the major portion of his pension during the "shared enterprise" of his marriage. Consequently, "[f]airness ... entitle[s] both him and his wife to their respective shares." *Kikkert v. Kikkert, supra*, 88 N.J. at 8 (Pashman, J. concurring).

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We conclude therefore that future benefits such as post-retirement cost of living increases under the NJPFRS are "property" subject to equitable distribution. The fact that these benefits become due and owing subsequent to the divorce does not immunize them from equitable distribution. The majority of cases from outside this jurisdiction are in accord with this view.⁴ *Lentz v. Lentz*, 353 N.W.2d 742, 747 (N.D.1984); *Cave and Cave*, 85 Or.App. 336, 338, 736 P.2d 215, 216 (1987); *Manners and Manners*, 68 Or.App. 896, 899, 683 P.2d 134, 136 (1984); *Sprott v. Sprott*, 576 S.W.2d 653, 655-56 (Tex.Civ.App. 1978). *Contra Dunn v. Dunn*, 703 S.W.2d 317, 321 (Tex.Ct. App.1985) ("To do so would invade the separate estate of the working spouse.").

II

[2] In this case the trial court held that post retirement cost-of-living increases were not "property" subject to equitable distribution because they were too speculative. The uncertainties and contingencies inherent in such future benefits are issues that go to *how* and *when* such benefits are to be equitably distributed, not to *whether* they should be distributed. Regardless of the speculative nature of future post-retirement

⁴Authorities from other states also clash with the trial court's decision to consider future salary increases in its current valuation of respondent's pension. See *Petschel v. Petschel*, 406 N.W.2d 604, 607 (Minn.Ct.App.1987); *Berry v. Berry*, 647 S.W.2d 945, 947 (Tex.1983). There is no cross-petition in this case. Thus, we do not reach this issue. However, we do note that the *Petschel* Court nevertheless awarded the non-working spouse a deferred distribution award of future cost-of-living increases because these, unlike future salary increases, do not result from the personal, individual efforts of the employee spouse. *Id.* at 607. Similarly, several courts in other states have included future cost-of-living increases in current valuations while excluding consideration of future salary increases. *Koelsch v. Koelsch*, 148 Ariz. 176, 185, 713 P.2d 1234, 1243 (1986); *In re Marriage of Castile*, 180 Cal.App.3d 206, 216, 225 Cal.Rptr. 382, 388 (1986); *In re Marriage of Jacobson*, 161 Cal.App.3d 465, 474, 207 Cal.Rptr. 512, 518 (1984); *In re Marriage of Scott*, 156 Cal.App.3d 251, 254, 202 Cal.Rptr. 716, 718, cert. den., 469 U.S. 1035, 105 S.Ct. 508, 83 L.Ed.2d 399 (1984).

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cost-of-living benefits they are not immune from equitable distribution.

For example, in equitable distribution cases not involving pensions New Jersey courts have actually included future unaccrued benefits in present value calculations. *Dugan, supra*, 92 N.J. at 433; *Stern, supra*, 66 N.J. at 346; *Grayer, supra*, 147 N.J.Super. at 521. In *Stern* we held that future benefits accruing to a husband's partnership flowing from its good will as well as accounts receivable were to be "examined and valued . . . to be included in determining the entire worth of defendant's partnership interest . . . [which should then be] allocated between the parties." *Stern, supra*, 66 N.J. at 346-47. Although the future benefits of good will and the value of accounts receivable are, like Mr. Moore's future cost of living increases, difficult to measure and contingent in nature, in *Stern* we stated that "the concept of vesting should probably find no significant place in the developing law of equitable distribution." 66 N.J. at 348.

[3] Generally there are two ways that trial courts have equitably divided an employee-spouse's future post-retirement cost-of-living increases—the "deferred distribution" method or the "immediate offset or payment" method. *Kikkert v. Kikkert, supra*, 177 N.J.Super. at 477-78; accord *Lowry v. Lowry*, 375 Pa.Super. 382, 544 A.2d 972 (1988). Both methods have advantages and disadvantages. Under the "deferred distribution" method the non-employee spouse does not receive any benefit until the benefits are actually paid to the employee spouse. Hence the major advantage of the "deferred distribution" method is that it eliminates any uncertainty or speculation about the value or benefit and avoids the necessity of fixing a present value for the future benefit.

The goal of divorce proceedings is to eliminate possible contact and strife between the parties. Thus, the major disadvantage of the "deferred distribution" approach is that it does not result in a final resolution. Under the "deferred distribu-

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tion" approach the parties, the court, and the employer of the pensioner may continue to be embroiled in controversy. On actual receipt of the benefits by the pensioner a determination of the proper percentage of each pension payment to be distributed to the non-employee spouse must be made. The non-employee spouse must keep contact with the employee spouse to determine the official date of retirement. Additionally, the non-employee spouse will have to be constantly vigilant to ensure that proper revised beneficiary forms are filed with the employer and that agreed proper benefits are chosen at retirement. For instance, if the employee spouse remarries and changes the beneficiary of the plan, his new wife may receive the benefit.

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The "present payout" method avoids the enforcement problems inherent in compelling the employee spouse to turn over part of the pension check to the non-employee spouse. This method eliminates any future contact between the parties, the court, or the employer with respect to the non-employee's future cost-of-living increases. Its major drawback, however, flows from the difficulty inherent in fixing a present value for future benefits. Furthermore, in some cases the employee-spouse will be financially burdened if forced to pay a lump sum present-value share. The employee-spouse's major asset may be the pension.

[4] We recognize there is some controversy over whether the current valuation method should be employed without the consent of both parties when a conditional or contingent pension benefit is involved. *Whitfield, supra*, 222 N.J.Super. at 50. The *Whitfield* court stated that "[s]uch a payment may surely be made voluntarily, but not under the duress of a court order." *Ibid.* *Whitfield* conflicts with *Kikkert, supra*, 177 N.J.Super. 471, which was affirmed by this Court. In the latter case it was held that "[w]here the Court is satisfied, based upon appropriate proofs, that present value has been established . . . a firm and final division may be achieved. . . ."

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177 N.J.Super. at 477. Thus, *Kikkert* leaves it to the court, not the parties, to decide on the method of distribution. It also states that current valuation "is to be encouraged." *Ibid.* This seems to be the more sensible approach. The present payout method is final, equitable, and immediately resolves the controversy.

We recognize that this method, while preferred, is not the only way in which an equitable share of a future contingent benefit could ever be awarded. Indeed, in addition to the deferred distribution method, in situations in which the future contingent benefit is not very likely to accrue, a form of partial deferred distribution could be employed.

The "partial deferred distribution" approach would entail a current valuation award of the appropriate share of the non-contingent portion of the pension and a deferred distribution of the share of the contingent benefits if and when they are paid to the employee spouse. The "partial deferred distribution" award is supported by some precedent. *Koelsch, supra*, 148 Ariz. at 185, 713 P.2d at 1243 ("We wish to leave open to the trial court's discretion the option, under very limited circumstances, of deferring . . . part of the monthly payment owed to the non-employee spouse."); *cf. Staver v. Staver*, 217 N.J.Super. 541, 545 (Ch.1987) (portion of pension not included in current valuation equitable distribution may be considered in award of alimony). This method of distribution would allow the non-employee spouse immediate enjoyment of part of his or her equitable distribution award and yet effectively protect his or her right to share future contingent benefits.

Nonetheless, there are flaws in the "partial deferred distribution" approach. Contrary to the precepts of *Kikkert, supra*, 177 N.J.Super. at 477, this method would prolong relations between the parties. Also, it would continue judicial involvement in their affairs—calculations of the percentages of actual payments owed to petitioner would have to be made, disputes would arise, and so on. Hence, the "partial deferred distribu-

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tion" method should be used only where the future benefit is extremely contingent or the parties have agreed to the employment of such an alternative.

[5] Accordingly, we encourage use of the "immediate payment" approach. We recognize, however, that in some instances the "deferred distribution" or "partial deferred distribution" approach will be appropriate. Courts must decide which to use based on sometimes competing considerations: the elimination of strife between the parties, the ease with which the present value of the pension may be ascertained, and the ability of the employee spouse to pay the non-employee the current cash value of the pension.

III

[6] In determining the proper method of distribution in this case we must decide whether future cost-of-living increases under NJPFRS are so speculative as to make it impossible to calculate their present value so as to provide for their immediate payout.

The mere fact that a benefit is contingent and difficult to measure does not mean it is immune from equitable distribution. Indeed, considering (that is, making assumptions about) life expectancy and interest rates, as the actuary Davis did, also involves speculation. As one commentator arguing for the inclusion of future post-retirement cost-of-living increases under the NJPFRS in current valuation equitable distribution awards stated, "[n]aturally, none of us know[s] the future course of cost of living anymore than we know the future course of interest rates—it is necessary to make an assumption." Garfield, *Re: DiPietro case*, 111 N.J.L.J. 304 (1983) (emphasis supplied).

Moreover, courts are not blocked from employing the present payout approach simply because a contingent pension benefit may never accrue. Authorities have intimated that an alternative approach would entail discounting future contingent bene-

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fits to account for this possibility. *Whitfield, supra*, 222 N.J. Super. at 47 ("[T]he conditional nature of a nonvested pension is clearly a legitimate area of inquiry on issues of valuation and distribution."); *McGrèw, supra*, 151 N.J. Super. at 518 ("[T]he uncertainty of enjoying benefits may be a factor to be considered in awarding equitable distribution."); *Lowry, supra*, 375 Pa. Super. 382, 404, 544 A.2d 972, 983 ("If the pension [benefit] is not yet fully vested and immediate offset method of distribution is nevertheless used, a further discount to reflect the contingencies attendant on vesting is applied."); *Buonocore, Equitable Distribution of Defined Benefit Pension Rights*, (Pt. 2), 112 N.J.L.J. 669, 679 (1983) (contingency is proper factor in valuation of the asset).

Bearing these principles in mind we do not find that the increases under NJPFRS are so speculative as to preclude present valuation for immediate payout purposes. The Davis report indicates that such increases are contingent on state appropriation. As the trial court acknowledged, Davis stated that "[f]uture post retirement cost of living increases are not guaranteed by the retirement system but have been granted by the State outside of the retirement system for approximately the last 10 years." We take judicial notice that funding for these increases has been provided by the State each year subsequent to Davis' report.

The *Retired Public Employees' Pension Increase Act, N.J.S.A. 43:3B-1 to -10* amplifies and supports Davis' observation. N.J.S.A. 43:3B-4 states that the employer of a specific pensioner (e.g., the city employing a particular policeman) is responsible for funding post-retirement cost-of-living increases. However, it also provides that in seeking such funds from the localities the Director of the Division of Pensions shall take into account certain variables: payments made by the employer and payments to be made to former employees of that employer. Further, it indicates that the remaining costs of these increases is to be covered by expenditures from the Director of the Division of Budget and Accounting at the request of the

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Director of the Division of Pensions. So, the Act mandates that these increases are related to funding from both the employers and the State. We take judicial notice that the fund covering a specific locality's employees also covers state employees. The State pays the fund for cost-of-living increases for its employees and the localities *must* pay for increases for their employees. The localities finance a portion of the administrative expenses of the cost-of-living adjustments for their employees and the State pays the remainder of these expenses.⁵

Davis, therefore, correctly stated that such increases will not be paid if the State ceases to finance its share of the cost of them. *N.J.S.A. 43:3B-5* provides that *all* post-retirement cost-of-living increases shall cease to be paid should the State fail to appropriate the amounts requested by the Director of the Division of Pensions.

[7] Out-of-state courts have ruled with virtual unanimity that future post-retirement cost of living increases should be included in present value calculations of pensions. *Lowry, supra*, 375 *Pa.Super.* at 401, 544 *A.2d* at 982 ("[T]he appropriateness of using an inflation factor [to offset interest discounts] is completely dependent on the terms of the individual pension at issue."); *accord Koelsch, supra*, 148 *Ariz.* at 185, 713 *P.2d* at 1243; *Castle, supra*, 180 *Cal.App.3d* at 216, 225 *Cal.Rptr.* at 388; *Jacobson, supra*, 161 *Cal.App.3d* at 474, 207 *Cal.Rptr.* at 518; *Scott, supra*, 156 *Cal.App.3d* at 254, 202 *Cal.Rptr.* at 718; *In re Marriage of Sheldon*, 124 *Cal.App.3d* 371, 381, 177 *Cal.Rptr.* 380, 385 (1981), app. dismissed, 456 *U.S.* 941, 102 *S.Ct.* 2002, 72 *L.Ed.2d* 462 (1982); *Phipps and Phipps*, 75 *Or.App.* 757, 758, 707 *P.2d* 1287, 1288 (1985), *withdrawing opinion in*, 73 *Or.App.* 100, 698 *P.2d* 52 (1985); *see also DiFranza & Parkyn, Dividing Pensions on Marital Dissolu-*

⁵This is substantiated by the legislative history of the Act, which anticipates shared financing of these cost of living increases. *Fiscal Note to Assembly No. 3278*, L.1975 c. 375, and *Fiscal Note to Assembly No. 3515*, L.1977 c. 306.

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tion, 55 *Cal.St.B.J.* 464, 466 (1980) (If a plan calls for cost-of-living increases a lower discount rate is appropriate to reflect the plan's compensation for inflation.). *Contra Daffin v. Daffin*, 567 *S.W.2d* 672, 680 (Mo.Ct.App.1978) ("[P]ension benefit, by its terms, varies according to the cost of living and . . . such adjustable asset is most aptly allocable on a percentile basis.").

[8] So too, the trial court here should have awarded Mrs. Moore a current valuation equitable award of these benefits discounted to compensate Mr. Moore for any uncertainty inherent in his receipt of these benefits. The trial court apparently thought that Mr. Moore possessed resources which were sufficient to warrant use of the current valuation form of distribution.⁶ This is supported by the record, since, as noted, Mr. Moore is the owner of a nine-unit dwelling and gainfully employed. Also, as shown, the possibility of Mr. Moore not receiving cost-of-living increases is fairly remote, since they have been granted each and every year. One New Jersey case states that if a "court believes that the risks of total forfeiture of the . . . rights are so remote . . . [then it is] appropriate to fix a present value and distribute a portion thereof to the nonpensioner spouse." *Weir, supra*, 173 *N.J.Super.* at 135. We do not find the variability of the cost-of-living to be a bar to present valuation of such increases. The difficulty inherent in placing a present value on a future benefit does not bar a court from including that benefit as a current valuation. *Stern, supra*, 66 *N.J.* at 346; *Re: DiPietro, supra*, 111 *N.J.L.J.* 304.

The only disadvantage of this approach is the potential unfairness to Mr. Moore. However, in this case the risk of Mr.

⁶As noted, the trial court did grant Mr. Moore two years in which to pay this share to Mrs. Moore. Yet this was not, strictly speaking, a form of deferred distribution. This aspect of the trial court's decision will be discussed later in this opinion. For now it should be noted that such a step is a sensible one. It mitigates the harshness to the employee spouse of the "current valuation distribution" method.

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Moore not receiving the cost-of-living increases is slight. Moreover, as shown, authorities support discounting the current value of these benefits to reflect this uncertainty and eliminate unfairness.⁷ Thus, if the trial court was concerned about unfairness to Mr. Moore it could have reduced the present value of the future cost-of-living increases to account for any uncertainty.⁸

[9, 10] We emphasize that the post-retirement cost-of-living increases that are subject to equitable distribution are limited to increases attributable to the pension earned during the marriage. Post-retirement cost-of-living increases attributable to that portion of the pension earned after the marriage are not subject to equitable distribution. To determine the post-retirement cost-of-living increases subject to equitable distribution we apply what some courts refer to as the "coverture fraction." *Lowry, supra*, 375 Pa.Super. at 404, 544 A.2d at 983. The numerator of this fraction is the total period of time that the employee-spouse participated in the plan during his marriage. The denominator is the total period of time that the employee spouse participated in the plan. *Whitfield v. Whitfield, supra*, 222 N.J.Super. at 48. The fraction is then applied to post-retirement cost-of-living increases to determine the percentage of those increases that are attributable to the employee spouse's participation in the pension.

⁷The trial court only awarded alimony payments of one year to Mrs. Moore. Mr. Moore's cost-of-living increases will not be paid until two years after retirement. However, in cases where alimony payments are still due at the time a cost-of-living increase included in a current valuation has failed to be paid, adjustments in alimony payments could be employed to do equity. This is, however, only appropriate where no discount to reflect that contingency has been made to reduce the current value of the pension. That is to say, it is an alternative method of distribution.

⁸The record does not indicate that Davis' valuation figures reflected such a discounting. Davis merely discounted to present value based on assumptions about future interest rates. Nevertheless, it is apparent that such a discount was probably unnecessary in this case.

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IV

[11] We now address the second ground on which Mrs. Moore appeals—the trial court's decision to allow Mr. Moore two years to pay out her equitable share of his pension benefits. As noted, a good way to mitigate the harshness to the employee spouse involved in a current valuation distribution is to give him or her an opportunity to make payments over a short period of time. This seems consistent with *Kikkert, supra*, which states that deferred distribution should be employed "where other assets for equitable distribution are inadequate or lacking altogether." 177 N.J.Super. at 471. *Accord DiPietro, supra*, 193 N.J.Super. at 537. The trial court in the instant case did not defer distribution in a strict sense. Yet it seems to have allowed Mr. Moore two years to pay because resources were lacking and thus its decision is a defensible one.

[12] However, we caution that the period of time in which to allow payment of the current valuation share must be short. If it is not, the coherency of discounting to present value based on assumptions about future interest rates will be undermined. *See Whitfield, supra*, 222 N.J.Super. at 51 ("[I]f distribution is deferred until [the pension is paid] discounting is unnecessary."). In any event, the issue of the two-year deferral has become moot, because over two years have elapsed since the time of the trial court's decision. Moreover, at oral argument both counsel agreed that there should be a current distribution, that Mr. Davis' valuations are correct, and that Mrs. Moore should receive 50% of the present value of Mr. Moore's pension benefits.

Therefore, we reverse and order Mr. Moore immediately to pay Mrs. Moore \$12,561, the difference between the award she received from the trial court, \$29,915 (50% of \$59,830), and the amount she would have received had the trial court included post-retirement cost-of-living increases in his current valuation, \$42,476 (50% of \$84,951).

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For reversal—Chief Justice WILENTZ, and Justices HANDLER, POLLOCK, O'HERN and STEIN—6.

Justice CLIFFORD did not participate.

Opposed—None.

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STATE OF NEW JERSEY, PLAINTIFF-RESPONDENT, v. JOHN BAYLASS, DEFENDANT-APPELLANT.

Argued September 14, 1988—Decided February 7, 1989.

SYNOPSIS

Defendant was convicted of forgery. The Superior Court sentenced defendant upon revocation of probation, and the Appellate Division affirmed. On certification, the Supreme Court, Pollock, J., held that violation of probation should have been considered only to extent that it diminished mitigating factors found to exist at original sentencing hearing.

Reversed and remanded.

1. Criminal Law ¶986(3)

When defendant is not entitled to presumption of nonincarceration, sentencing court should identify aggravating and mitigating factors and explain why balance tips in favor of probation.

2. Criminal Law ¶982.9(7)

Upon determining that defendant, whose probation had been revoked, should be incarcerated, only aggravating factors sentencing court could consider were those that existed at time of initial sentencing.

3. Criminal Law ¶982.9(7)

Court, sentencing defendant to term of incarceration upon revocation of probation, could consider effect of probation violation on relevant mitigating, but not aggravating, factors.

4. Criminal Law ¶982.9(7)

Defendant's violation of probation requirement, that he remain drug-free, was erroneously used by sentencing court to sentence defendant to maximum term with parole disqualifier, and to consecutive sentences; violation of probation should

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Richard L. Grossman
1200 E. Marlton Pike #1211
Cherry Hill, NJ 08034

March 20, 1994

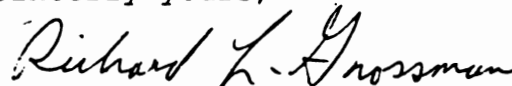
Ms. Patricia K. Nagle
Commission to Study the Laws of Divorce
Legislative Office Building
135 W. Hanover St.
CN-067
Trenton, NJ 08625

Dear Ms. Nagle:

Enclosed please find two documents for the Commission to Study the Laws of Divorce. The first was taken largely from a paper which I wrote for a Family Law course which I took last semester at Rutgers-Camden Law School. It details the total asininity of assuming that children of divorce are somehow insulated from the economics fortunes and misfortunes of their parents, and how such a policy can do considerably more harm than good.

The second document is a copy of a memo which I sent to Judge Vincent D. Segal in Camden County. It details how easy it is for a custodial parent to totally brainwash children against a non-custodial parent, thereby making it impossible to effect any kind of relationship. For what it's worth, the specific issue which necessitated the memo was which surname my adopted sons would use. Judge Segal did rule in my favor however I am to this day having trouble enforcing his order.

Sincerely yours,



Richard L. Grossman

In 1983 I married a divorcee P-- who had 2 sons by her first husband D--. D-- abandoned his family in 1980 and until 1987 his own parents didn't know where he was. At the time of the wedding, becoming a father was every bit as important to me as becoming a husband. During the course of the marriage, 2 more children were born, one of whom died at the age of 4 days. During the second pregnancy, I legally adopted my 2 stepsons.

In 1987 I went through a painful separation--which included a total estrangement from my adopted sons¹--and the divorce was

¹ Originally I intended to discuss this at length, but that would take more pages than space allows. Every divorced non-custodial father I know would dearly, dearly love to have a better relationship with his children. In an organized fashion we have fought for--and occasionally won--shared physical custody to accomplish the goal.

Whoever has the primary physical custody of a child will be the most influential person in that child's life. It is not at all uncommon for the custodial parent--out of spite and malice--to brainwash the children to hate the non-custodial parent, making it impossible to effect a relationship.

New Jersey courts on several occasion have taken judicial notice of the Malicious Mom. Relevant New Jersey cases include (listed here chronologically):

Von Bernuth v. Von Bernuth, 76 N.J. Eq. 200 (1909)
Bierck v. Bierck, 123 A. 537 (N.J. Ch., 1923)
Turney v. Nooney, 5 N.J. Super. 392 (1949)
Sheehan v. Sheehan, 51 N.J. Super. 276 (1958)
Lathrop v. Lathrop, 50 N.J. Super. 525 (1958)
Fiore v. Fiore, 49 N.J. Super. 219 (1959)
Smith v. Smith, 85 N.J. Super. 462 (1964)
Brennan v. Brennan, 187 N.J. Super. 351 (1982)
Wilke v. Culpe, 196 N.J. Super. 487 (1984)

A few good cases outside New Jersey include:

Egle v. Egle, 715 F. 2d 999 (5th Cir., 1983)
Schutz v. Schutz, 581 S. 2d. 1290 (Fla., 1991)

finalized in 1988. In 1990 I was part of massive layoffs in the aerospace/defense industry and I tried to get an adjustment in child support obligations. The local judge refused, and for what it would have cost to go to the appellate court, I figured it cheaper to pay the arrears once I found another job. Interestingly, during the course of unsuccessful litigation in 1990 I did re-establish a relationship with the younger of my 2 adopted sons. In 1991 I experienced disease and disability which robbed me of the normal use of my lower appendages. The year 1991 was a piece of cake compared to the previous 4 years.

As a result of my experience with the estrangement from my adopted sons as well as the refusal by the local court to

Bierck and Smith put it especially well:

There is in cases of this nature a well-known tendency on the part of the parent having the physical custody of children of the marriage to measurably restrain the natural and proper affection of the children for the absent [non-custodial] parent.

Bierck, 123 A. at 538

The children may well be used as weapons to inflict upon the other parent for real or imagined wrongs.

Smith v. Smith, 85 N.J. Super. at 469

As but one personal example, when I went to equitable distribution the last thing--both figuratively and literally--that I thought I had to worry about was the cemetery parcel in which my fourth child was buried. P-- was most anxious to have the plot so I offered no objection. As a result of her ownership of the tract, my surname does not appear on my dead child's tombstone. If P-- will cut off my relationship with a **dead** child, how much harder will she work to estrange me from my living children?

A divorced father has rights under the U.S. CONST., amends. I, V, IX, and XIV to be a parent, *In the Matter of J, S, & C*, 129 N.J. Super. 486, 489 (1974). A parent should be more than a paycheck or a visitor. While the higher courts have pronounced such rights, the local courts have done little to enforce them.

acknowledge unemployment as a circumstance which merits a change in child support obligations, I became active in 2 divorced fathers' organizations. From that experience I learned unequivocally that there is always someone worse off than myself.

When the Berlin Wall went down in 1989, the defense industry went down with it. As soon as I was given notice of the layoff in 1990, I petitioned the court for a reduction in child support. The judge quoted *Lepis v. Lepis*, 83 N.J. 139 (1980) about how change must be continuous and substantial before a reduction will be ordered. As I had been out of work only 1 week, the change was not yet continuous and substantial. I asked the judge what would constitute "continuous and substantial". His reply was that 3 months' joblessness would meet his criteria. My immediate counter-response was that an awful lot of arrears were going to pile up if I wasn't fortunate in finding a job before that time.

Over the course of the next 3 months I mailed out 166 resumes and I was invited to 10 interviews, but there was still no new job. I went back to court and again asked for an adjustment. The judge denied it again, claiming that I could always flip hamburgers. He invoked *Lepis* again and also cited *Arribi v. Arribi*, 186 N.J. Super. 116 (1982). The latter case involved a divorced father who had worked as an accountant though not a C.P.A. and who had also worked part-time as a bartender. He lost his job, could not find an accounting job, and would not work as a bartender. The court held that one could not confine a job search to one's chosen field, and one could not, "... remain unemployed for a considerable period, financially unable to pay such support," *Arribi* at 117.

By using both *Lepis* and *Arribi*, the judge set up a Catch-22. If one is unemployed for long enough a period to meet the *Lepis* standards of "continuous and substantial", then one has been unemployed too long, what *Arribi* called, "...for a considerable period of time". I made a motion to reconsider which turned out to be a disaster. I gave the judge 40 pages of documented job-searching efforts but his reaction was, "Sir, you're not doing anything to find a job." Included in the documentation was 3 interviews in the 4 business days prior to the hearing--1 of which led to a position 6 weeks later--but the judge didn't care. I documented to the judge how his suggestion of flipping hamburgers would require that I be so employed 26 hours/day 388 days/year in order to have the gross income upon which the child support obligation was based; the judge didn't care. What added special insult to the injury was that due to P--'s acknowledged increased prosperity, the children were documentably enjoying a standard of living far in excess of what had existed during the course of the marriage. Even the judge acknowledged that I had no obligation to support children at a higher standard of living, but he granted no relief.

My obligation to support at the time was \$230/week. For 26 weeks I received checks from the N.J. Division of Unemployment and Disability Insurance for \$279/week; obviously I couldn't survive on the remaining \$49/week. The judge stated that he expected me to collect all severance and accrued vacation pay. That would have made it possible to make full payments for about 6 months, but I was unemployed for 7 months. If I had done as the judge wanted (a)

the children and I would have lost our health insurance (b) I would have lost the life insurance of which the children are beneficiaries (c) I would have lost retraining benefits--which proved to be most useful in finding another job--and (d) I could not have afforded the expenses involved in looking for a new job.

A few weeks after the judge's third refusal, the county probation department demanded that I pay at least \$800 of arrears in 2 weeks time, and then said that \$35/week would be garnished from my unemployment checks. By the grace of God, I found another job by the time that the payments were due, and my unemployment checks had already run out so there was nothing to garnish.

In most states, fortuitous unemployment--or in the case of the self-employed, business recession--is recognized as a condition which merits an adjustment in child support obligations, *Barclay v. Barclay*, 554 S. 2d 1191 (Fla., 1989), *Chenoweth v. Chenoweth*, 481 N.E. 2d 765, 767 (Ill., 1985), *Cohen v. Cohen*, 461 N.E. 2d 1028 (Ill., 1984), *Cook v. Cook*, 364 N.W.2d (N.D., 1985), *Martin v. Martin*, 364 N.W. 2d 475 (Minn., 1985), *McClure v. McClure*, 672 P. 2d 1390 (Ore., 1983).

New Jersey published cases insist that children of divorced parents should not bear the full brunt of their parents' financial problems, *Gertcher v. Gertcher*, 262 N.J. Super. 176, 177 (1992). That is a patently absurd policy which does nothing but create arrearages. If a married father is caught in a layoff, the entire household suffers along with him. What makes a divorced father (or mother, as in the case of *Gertcher*) any different? Not only is it wrong on a philosophical level, but the plain cold hard reality is

that if the paycheck isn't there, then the paycheck isn't there. One generally does not lose a job and find another at the same salary before the next support payment is due, which can be on the same day or at the very least within 30 days. The general rule of thumb is that it will take 30 days' job hunting for every \$10K of salary, although my own experience in 1990 was more like 30 days' job hunting for every \$6K earned.

New Jersey--like most states--bases child support obligations not only upon actual earnings, but upon other assets, *Lynn v. Lynn*, 165 N.J. Super. 328 (1979), and especially upon the **capacity** to earn, *Bonanno v. Bonanno*, 4 N.J. 268 (1950). Judges work in a recession proof industry. They don't seem to understand that recession, as well as changes in technology which render once marketable skills obsolete, seriously hampers one's capacity to earn.

There is also a terrible element of sex discrimination in the way New Jersey views child support obligations and the inability to meet them. The *Gertcher* case involved a divorced mother--not a father--who had lost her job. She sought greater child support from her non-custodial ex-husband which the court refused. At first blush, this would appear to establish gender equality. However, had it been **Mr.** Gertcher who had lost **his** job, he would have been threatened with what amounts to a debtors' prison; no such thing ever happened to **Mrs.** Gertcher because no one was monitoring how much money **she** was spending to support the children.

As I stated above, by the grace of God I found another job shortly after the county probation department threatened me. If

push had come to shove, I would have had to have run away. I certainly wasn't going to find a job while sitting in jail, and without a paycheck I couldn't have paid any arrears. One can only speculate as to how many other fathers were not so fortunate in finding another job.

To: Hon. Vincent D. Segal
From: Richard L. Grossman
Re: Changing Existing Orders Requiring My Adopted Sons to Use Surname "Grossman".
Date: May 14, 1993

QUESTION PRESENTED

Will it serve the best interests of Kevin and Ian to drop existing orders which stipulate that they use the surname "Grossman"?

BRIEF ANSWERS

In Kevin's case, probably yes. In Ian's case, there are valid arguments for requiring the use of the name "Grossman".

STATEMENT OF FACTS

As the case has a long history, the following outline is offered of the facts:

- I. Preliminary History
 - A. Patricia's First Marriage, Birth of Kevin and Ian
 - B. Subsequent Marriage to Richard
- II. Divorce and Its Effect on Father-Son Relationship
 - A. Deterioration of Relationship with Kevin and Ian
 - B. Lack of Compliance with Counselling/Mediation Orders Intended to Restore the Relationship
 1. 1987 Orders
 2. Efforts with Acorn
 3. Order for Mediation with Ian
 - C. Other Attempts to Effect a Relationship
 1. Christmas
 2. Birthday Cards
 3. Tennis
 - D. Current Attitude by Each Parent
- III. Specific Orders Concerning the Use of the Name "Grossman"

I. Preliminary History

A. Patricia's First Marriage, Birth of Kevin and Ian

In 1974, Patricia Lou Finnie married Dennis Cecil Place in California. Two children were born to the marriage, Patrick Ian--who has always preferred the name "Ian" rather than "Patrick"--on April 17, 1976 and Kevin Robert on March 6, 1979. Both children were born in Berkeley, Alameda County, CA. Shortly before Ian's fourth birthday, when Kevin was 13 months old, Dennis abandoned his family. For several years thereafter he used a string of bogus addresses in Ohio, West Virginia, and Florida. His own parents, Cecil and Nancy Place--residents of downstate Illinois--did not know his whereabouts until 1986. He has had absolutely no contact with his children or his ex-wife since he ran away. He has paid absolutely nothing in child support despite court orders to the contrary.

B. Subsequent Marriage to Richard

Patricia formally divorced Dennis by default in 1982. In 1983 she married Richard L. Grossman and moved into a home in Haddon Twp., NJ as a result. Two children were born to her second marriage, Brian Richard Christopher on Feb. 26, 1985 and Alan Michael Joseph on June 17, 1986. Both children were born at West Jersey Hospital in Voorhees Twp., Camden County, NJ. Alan died at the age of four days. In what has now become a textbook case for N.J. family court judges, the name "Grossman" does not appear on the child's tombstone.

While pregnant with Alan, Richard adopted his stepsons Kevin and Ian. The order of adoption was signed by Judge Lario on Jan. 24, 1986. Paragraph 2 of that order clearly states:

The names of the children shall be Patrick Ian Place Grossman and Kevin Robert Place Grossman.

(see Grossman Cert. Feb. 9, 1993, Ex. 5, Judge Lario's order)

Contrary to statements made by Patricia, there is nothing in the adoption order which changes their names to Place-Grossman. In accordance with the Judge Lario's orders, both children's birth certificates were changed (see Grossman Cert. Feb. 9, 1993, Exs. 6-7, Ian's birth certificate and Kevin's birth certificate, respectively).

It means that the adopted sons have four names: Patrick Ian Place Grossman and Kevin Robert Place Grossman. Richard's biological sons also have (or in Alan's case, had) four names: Brian Richard Christopher Grossman (see Grossman Cert. Feb. 9, 1993, Ex. 11, Brian's birth certificate) and Alan Michael Joseph Grossman.

II. Divorce and Its Effect on Father-Son Relationship

A. Deterioration of Relationship with Kevin and Ian

On Feb. 22, 1987 Richard and Patricia separated, and early settlement was held about a year later. Richard's attempts to maintain a relationship with all three of his sons met with considerable difficulty almost from the beginning of separation. In the earliest days of separation, Richard was allowed visitation rights in the marital home (Order by Judge Segal, March-5, 1987, ¶ 6). On Saturday, March 14, 1987 Richard came to the marital home

to exercise such visitation rights. Patricia stated to Kevin and Ian, "He doesn't care about you; he's only here to see Brian." This incident has been placed before the Court on several occasions, the most recent being in 1992 (see Grossman Cert., April 30, 1992, ¶ VII-F-1), Patricia has never denied it. Not too long thereafter, on April 16, 1987 Richard was again exercising visitation rights in the marital home. Ian expressed apprehension about an upcoming visit by the paternal grandparents who reside in Arizona. He feared that they only cared about Brian. Richard tried to disabuse Ian of the notion, at which point Patricia rushed into the room and insisted that Richard leave because he was "filling Ian's head with such terrible ideas". Again this incident has been placed in the record before in 1987 and 1992 (see Grossman Cert., April 30, 1992, ¶ VII-F-1 and Grossman Cert., April 28, 1987, ¶ 9). Patricia has not denied it.

The worst incident happened on Saturday, April 18, 1987. Patricia charged Richard with assaulting the children. The case went to trial in July and ended in acquittal. As a result the record of the arrest of was expunged (see Grossman Cert., April 30, 1992, Ex. 1).¹ Interestingly, it was Ian's testimony more than anything else which influenced the verdict.

¹ There have been several occasions on which Patricia has chosen to ignore the order of expungement, in violation of N.J. Stat. Ann. § 2C:52-30 (see Place Cert., April 20, 1992, ¶ 6 and Grossman Am. Cert., Nov. 7, 1992, ¶ III-E). It is primarily out of consideration for the children that Patricia has not been prosecuted.

It has always been Richard's position that there can be no surer way to sabotage a relationship between father and son than to bring the child into a criminal court to testify against the father. Acquittal or no acquittal, Ian and Kevin obviously didn't want to have any further association with their father. The mother had taught them that Richard was someone bad, and no municipal court judge was going to overpower the influence of the mother. Almost immediately after the incident, Richard made motions to the court to order professional counselling to try to restore a father-son relationship with Ian and Kevin. A synopsis of those orders is shown below:

<u>No.</u>	<u>Date of Order</u>	<u>¶ #</u>	<u>Substance of Order</u>
1	7/7/87	2	Dr. Stephen Stern for Patricia and Dr. Sally Pearne for Richard to confer together to find a mutually agreeable counselor to work with Ian and Kevin to resume a family-relationship
2	7/31/87	2	Family directed to use counselling services of the Family Court
3	5/3/88	entire order	Counselling through ACORN Associates for the purpose of re-establishing a father-son relationship with Kevin and Ian
4	12/2/88	9	Counselling effort with ACORN to continue until further order of the court
5	5/8/92	7	Mediation services of the Family Court to be used to restore a relationship with Ian (a relationship with Kevin was restored in 1990, although not by any counselling efforts ²)

² The restoration of the relationship with Kevin makes an interesting story in and of itself. In March, 1990, Richard was laid off from his job at GE Aefospace and applied to the court for a reduction in child support. Patricia, in her cross-motion, said that in order to

Judge Joseph Greene made the fifth order; the first four were by Judge Vincent Segal. Richard paid a professional attorney to argue for all of the orders except #5; the cost drove him to the brink of bankruptcy. Patricia actively opposed all of the orders in court except #3 (see Grossman Cert. April 30, 1992, Ex. 19, a compilation of various documents in which Patricia expresses her opposition to counselling and to visitation in general).

B. Lack of Compliance with Counselling/Mediation Orders Intended to Restore the Relationship

1. 1987 Orders

The first order, dated 7/7/87, was totally ignored. The second order, dated 7/31/87, resulted in three sessions being held

avoid future court appearances, she simply did not want any more child support. Richard, in his response to the cross-motion, detailed the history of difficulties with Kevin and Ian--especially the lack of co-operation and compliance with counselling orders. He then invoked such precedents as (listed here alphabetically) *Brennan v. Brennan* 187 N.J. Super. 351 (1982), *Fiore v. Fiore* 49 N.J. Super. 219 (1958), *Smith v. Smith* 85 N.J. Super. 462 (1964), *Turney v. Nooney* 5 N.J. Super. 392 (1949), and *Von Bernuth v. Von Bernuth* 76 N.J. Eq. 200 (1909), to argue that child support for Ian and Kevin should be reduced to \$1/year. The idea, following the various precedents cited, was that economic pressure would be put on Patricia to make Richard's right to a relationship with Kevin and Ian effective.

Judge Stephen W. Thompson heard the motion and cross-motion on March 9, 1990. He would not allow Patricia's recommendation of dropping child support altogether, nor did he grant Richard's suggestion of economic pressures. He did, however, admonish Patricia to encourage Kevin and Ian to have a relationship with Richard, and he emphasized that there is a difference between "allowing" and "encouraging" (see Grossman Cert., May 1, 1992, Ex. 26, transcript of 3/9/90, p. 26). As a result, 8 days after that hearing, Kevin started a program of regular visitation with Richard which continued unbroken until the current controversy concerning the use of the name "Grossman" arose.

with Marie Hulse. Richard's first attempt at pro se litigation was sparked in part by Patricia's failure to show up twice in a row for scheduled sessions in Oct., 1987. Patricia had claimed that illness had caused the cancellation. After using that excuse twice, she told Mrs. Hulse in Richard's presence that she flat out refused to continue until such time as he got a psychiatric evaluation. This was in total defiance of a court order which said:

Both plaintiff and defendant as well as the children of the marriage shall fully co-operate with the said counsellor(s) in furtherance of this Order as well as previous Orders of the Court.

(Order by Judge Segal, July 31, 1987, ¶ 2)

Had Richard known more about the enforcement of litigant's rights in 1987, Patricia would have been prosecuted for contempt-of-court. Interestingly, he did submit to an psychiatric-psychological examination as per ¶ 9 of Judge Segal's order of Nov. 12, 1987. The bottom-line conclusion of that examination was:

Mr. Grossman's psychological profile does not in my opinion preclude liberal visitation with his children. Mrs. Grossman's concerns may reflect unresolved conflict between she and her husband. A Family Evaluation is indicated and suggested.

(see Grossman Cert., May, 1, 1992, Ex. 24, a report by Dr. Phillip Slonim)

2. Efforts with Acorn

The third order, dated 5/3/88 required "whatever counselling is determined appropriate toward the end that the relationship between the Defendant and the two (2) adopted children is rehabilitated." This is the one occasion where Patricia did not

offer opposition in the courthouse. The order led to a counselling effort with Dr. Joseph Zielinski of Acorn PyschManagement Corp. during the summer and autumn of 1988. At the very outset, Patricia let Dr. Zielinski know that the only reason she was there was because the court had ordered it. After a few sessions with both boys, but without Richard, Dr. Zielinski thought it a good idea to have the boys work with their father one at a time; Kevin went first. The effort started to bear some fruit, and Kevin did spend one Saturday with his father. The whole thing raised Patricia's hackles. After one session on Monday, Oct. 3, 1988, she shrieked and howled at Richard, "I resent the Hell out of you using counselling as a back door method of getting visitation!". This incident was presented to the court at least twice before in 1990 and 1992 (see Grossman Cert. April 30, 1992, ¶ VII-H); Patricia has never denied it.

As a result of her outburst on the evening of 10/3/88, the fourth order--dated 12/2/88--was issued by Judge Segal. It states that the counselling effort will continue until the court says otherwise. Upon finding that the court wouldn't stop the counselling effort, Patricia found another way to halt things. On 11/21/88 she insisted on being present during the session with Dr. Zielinski, Kevin, and Richard. Rather than contributing to the process of restoring a relationship between the father and the son, she shrieked, howled, and had to be restrained more than once by Dr. Zielinski. It became all too apparent to the counsellor that

nothing was going to be accomplished if Patricia opposed the effort, for which reason the following week was the final session.

In addition to finding Patricia impossible to deal with, Dr. Zielinski also feared that Kevin would be harmed if he were put into a tug-of-war between Richard's desire to have a relationship and Patricia's opposition. Mrs. Hulse made a similar finding concerning Ian in 1987 (refer to Grossman Cert. April 30, 1992, Ex. 25, a memo written to Judge Segal by Mrs. Hulse on 2/29/88). These facts have been placed before the court before and were never denied by Patricia (see Grossman Cert. April 30, 1992, ¶ VII-H).

As detailed in footnote 2 supra, a relationship was restored with Kevin in 1990. A year later in 1991, Richard communicated to Patricia via attorney Cynthia Jenkins his desire to try yet another counselling effort with Ian (see Grossman Cert. April 30, 1992, Ex. 29, letters between Cynthia Jenkins and Patricia). Patricia's response was to counter-offer that Richard resign his equity in the marital home in exchange for being excused from any support obligations to Ian. Again, these are facts which have been placed before the court before and were never denied by Patricia (see Grossman Cert. April 30, 1992, ¶ VII-K-1). It became obvious that if Patricia didn't support a counselling effort to restore things with Ian, then no court-ordered effort would be useful. As such, the matter was dropped.

3. Order for Mediation with Ian

In 1992 Richard made a motion to the court demanding an accounting of a trust fund that was supposed to have been left with

the county surrogate. The motion was heard by Judge Joseph Greene on April 10, 1992, but due to confusion about court dates, Patricia made a motion to vacate the judgement. Although she did provide the desired accounting, in the same motion she demanded that all of the arrears which were the result of seven months' unemployment in 1990 be paid immediately (see Place Cert. April 20, 1992, ¶ 28). Richard's response to this was two-fold:

1. Arrears were being paid off at a rate of \$35/week as per ordered by the County Probation Dept.
2. The situation of arrears and lack of relationship with Ian bore a remarkable similarity to *Brennan v. Brennan*, 187 N.J. Super. 351 (1982)

The *Brennan* case involved a divorced father who had experienced a recession in his business and had fallen into arrears on child support. However, his wife had prevented him from having any relationship with his child. The court decided to forgive half the arrears. Richard argued in 1992 that something similar should be done in his case.

Judge Greene denied both Patricia's motion to pay all arrears immediately and Richard's motion to follow the *Brennan* precedent. The judge did, however, issue the fifth counselling/mediation order on 5/8/92 to use the court's mediation services (Order by Judge Greene, May 8, 1992, ¶ 7). Once again problems developed in getting compliance with the order. The first step in the process is to attend a Friday afternoon seminar in Judge Segal's courtroom. Patricia did not show up on the appointed day, although she was

there two weeks later. At the conclusion of the seminar, Patricia and Richard were assigned once again to Marie Hulse. Patricia immediately demanded to be transferred to another counselor/mediator, for which reason Siobhan McEnaney took responsibility. A few sessions were held in July, 1992³ but both Patricia and Ian insisted that he could attend no more due to a summer job. Richard did not press the issue that the court can require people to take time off from work to attend sessions. He was willing to wait through the entire month of August for the next scheduled session on Sept. 8, 1992. On Sept. 4, 1992 Patricia called in to cancel the Sept. 8 session. Ms. McEnaney contacted Richard and told him the next session would be postponed until Sept. 22, 1992. As no reason was given for the postponement, Richard became suspicious and started to compose a motion for enforcement of litigant's rights.

The Sept. 22, 1992 session was also cancelled, allegedly due to Kevin's refusal to co-operate. At this point Richard was ready, on the spot, to file a motion for enforcement. Only by Ms.

³ It was at one of those sessions--without the boys in attendance--that Patricia made the remark, "I use the name 'Place' because that is the children's names." That remark is what kindled the current controversy concerning the use of the name "Grossman". Richard said of the remark:

The fact that the plaintiff would commit so extraordinary a gaffe in my presence makes one question her state of mind. Does a foot firmly stuck in the mouth taste so good that the plaintiff would seek her rightful place in the *Guinness Book of World Records* for the most blatant expression of a position diametrically opposed to *res-judicata*?

(see Grossman Cert., Feb. 9, 1993, ¶ III-C-1)

McEnaney's immediately contacting Patricia and arranging for yet another session on Sept. 30, 1992 was Richard dissuaded from filing a motion. It was then discovered that the Sept. 8, 1992 session had been cancelled on Sept. 4, 1992 due to illness. Richard was totally unconvinced, recalling the experience with Mrs. Hulse in Oct., 1987. His attitude was that it was extremely dubious that on Sept. 4, 1992 anyone could know that illness would persist until Sept. 8, 1992.

On Sept. 30, 1992, under threat of being hit with a contempt-of-court motion, one mediation session was held. Ian let it be known that the most that could be expected in terms of a "relationship" with Richard would be that he would be civil if he ran into him at church. Ms. McEnaney labelled the situation "cancerous".

C. Other Attempts to Effect a Relationship

In addition to trying counselling and mediation, Richard has made other attempts to re-establish relations with Kevin and Ian, with varying degrees of success and failure.

1. Christmas

Kevin and Ian were invited to spend the eighth day of Christmas (as in 8 maids a milking, 7 swans a swimming, etc.) Jan. 2, 1989 with their father. Neither child accepted the invitation. Another invitation was extended for Christmas Eve, 1989. Kevin accepted but Ian did not. It was one of the events that led to the restoration of the relationship with Kevin.

2. Birthday Cards

In 1989, Richard mailed a birthday card to Ian which was returned and marked "REFUSED". In 1990, Richard bought another birthday card for Ian, and gave it to Kevin to hand deliver. A week later it was returned--again by Kevin--with obscenities scrawled all over it. (see Grossman Cert. May 14, 1990, Ex. F, a photocopy of the card with obscenities scrawled on it, see also Grossman Cert. April 30, 1992, Ex. 21 a photocopy of the 1990 birthday card, as well as the 1989 card).

3. Tennis

In May, 1992 Richard found out from Brian that Ian was playing on the J-V tennis team at Haddon Twp. High School. Richard attended a match between Haddon Twp. and Woodbury played at Haddon Twp.; Brian and Patricia were also there. At the end of the match Brian ran onto the tennis court and said to his older brother, "Say hello to Dad." Ian's response was negative. Brian then said, "But he's your Dad." Again Ian's response was negative.

A week later there was a return match at the Woodbury tennis court. Once again Richard was in attendance although Patricia and Brian were not. Richard attempted to greet Ian, but Ian would not reply and he did his very best to pretend that his father wasn't there.

D. Current Attitude by Each Parent

Patricia has maintained that Ian is old enough to make up his own mind about having a relationship with Richard. The lack of desire is due to Richard's absence from Ian's life since 1987, as

well as his repeatedly filing motions against the mother.

Richard's attitude is:

1. Various decisions by the U.S. Supreme Court as well as by the N.J. courts entitle him to a relationship:
May v. Anderson, 345 U.S. 528, 533 (1953)
Stanley v. Illinois, 405 U.S. 645, 651 (1971)
Lassiter v. Social Services, 452 U.S. 18, 27 (1980)
Santoskey v. Kramer, 455 U.S. 745 (1982)
In the Matter of J, S, & C, 129 N.J. Super. 486, 489 (1974)
Wilke v. Culp, 196 N.J. Super. 487 (1984)
2. The court's paramount duty is to act in the child's best interests and the most important thing which a court can do to achieve that best interest is to strive for a relationship with both parents, not just one. *Fiore* 49 N.J. Super. at 225, *Turney* 5 N.J. Super. at 397
3. Contrary to Patricia's insistence that Richard has ignored Ian, each of the five counselling/mediation orders was a well-reasoned effort to get back into Ian's life. Patricia's blatant opposition ("I resent the Hell out of you using counselling as a back door method of getting visitation!", 10/3/88) is why those attempts failed so miserably. The fact that Richard was pushed closed to bankruptcy in getting four of the five orders shows how serious he was in trying to get back together with his adopted sons.
4. The various attempts made outside of the counselling/mediation environment offers further evidence that Richard has tried to reach out to Ian.
5. Far from being the informed decision of someone beyond the age of tender years, Ian's antipathy toward his father is the direct result of 6 years of uncontested brain washing by the mother.

III. Specific Orders Concerning the Use of the Name "Grossman"

As noted in I-B above, when Richard adopted Kevin and Ian, Judge Lario ordered that "Grossman" be added to the end of their

names. During the course of separation and divorce, Richard was presented with medical bills for Kevin and Ian which bore the name "Place". He was most resentful that he should have to pay such bills because he had no relationship with the adopted sons and his obligation for support would not exist but for Judge Lario's order. Even greater insult came when certain of Brian's bills bore the name "Place" rather than "Grossman". This came to a head on March 9, 1990 when Richard argued before Judge Thompson that his obligation was to pay medical expenses for children named "Grossman" not "Place". Attorney Cynthia Jenkins argued a similar position on June 22, 1990. Judge Thompson did not excuse the obligation to pay medical expenses, but he did order that:

The minor children of the marriage Ian and Kevin shall use their legal names Ian Place Grossman and Kevin Place Grossman for all intents and purposes.

(Order by Judge Thompson, Aug. 15, 1990, ¶5)

The order has not been followed at all (refer to footnote 3 supra). This became an issue at the hearing on Feb. 26, 1993 which resulted in Judge Segal ordering:

Plaintiff is to ensure that the children's records at school and elsewhere are under the name Grossman.

(Order by Judge Segal, March 31, 1993, ¶11)

The adopted children's reaction to this was unfavorable. Kevin stopped seeing his father until May 11, 1993. Both boys wrote letters to Judge Segal explaining their opposition, and both boys were interviewed on April 27, 1993.

DISCUSSION

I. THE OBLIGATION TO SUPPORT IS BASED UPON AN ORDER WHICH ESTABLISHES THE CHILDREN'S NAME IS "GROSSMAN"

Even in the face of Patricia's deliberate actions to prevent any relation between Richard and Ian, the father has the obligation to support the child. The obligation to support stemmed from an adoption order which made Ian's and Kevin's names "Grossman". It adds incredible insult to injury to expect Richard to support a child who will not acknowledge his father. In 1990, Judge Thompson would not recognize recession as a continuous and substantial change of circumstance warranting a reduction in child support obligations, but he did recognize the fact that at least Richard had the right to have those who claim financial support from Judge Lario's order also have to comply with the provision that they use his name. If Judge Lario's order which changes the children's names is to be vacated, perhaps the rest of the order should be vacated as well.

II. THE COURT MUST ACT IN THE BEST INTERESTS OF THE CHILDREN.

Any proceedings which look to the person or property of infants is sufficient to make that infant a ward of the court. *Carey v. Carey*, 91 N.J. Eq. 448, 450 (1920). Kevin and Ian are still infants, and they have been wards of the court since Feb. 22, 1987 when their parents separated. It is plain beyond the need of any citation that in any issue affecting infant wards of the court, the welfare and happiness of the infant is the controlling interest.

A. The father's surname usually is in the best interests of the child.

It has been held that children should use their father's name unless it is contrary to the child's best interests, such as when the father has no contact with the child, the father is guilty of deviate behavior, or the father does not pay any child support. *Sobel v. Sobel* 46 N.J. Super. 284, 287 (1957), *In W. v. H.*, 103 N.J. Super. 24 (1968). More recently, *In re Rossell by Yacono*, 196 N.J. Super. 109 (1984) asserted the idea that children should not necessarily follow their father's name if any good cause can be shown for not doing so. *Id.* at 114-5. The *Yacono* case in particular involved a father who had no contact at all with his child. Dennis Cecil Place has had no contact at all with Kevin and Ian since 1980.

In contrast, Richard has had regular contact, one way or another, with his adopted sons. Because he adopted them, he has the obligation to support them. He is absolutely current in that obligation. He has further restored a visitation relationship with Kevin since 1990. In 1987 and 1988 he spent himself close to bankruptcy in well-reasoned attempts to re-establish a relationship with Ian, and it is by the mother's actions that such counselling/mediation efforts have failed.⁴ By the standards of

⁴ That Patricia should do so should not come as any shock to the court.

There is ... a well-known tendency on the part of a parent having the physical custody of children of the marriage to measurably restrain the natural and proper affection of the children for the absent parent.

Bierck v. Bierck 123 A. 537 (N.J. Ch., 1923)

Yacono, the children should not bear the name of Dennis Cecil Place. By the standards of Sobel, they should bear the name "Grossman".

- B. The best interests of the child are to know, love, and respect both parents, not just one.

For all that, there are still other considerations:

The greatest benefit a court can bestow upon children is not so much to be found in determining which parent shall enjoy their physical custody as it is in insuring that the children shall not only retain the love of both parents, but shall be at all times and constantly deeply imbued with love and respect for both parents.

Turney 5 N.J. Super at 397

With Kevin there is an element of love and respect. Forcing the issue of using Richard's surname threatened to cut off the relationship. It is always in Kevin's best interest to have a relationship with both parents, not just one. For Richard, this involves swallowing some pride. In 1990 Kevin was taken out of his neighborhood school in Haddon Twp. and placed into the Eisenhower School in Berlin, which is set aside for children with emotional disorders. Kevin's problems were due in no small part to the lack of human relationships. Restoring the relationship with his father in 1990 has been a part of the recovery. The last thing Kevin needs is more estrangement.

The children may well be used as weapons to inflict upon the other parent for real or imagined wrongs.
Smith, at 469

Patricia cut off Richard's relationship with a dead child, how much harder will she strive to cut him off from a living child?

C. Lack of the father's surname has been a wedge between Richard and Ian; use of the father's surname would be a wedge between Richard and Kevin.

In Ian's case there is a different situation. There is no visitation relationship to be lost as there is with Kevin. If anything, there is something to be gained. *In re Lone*, 134 N.J. Super. 213 (1975), came essentially to the same conclusions as the other cases which have dealt with the issue, the welfare and happiness of the child is paramount. *Lone* could not find any reason to show how the child would be harmed by using his father's surname, and quite a few reasons why the name should be used. Among other things, not using the father's name drives a wedge between the father and the child. It is not in the child's best interest to use a surname other than that of his non-custodial father if it contributes to estrangement of the child from a father who exhibits a desire to preserve the parental relationship. Courts have traditionally tried to maintain and to encourage continuing parental relationships. The link between a father and child in a divorce situation where the father does not have custody is uncertain at best, and the failure to use the father's surname further weakens that link. *Id.* at 220. The conclusion in that case was that the use of the father's surname represented the child's paternity, and remaining bond with his father. *Id.* at 221.

In Kevin's case, it is use of the "Grossman" surname which seems to have the effect of a wedge. In Ian's case, the wedge has been there continuously at least since April 18, 1987; it needs to be removed. Dennis Cecil Place cannot by any stretch of the

imagination be called Ian's father except for determining genetic chemistry. Richard L. Grossman is Ian's father legally, and he is the only male adult since 1980 who has striven to have a father-son relationship with the boy. The fact that Ian doesn't use his father's surname has very much been a wedge between them, a weakening of the link between father and son.

It cannot be in Ian's best interest to have no father whatsoever, especially when his biological father ran away from him. By requiring Ian to use the name "Grossman" it might remind him that he does have a father. If nothing else, it might remind him of who has been enriching his household by \$989/month tax-free since 1987. Ian might not like it, but remember that it is welfare as well as happiness which is to be considered. A child's welfare and a child's happiness are often mutually exclusive terms. A child will be happy if he eats candy, but his welfare requires a more healthy diet. A child might be happy if he skips school, but it is going to school which promotes his welfare.

The *Turney* court recognized that the greatest benefit a court can bestow upon children includes insuring that such children shall have respect for both parents, not just one. As regards Ian, the Superior Court of New Jersey, Chancery Division--Family Part, Camden County, has to date been grotesquely ineffective in bestowing that benefit. Enforcing the use of the name "Grossman" upon Ian can't make the situation any worse with him, and it just might make it better.

New Jersey Commission on Divorce

statements by : Daniel Fedeli

I have been involved in the study of divorce for about 8 years . In this search for fairness a high ranking state official and former domestic court judge explained that we don't need more laws. I agree. He explained that we needed to enforce the laws we already have and to better educate judges in related domestic issues. Not conjure laws as they go along.

There have been many times I have seen judges preside over domestics that have never had trial experience. Several times I've witnessed judges order supervised visitation because of allegation made by the custodial parent only to find out later [after the child had ben alienated from the noncustodial parent] that there was no cause for this action.[During a Matrimonial lecture a speaker stressed that a way to win a domestic issue was to strike the first blow.] Does this happen in New Jersey ,every minute .

We know that this issue are explosive . Especially the issue of Child Support. My problem is not with paying of the support it's with the application and attitude of the custodial parent along with the arrogance of the domestic courts . I am frustrated and bored by the obnoxious statements in the **best interest of the child**. That statement has such abuse to it that I compare it to Hilter, Stalin, and Hussein. These men were acting in the best interest of the countries children? The attorneys know all this , they know that they have to practice everyday in front of that judge , they all belong to the same Associations. The attorneys then appeal to the sordid side of domestic forgetting the real issues. The cycle continues.

Example ,

A person earning 40,000. dollars a year was taken down to earning 12,000. per year by choice. His divorce started just as he changed careers. The child support was 7,500. per year. The legal bill was over 100,000.00 dollars for defence and an **attempt** to enforce litigants right for visitation. Was it in the best interest of the child to waste 2 pensions and a college saving . That person almost became homeless trying to pay for legal fee's to see his children . WHO would of paid for that problem had he gone to welfare.? The problems are many but the stories are all the same throughout New Jersey. A common problem is a Judge will say Mr. Non custodial parent I will put you in jail if you don't pay your child support and Mrs. Custodial parent please allow you ex to visit with the child. At that point a judge should arrest both parties ,however, he will not. Nothing happened to the **custodial parent** who continually violates that law.

What is needed is to extract divorce from the court system,mandate mediation. A accountability for all judges and a public review of all complaints made against them.

The Horror of the treatment that I received and what I saw prompted me to lead a media campaign several years ago.I found that unless your own life has been

touch by it ,it's difficult to understand . When a judge tells you to quit your job and find another with a higher pay you wonder about his competences or tells you he's not interest in your civil rights . I witnessed financial devastation due to legal fee's. Men harassed and terminated from there jobs because employers did not want to hassle of payroll deduction of child support.

I suggest the fee for marriages license be raised to 150.00 dollars using some of that money for the enforcement of visitation rights and educating the public on the subject of divorce .{domestic violence ,support etc. not posting signs on buses as they are currently doing.}

You can study this subject ,however divorce is a billion industry it profitable to some .

Respectfully

Daniel Fedeli



March 11, 1994

***TO: THE NJ COMMISSION TO STUDY
THE LAWS OF DIVORCE***

Commissioners:

The New Jersey Council for Children's Rights (NJCCR) seeks to educate the public concerning the incredible harm we are inflicting on children of divided families -- families divided by divorce, separation, and families in which the parents never married. We also help those who have seen at first hand just how uncaring and unreasonable the "system" is -- from the "family" courts to state agencies who are supposed to act in the public welfare or the "best interests" of children. We consist of fathers, mothers, stepparents and grandparents who have seen multiple cases where the "system" harms children. We seek by any and all means to end the repressive and economically draining "family" court system, which all too often (and just once is enough when children are involved) is unjust, unfair and inequitable.

NJCCR is a non-profit, tax-exempt, 501(c)(3), United Way Donor option, corporation that seeks to help children and parents of divided families. We are affiliated with the Children's Rights Council (CRC - Washington, D.C.), which now has 31 chapters in 24 states, of which NJCCR is only one. Through CRC, NJCCR is also affiliated with other national organizations: Mothers Without Custody, The Stepfamily Association of America, Grandparent United for Children's Rights, and *Kids Express*, a magazine for children of divorce.

There is now extensive evidence that the greatest problems facing New Jersey and all of America are: increasing poverty, crime, and declining education. The burgeoning of births to unwed mothers and the rising rate of divorce, coupled with the discriminatory practices of "family courts" in awarding custody of these children to "mothers" -- who are often ill-equipped to raise children on their own, and awarding to fathers limited visitation and a child support payment almost no one can afford, has directly contributed to the current crises: persistent and increasing poverty, rising crime, and declining education.

Let me echo the sentiments of Louis Sullivan, past Secretary of Health and Human Services, who said "... what I consider to be one of the most pressing issues facing our nation [is] a perilous rise in fatherless families.

- 90% of all homeless and runaway children come from single parent households.
(Source: Rainbows for all God's Children)

P.O. BOX 316, PLUCKEMIN, N.J. 07978 -- (201) 694-9323

- **85% of all youths incarcerated in our juvenile jails are from single parent or sole custody homes.** (Source: an average of two studies: one on Fulton County, Georgia; one issued by the Texas Department of Corrections) 75% of New Jersey's state criminals were raised in single parent homes. (Source: Dr. Kay Herud, Director of Psychological Services, East New Jersey State Prison)
- **75% of adolescent patients in chemical abuse centers are from single parent or sole custody households.** (Source: Rainbows for all God's Children)
- **71% of all high school dropouts are from single parent or sole custody homes.** (Source: National Principals Association annual report)
- **71% of teenage pregnancies are to single-parent children.** (Source: U.S. Department of Health and Human Services study)
- **63% of youth suicides are to single-parent children.** (Source: Bureau of the Census study)
- **only 20-25% of all children are raised in single parent or sole custody homes** (16 million according to the last census)

Mr. Sullivan was all too aware of these dismal statistics. Combine them with this one: according to the Bureau of the Census, 85% of single parents are mothers, and only 15% are fathers (in New Jersey 95% are women and 5% are men). Would single-parent fathers do a better job of raising their kids? No study has been done to date, but fathers, on the whole, might do a better job; in general, fathers are better disciplinarians.

But we need not engage in idle speculation: everybody knows that children are best taken care of by TWO PARENTS. Although there are some studies out there that denigrate joint custody, the OVERWHELMING evidence shows that TWO PARENTS ARE BEST FOR KIDS! Sole custody is in the long run a termination of the other parent's parental rights, as "visitation" is simply not adequate for most non-custodial parents and their children. In New Jersey a parent's rights can be terminated only on a clear and convincing standard of evidence -- the same standard should apply to sole custody.

To date government "band-aid" solutions to deal with the rise of divided families and the resulting societal havoc, has almost exclusively been through the enforcement of child support payments. The Census Bureau has also shown that fathers with joint custody pay 90% of their child support; fathers with parenting time pay 80% of their child support; but, father with no contact with their children pay only 45% of their child support. You do not need repressive measures to ensure the payment of child support -- you need child support obligors who are actively involved in raising their children.

The latest Department of Health and Human Services Office of Child Support Enforcement Report to Congress states that a mere 10% of welfare payments are repaid through enforcement of child support compliance. For over two decades it was felt that enforcement of child support would reduce welfare costs and dependency -- and this policy has clearly failed!

It could not be clearer: repressive and unwieldy child support enforcement is not saving us a dime; in fact these bureaucracies are costing us money. Since the federal Family Support Acts of 1984 and 1988 have gone into effect, the overall percentage of child support collected has been flat; it HAS NOT INCREASED AT ALL. One study in Indiana shows that the "tougher" child support enforcement program, far from increasing support payments, is actually driving fathers out of the

state, making it even more expensive to locate them elsewhere, and the majority of these fleeing fathers leave behind children that end up on welfare.

NJCCR is also deeply troubled that: state agencies charged with the "welfare" of children are failing parents and children. The Division of Youth and Family Services and the Departments of Welfare and Probation are staffed with college graduates who need considerably more education/experience to deal with domestic relations problems effectively. We know of multiple cases of abuses by these agencies and victims of these abuses have no effective recourse -- beyond costly litigation, which the average citizen cannot afford -- which makes these agencies effectively a law unto themselves.

At the "root" all three of our most pressing problems -- increasing poverty, crime, and declining education -- is the disintegration of the nuclear family -- in most cases (80 - 95%) this means to the children of these families the "loss" of a father. All too often we attempt to solve problems by "throwing money" at them; NJCCR does not feel that monetary child support is the "solution." To be sure, child support dollars are needed by children, but they need much more if they are to avoid poverty and crime -- they need an education, they need good role models, and they need TWO PARENTS who care.

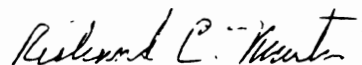
Do you want to save our children from suicides, teen pregnancies, crime, drug and alcohol abuse, mental health problems, academic achievement problems? Encourage family formation and family preservation, and when there is a separation, divorce, or no marriage, require joint custody. Let's establish programs to ensure:

- Mandatory high school classes on marriage, parenting and divorce -- as a past assistant principal of a private school in Atlantic City, I will be glad to help you with the curriculum for such a course. Mandatory classes on the same for all persons who apply for a marriage license. Mandatory classes for all persons who are going to have children, whether married or not. Mandatory classes for all parents filing in "family" court.
- The use of "family" courts only as a last resort -- people who are in a crisis, (and every domestic relations problem IS a crisis to those involved, especially the children), and probably behaving very badly because they are in crisis -- DO NOT NEED and SHOULD NOT BE ALLOWED to litigate. Every other available option should be employed first: counseling, mediation, arbitration, conciliation courts, and any other technique that aims at solving problems -- "family" courts do NOT solve problems, they exacerbate them.
- A ban on sole custody, unless one or both parents can be shown to be unfit on clear and convincing evidence. Establishment of standards for parenting in cases of separation and divorce that ensure that every parent is given the opportunity to and is encouraged to actively parent the children. Any person who is opposed to this is either ignorant of or chooses to ignore the vast evidence supporting joint custody in the majority of cases, whether the parents are "cooperating" or not.
- Limitation as far as possible the of "discretion" of the courts. Judges are just lawyers in robes and do not have the education necessary to make decisions that are best for children -- in fact I cannot think of many professions less suited to determining what is best for children. Most judges rely on their own perception of the "conventional wisdom," which is more often than not wrong. Prospective Family Court judges need special education, especially if they have never been in Family Court as a lawyer; while they are sitting in

Family Court, they should be required to participate in ongoing, continuing education classes that will (hopefully) bring them up to speed on the vast quantity of research done in the last 25 years.

- Removal of all references in the statutes to the “best interests of children” and replacement with specific, meaningful and scientifically demonstrable standards.
- Recognition that separated couples are always angry, hurt, bitter and vengeful -- I have yet to meet the saint who is an exception to this rule. Any and all allegations of violence and/or child abuse and neglect that arises after or just prior to a separation is very likely to be false. Our current “system” encourages its own misuse and abuse. A vengeful person is well aware that a parent’s most precious treasure are the children.
- Put a stop to parental alienation syndrome through education and counseling, and if that fails, termination of the brainwashing parent’s parental rights. Today, we transfer custody of children away from parent’s that kidnap their children -- kidnapping a child’s mind deserves no less.
- Establishment of a “watchdog” committee, charged with ensuring the welfare of children, positions to be filled by parents from all walks of life to oversee and control the Division of Youth and Family Services, the Department of Welfare and the Probation Department.
- A requirement of continuing education for state workers in the above agencies and any other agency charged in any way with furthering the “welfare” of children.

If the State does not take a proactive stance -- by encouraging BOTH parents to get beyond their petty differences and to stay involved with their children -- poverty and crime will continue to increase, and education will continue to decline; if this trend is continued unchecked, the State will have to bear the cost and burden of raising the children who will likely lead dysfunctional lives themselves! I am a child of a divided family myself, and if there ever was a reason for me to be sorry that I fathered a daughter, it would be this: after I am dead and gone, my daughter is going to have to live in a world WE created, and I, for one, would not want to live in that world myself.



Richard C. Martin
President, NJCCR
3 Academy Court
Bedminster, N.J. 07921
(908) 781-6333 (H)
(908) 957-2158 (B)
(908) 957-4428 (Fax)
rcm@mink.mt.att.com

TESTIMONY OF ALICE TULANOWSKI

Three years ago we viewed our family as normal, average, Americans, middle class. We have three married sons and four granddaughters. Both husbands and wives in our families are gainfully employed. We celebrated holidays and birthdays at our home because we had the space. Aunts, Uncles and Cousins are a part of such celebrations.

In May 1991 our son separated from his wife of 2½ years and the world of this entire family turned topsy turvy. It began with false domestic violence charges against our son. These charges were brought because he went back to the marital home for his clothes (which his wife refused to give him). His wife was hundreds of miles away when he did this. How could domestic violence occur when someone is absent from the premises. Nonetheless, our son was found guilty by the municipal judge thanks to his clever wife and photographs of a bruised arm (no head on photo) produced by her male friend. The photograph was taken 8 months prior to the domestic violence charge. This was the beginning of a nightmare and set the stage for the negative view of our son which I am sure was his spouses intent. Despite the fact that our son had no record of violence prior to the marriage and has had no incidences since leaving the marital home, he has a label he cannot shake in the courts thanks to an angry, vengeful spouse.

Because the stage was set any and all subsequent accusations made by his wife have been considered to be valid when in fact they are not.

In December, 1992, four days prior to a final divorce hearing, his wife charged him with sexual abuse of his daughter. What is really ludicrous is that if such abuse had occurred it had to happen in our presence, since we supervised all his visits. By December 31, 1992 I was informed that DYFS found no evidence abuse had occurred and that the allegations were unfounded. Concurrently the prosecutors office claimed the accusations were unsubstantiated and the case should be closed. Documented reports stating this are in the file.

It is now 16 months later. The judge has denied the father parental visits for all those months. These false allegations have cost the family in excess of \$10,500.00. We are constantly bombarded with questions from our granddaughter's cousins, "Where's Alyse?" "Why can't she come to my party?"

The real damage has been to a three year old child. Because of her mothers angry, vengeful actions to get back at a spouse and his parents, this sweet little girl has gone from happy and carefree to regressed, clingy, insecure, deteriorated and unable

to sleep. I might add these behaviors were described by the mental health professionals evaluating her. We have observed major changes in Alysse's behavior for the worse and she is now alienated from a whole network of supportive relationships she previously enjoyed. Her mental health and well being have been desperately jeopardized and compromised.

What has really troubled us is the obvious gender bias of the court system, the discounting of fathers as valuable in their childrens lives, the complete ignoring of the paternal extended family, and the lack of investigation of the female parent. Example: two years ago family case management recommended both parents be given psychological testing. The court only pushed for the fathers evaluation until recently. Another example: One year ago our sons lawyer suggested that the real problem was Parental Alienation Syndrom (PAS) - the court ordered an independent evaluator who specialized in sexual abuse (after it had been decided there was no sexual abuse) instead of ordering someone like Dr. Gardner who specializes in PAS. Example 3: Our daughter-in-law took our granddaughter to an unlicensed, uncertified student of psychology for therapy, without her fathers consent. This cost the state money when in fact her father carries insurance on Alysse and she should have been seen by an appropriate expert. When we asked the judge about this novice his remark was "so what"? Our response was "when a person is dealing with a childs future and peoples lives, the therapist should be experienced". The judge continued to let this novice see our granddaughter and the therapists reports do not show improvement but rather deterioration of our granddaughter.

The prosecutors office stated Alysse pointed to a juvenile doll as the perpetrator. Our lawyer requested an investigation of both parties (mother and father). To our knowledge the mother was never investigated nor the half-brother or cousins who are frequently present with Alysse and are juveniles. Real abuse could be occurring even today, if someone else was the abuser. The court has chosen to ignore this possibility. A year ago (see written testimony April 16, 1993) it was pointed out that Alysse's mother sleeps with a knife under her pillow. When Alysse reported that someone touched her privates with a knife, in June 1993 (see prosecutors report), the person implicated was her father who had not been seeing her for months. Further proof that the courts refuse to be neutral and investigate all parties.

I am a masters prepared, certified, licensed mental health professional. My experience with this case has made me ashamed

of other professionals in my field. My experience with this case has destroyed my faith in the criminal justice system and negated any ideas I had of equal justice for all. The travesty of justice we have encountered in the name of family law I would not wish on any human being.

We hope this panel will truly look at the gross injustices and inertia in the system. Yale law experts stated on National TV that in custody cases eight out of nine abuse allegations are proven false. There is a need for the family court system to consider this. There is a need for the family court system to learn about Parental Alienation System. There is a need for the family court system to evaluate the credentials of the "court appointed experts" and to develop a referral system of qualified experts. This would not include beginning practitioners in a community mental health system setting who are not required to be qualified. There is a need to "take such cases" out of the adversarial, money producing system and place them in the more just system of mediation such as the state of California embraces. There is a need to consider that some females are not the picture we have of motherhood and apple pie but in fact some mothers can be quite destructive to their children when they are unable to deal with the consequences of divorce, especially when that divorce is not the first. There is a need to recruit family therapists into the mediation rolls.

If Congress truly wants to uphold the concepts of the Family Preservation Act, then courts need to look at the entire family system, and not just the maternal or female role.

TESTIMONY OF PAUL TULANOWSKI

My name is Paul Tulanowski. I am the father of a beautiful four year old daughter Alysse. I love my daughter immensely. I want to be responsible to her and to be there in her time of need. I already support her financially.

I filed for divorce three years ago. In my complaint for divorce I stated what my wife had said many times, "if you leave you'll never see your daughter again". In those three years I have had numerous times of interference with visitation. On one occasion my wife on her own, withheld visits for seven weeks. Most recently the judge denied my visits for 16 months based on false allegations by my wife.

I ask you this - if a father cannot see his child and is denied access to her during a critical growth and developmental period how can he effectively parent when that child gets older. Of course the mother will be at an advantage because she has been afforded the time and contact to bond psychologically with the child.

The court needs to look at the gender bias in its system. It needs to consider the non neutral stance of some judges. Where are the mens resource centers? Where are the male advocates? Who is touting the child's need for access to both parents? Surely the cases I know of have leaned in favor of the mother.

I am not divorced yet. My weekly visits have been reduced to two hours. I pay excess child support. My former lawyer, who I can no longer afford, has stated "this case is hopelessly and locked in the Somerset County Court System.

Whatever the panel can do to alleviate the pain and agony that some of us have experienced will be grateously appreciated. I commend you for taking on the challenges of this commission and pray that your work will benefit those of us who have experienced a gender biased system which is far from neutral and not timely in its decisions. The delays in process also create a whole other set of problems, add much unneeded expense and create havoc with peoples emotional lives.

MARCH 22, 1994

MS. PATRICIA K. NAGLE
COMMISSION TO STUDY THE LAWS OF DIVORCE
LEGISLATIVE OFFICE BUILDING
135 WESTHANOVER ST.
CN-067
TRENTON, NJ 08625

MS. NAGLE:

I WELCOME THE OPPORTUNITY TO RESPOND TO YOUR REQUEST AND POSSIBLY TESTIFY ABOUT DIVORCE LAWS. I DO NOT BELIEVE THAT A PERSON SHOULD BE REWARDED IN THE COURTS SIMPLY BECAUSE THEY HAPPENED TO BE MARRIED TO EACH OTHER.

I FEEL THAT IF A PERSON KNOWINGLY DESTROYS A MARRIAGE, ESPECIALLY WITH CHILDREN, THEY SHOULD BE PUNISHED FINANCIALLY FOR THEIR ACTIONS. THE SAME LAWS SHOULD APPLY TO THEM AS OTHER CRIMINALS THAT KNOWINGLY MAKE YOU AND THE CHILDREN A VICTIM!!

BEFORE I GO ON, EVERYTHING I AM TELLING YOU IS PUBLIC RECORD AND ON FILE WITH THE SUPERIOR COURT OF NEW JERSEY, CHANCERY DIVISION - FAMILY PART, ATLANTIC COUNTY, NJ. MY DOCKET NUMBER IS FM -01-231.92C.

MY WIFE DESTROYED WHAT WAS JUST A BEAUTIFUL FAMILY. AS A RESULT MY CHILDREN AND I WERE IN THERAPY FOR OVER TWO YEARS AND I HAVE SPENT COUNTLESS UNRECOVERED DOLLARS ON THE TREATMENT. MY WIFE REFUSED TO GO EVEN AFTER ORDERED BY THE COURTS. MY CHILDREN WERE AWARE OF MY WIFE'S AFFAIR LONG BEFORE I KNEW AND, THIS ALONE WILL LEAVE LONG LASTING SCARS.

MY WIFE WAS A SUPERVISOR AT THE TRUMP CASTLE CASINO IN ATLANTIC CITY NEW JERSEY. ON DECEMBER 23, 1990, SHE WAS ARRESTED BY THE GAMING SECURITY AND STATE POLICE FOR STEALING. JUST THREE DAYS BEFORE CHRISTMAS SHE WAS FIRED. SHE SUBSEQUENTLY LOST HER CASINO LICENSE. TWO WEEKS FOLLOWING THE THEFT AT THE CASINO, I FOUND HER WITH A MAN SEVENTEEN YEARS HER JUNIOR. IT WAS MY SON'S BIRTHDAY!!!!!! MY WIFE WAS PLANNING TO RUN OFF WITH THIS PERSON AFTER FIRST STEALING EVERYTHING SHE COULD FROM ME AND THE CHILDREN. SHE RECEIVED UNEMPLOYMENT CHECKS TOTTALLING \$4500.00 EVEN THOUGH SHE LOST THREE APPEALS. SHE WAS SCHEDULED TO APPEAR BEFORE MR. DEL TUFO AT ONE POINT.

SHE ATTEMPTED TO DEFRAUD PRUDENTIAL INSURANCE BY CLAIMING HER DIAMOND RINGS WERE LOST. I HAD SAVED 7 YEARS TO BUY THEM. SHE FILED THE CLAIM (AGAIN A MATTER OF RECORD) AND WAS AWAITING THE CHECK. I FOUND THE RINGS AND STOPPED THE PAYOFF PROCESS. AS A RESULT, PRUDENTIAL CANCELLED BY HOMEOWNERS INSURANCE. EVEN THOUGH THEY KNEW THE FRAUD WAS DISCOVERED AND REPORTED BY ME.

MY WIFE WAS ORDERED OUT OF THE MARITAL HOME BY A JUDGE. I RESIDE IN THE HOME TODAY WITH MY CHILDREN.

WE FINALLY WENT TO COURT ON APRIL 20, 1993. MY WIFE WAS AWARDED ONE HALF OF EVERYTHING, INCLUDING THE RINGS THAT SHE CLAIMED WERE LOST. THE RINGS WERE VERY SPECIAL TO ME, BUT OBVIOUSLY NOT TO HER. SHE WAS EVEN AWARDED MY PENSION! THE JUDGE WAS VERY SYMPATHETIC TO HER AND THUSLY REWARDED HER FOR CRIMINAL CONDUCT. MY WIFE COMMITTED EVERY DISPICABLE ACT AGAINST HER SPOUSE AND CHILDREN, THEN WALKED AWAY WITH MY LIFE'S SAVINGS AND EVERYTHING THAT I WORKED SO HARD FOR! I LIVE IN THE MARITAL HOME, BUT I AM NOW FORCED TO SELL BECAUSE OF THE MOUNTING DEBT THAT HAS BEEN LEFT TO ME.

129X

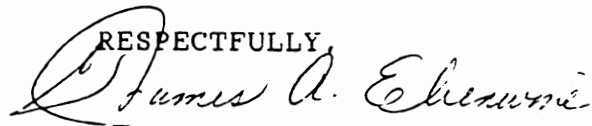
OUR COURT DATE WAS NEARLY A YEAR AGO AND STILL SHE HAS NOT CARRIED OUT THE WISHES OF THE COURT. SHE WAS SUPPOSED TO SIGN THE DEED TO THE HOUSE OVER TO ME LAST YEAR SO THAT I COULD ACQUIRE THE NECESSARY LOANS TO PAY HER. SHE HAS NOT DONE SO, AND THE INTEREST RATE CONTINUES TO CLIMB FOR THE SECOND TIME IN TWO MONTHS. OH YES, I AM SUPPOSED TO PAY HER INTEREST ON THE UNPAID BALANCE OF THE LOAN. A LOAN I CAN'T GET BECAUSE NO DEED! YOUR ASKING YOURSELF, WHY DIDN'T YOU COMPLAIN TO YOUR LAWYER? I DID NUMEROUS TIMES, AND EVEN WROTE TWICE TO THE JUDGE WHO RENDERED THE DECISION WITHOUT SUCCESS!!!!!! BITTER, YOU BET I AM!!!!!!

EVERYONE HAS TOLD ME HOW "FORTUNATE" I AM NOT TO BE PAYING ALIMONY AND ALSO BECAUSE I HAVE CUSTODY. I HAVE HEARD STORIES ABOUT SOME PEOPLE LOSING EVERYTHING THEY HAD, EVEN THE CHILDREN. I AM VERY SYMPATHETIC AND FEEL THAT THERE HAS BEEN A TREMENDOUS INJUSTICE APPLIED HERE. HOWEVER, IF A PERSON WANTS OUT OF A MARRIAGE, AND THERE ARE CHILDREN, THEN THE CHILDREN MUST BE THE FIRST PRIORITY IN THE COURTS. THE FINANCES CAN BE DISTRIBUTED, BUT SHOULD BE HEAVILY APPLIED IN FAVOR OF THE PERSON(S) WHO BECOMES THE VICTIM(S).

ALL THREE OF MY CHILDREN APPEARED BEFORE A JUDGE AND THEY (AFTER 10 MINUTES) WANTED TO REMAIN WITH ME, EVEN MY OLDEST DAUGHTER FROM MY WIFE'S FIRST MARRIAGE. MY WIFE IS A LIAR, A CHEAT, A THIEF, A TERRIBLE PARENT. MY CHILDREN AND I WERE ABLE TO SEE THIS. IRONICALLY, THE PERSONS RESPONSIBLE FOR SAFE GUARDING THE RIGHTS OF THE INNOCENT, WERE BLIND!!!

I WON'T KEEP YOU ANY LONGER. I TRUST YOU CAN SEE EXACTLY WHY I WOULD LIKE TO TESTIFY.

RESPECTFULLY,

A handwritten signature in cursive script that reads "James A. Eberwine". The signature is written in dark ink and is positioned above the typed name.

JAMES A. EBERWINE

CC: FACE

March 25, 1994

New Jersey Constituent

New Jersey State Legislature
Office of Legislative Services
Legislative Office Building, CN-068
Trenton, New Jersey 08625-0068

Subject: Commission to Study the Law of Divorce

Dear Members:

On Monday, March 21, 1994, Barbara Walters interviewed three celebrities, Steven Spielberg, Meg Ryan and Elton John. She asked about their parents' divorce; there are untold numbers of silent voices that have never been asked what their thoughts are. The judgments are coming in and the conclusion is apparent: DON'T TRIVIALIZE THE IMPACT!!

Children's lives are unalterably changed by professionals that, most probably, didn't know them prior to this event and most likely not afterward. The individuals keep the hollow void deep within, unadulterated hurt, through life.

Children of divorce are sometimes, possibly too often, considered property, too young, manipulative or inconsequential. "We" should have unalienable rights from birth; not until divorce!

A Social Service Agency should be required and responsible to speak, personally, with each child whose life is being affected. That information should be conveyed to the divorce judge acting as an advocate "in the best interests of the child" for physical, emotional and mental health.

It is my opinion that higher and/or technical education and estates should be protected regarding second, etc., marriages. Specific advance declaration should be incorporated in the final divorce decree determination.

Time and circumstance is not an ally of "first marriage" progeny.

There is much more to be commented upon, but suffice to say that as an adult of divorced parents (vintage 1947 decree), a stepmother, wife and mother of thirty years duration, my vantage point has been honed by a multiplicity of views.

Thank you for considering my opinion, prospective and experience.

DEAR AJR *COMMISSION MEMBERS:*

JANUARY 31, 1994

HAVING RECENTLY GONE THREW OUR ANTIQUATED DIVORCE SYSTEM, I WAS VERY PLEASED TO HEAR ABOUT AJR 26. I AM VERY PLEASED THAT THIS COMMITTEE EXISTS, AND RESPECTFULLY REQUEST THAT YOUR FINAL REPORT WILL EXPLORE SOME TYPE OF EFFECTIVE PANEL SYSTEM PROPOSAL SIMILAR TO THE MATRIMONIAL RESOLUTION PANEL (MRP) SUGGESTED!

HAVING RECENTLY BEEN UNWILLINGLY PLACED INTO A NON-CUSTODIAL STATUS, I AM COMPELLED TO ENLIGHTEN YOUR COMMITTEE ON SOME COMMON SENSE CHANGES THAT CAN BE EFFECTIVE IN BRINGING ABOUT FUNDAMENTAL CHANGES TO OUR ANTIQUATED DIVORCE SYSTEM. I RELENTLESSLY RESEARCHED WHAT I BELIEVE IS FUNDAMENTALLY NEEDED TO REFORM OUR DIVORCE PROCESS AND CAME UP WITH SOME LOGICAL CONCLUSIONS I HOPE YOUR COMMITTEE CAN CONCUR WITH.

IN BRIEF, IN TODAY'S SOCIETY OUR GOVERNMENT HAS TAKEN THE RESPONSIBILITY TO ATTEMPT TO BE A SURROGATE PARENT TO CHILDREN OF BROKEN MARRIAGES. OUR GOVERNMENT CAN NO LONGER ASSUME THE ROLE OF PICKING UP THE PIECES OF DISINTEGRATED FAMILIES.

DIVORCES HAPPEN BUT, OUR STATES LEGAL DIVORCE PROCESS CREATES AN ADVERSARIAL ROLE FORCING SINGULAR SUPERIOR COURT JUDGES TO RULE ON SOCIAL ISSUES OF EXTREME IMPORTANCE AND COMPLEXITY UNDERMINING THE SOCIAL FABRIC OF OUR COMMUNITIES. TO COMPLICATE MATTERS TOO MANY CITIZENS LOOK TO THE FAMILY COURTS FOR GUIDANCE AND DIRECTION OVERBURDENING THE FAMILY COURTS SYSTEM. UNFORTUNATELY MANY OF OUR INNOCENT CHILDREN(S) ARE INNOCENTLY BEING DENIED A MEANINGFUL REALATIONSHIP WITH BOTH PARENTS. MANY OF THESE CHILDREN(S) ARE FORCED TO GROW UP WITHOUT PROPER AND CLEAR DIRECTION, GUIDANCE, SUPPORT, VALUES, AND DISCIPLINE, LEFT BECOMING A MAJOR BURDEN ON OUR SOCIETY.

A MAJOR FUNDAMENTAL FRONTLINE APPROACH TO THIS ADVERSARIAL DIVORCE PROCESS IS NEEDED. I STRONGLY BELIEVE THE EMOTIONAL& STRESSFUL DIVORCE PROCESS MUST BE REMOVED FROM SUPERIOR COURTS.

I SUGGEST WE BUILD A DIVORCE SYSTEM FROM THE IMMEDIATE ONSET THAT CLEARLY & SPECIFICALLY ADDRESSES THE PROPER WANTS AND NEEDS OF OUR CHILDREN(S), WITH CLEAR DIRECTION, GUIDANCE, AND PROPER DISCIPLINES! I PROPOSE A COOPERATIVE NON-ADVERSIAL PANEL OF QUALIFIED LICENSED PROFESSIONAL SPECIALISTS BE ASSIGNED TO HANDLE THESE MATRIMONIAL MATTERS. FOR STARTERS I WILL CALL THIS PROPOSED SYSTEM:

MATRIMONIAL RESOLUTION PANEL(MRP)

I ENVISION A MATRIMONIAL RESOLUTION PANEL OR MRP TO CONSIST OF THE FOLLOWING THREE PROFESSIONALS TO HANDLE THE COMPLEXITIES OF DIVORCE AND MINIMIZE THE ADVERSIAL PROCESS.

MEMBER I

IF CHILDREN ARE INVOLVED THE FIRST MOST IMPORTANT PANEL MEMBER IS A QUALIFIED LICENSED PROFESSIONAL CHILD PSYCHOLOGIST/PSYCHIATRIST, WITH EXPERTISE IN CHILD CARE ISSUES. THIS PROFESSIONAL SHOULD BE ASSIGNED TO THIS PANEL. (INSTEAD OF SOLE CUSTODY WHICH IS OFTEN THE MAJORITY SINGULAR JUDGES RULING IN ADVERSIAL PROCEEDINGS TO CONSUMATE A QUICK POORLY CONCEIVED SOLUTION). THIS INDIVIDUAL'S PROFESSIONAL ROLE AND OBJECTIVE MUST BE CLEAR. THE LAW THAT GENERALLY STATES TO DO, "WHAT IS IN THE BEST INTERESTS OF THE CHILDREN(S) IS TO VAGUE, AND FAIL TO MEET THE CHILDREN(S) RIGHTS AND NEEDS! THIS LAW NEEDS TO BE MORE SPECIFIC IN ADDRESSING THE CHILDREN(S) FINANCIAL, EMOTIONAL, AND MENTAL RIGHTS AND NEEDS! HOPEFULLY THE LAW COULD BE REWORDED TO ADDRESS CO-PARENTING WITH SPECIFIC OBJECTIVE SUCH AS: TO ENCOURAGE, NURTURE, FOSTER, PROMOTE, SUPPORT, DEVELOPE, CREATE AND MAINTAIN A MEANINGFUL RELATIONSHIP WITH BOTH RESPONSIBLE PARENTS WHENEVER POSSIBLE, AND TO MINIMIZE THE PSYCHOLOGICAL DESTRUCTIVE IMPACT OF DIVORCE WHENEVER POSSIBLE ON OUR CHILDREN(S). MAYBE A REQUIRED MOVIE COULD BE MADE & MANDATORY THAT PARENTS BE FORCED TO SEE WHAT CAN/MIGHT HAPPEN TO THEIR CHILDREN IF NOT PROPERLY ATTENDED TO. THIS PROFESSIONAL CAN BEST EXPLAIN TO BOTH PARENTS HOW THE CHILDREN(S) NEEDS AND REQUIRES BOTH PARENTS GUIDANCE, NUTURING, SUPPORT, DIRECTION, AND DISCIPLINE TO GROW UP PROPERLY IN A SHARED/JOINT CO-PARENT CUSTODY ARRANGEMENT WHENEVER POSSIBLE! THIS WILL HELP OUR CHILDREN GROW INTO RESPONSIBLE CITIZENS AND NOT FUTURE CRIMINALS. I HOPE THIS COMMITTEE CAN CONCUR THAT THE VIOLENCE WE READ AND SEE IN THE DAILY NEWS AND MOST SOCIAL DECAY AND CRIMINAL ACTS ARE FROM A MAJORITY OF KIDS OR GROWN UPS OF BROKEN FAMILIES WHO TURN TO DRUGS, GANGS, GUNS, VIOLENT CRIMES, WELFARE, ETC., BECAUSE THEY LACK THE PROPER GUIDANCE, SUPPORT, DIRECTION, DISCIPLINE AND SOCIAL RESPONSIBILITY THAT ONLY BOTH PARENTS CAN PROVIDE. THE LONG TERM PROBLEM IS COSTING OUR STATE BILLIONS IN LAW ENFORCEMENT, PRISONS, DRUG & ALCOHOL ABUSE, WELFARE, AND A UNWORKABLE CHILD SUPPORT SYSTEM, CRIME, ETC. THIS IS A FRONTLINE FUNDAMENTAL COMMON SENSE APPROACH WE NEED TO TAKE. THE LONG TERM EFFECTS WILL GENERATE BENEFICIAL RESULTS!

MEMBER II

THE SECOND MOST IMPORTANT MEMBER ASSIGNED TO THIS PANEL IS A LICENSED PROFESSIONAL AND QUALIFIED FINANCIAL PLANNER WITH EXPERTISE IN FAMILY FINANCIAL MATTERS. IF MONEY OR ASSETS ARE BEING DISPUTED, WHICH IS OFTEN THE CASE, THIS QUALIFIED PROFESSIONAL MEMBER CAN SUGGEST ALTERNATIVE FINANCIAL PLANS FOR RESOLUTION OF ASSETS & LIABILITIES. I HAVE ADDITIONAL IDEAS UPON YOUR REQUEST.

MEMBER III

A THIRD MEMBER ASSIGNED TO THIS PANEL IS A QUALIFIED LICENSED PROFESSIONAL JUDGE OR LAWYER WITH EXPERTISE IN FAMILY LAW TO INSURE JUDICIAL PROCEDURE IS FOLLOWED AND TO KEEP ORDER.

1775 LD MC
1-5-95 160265

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1-800-555-1212