P U B L I C H E A R I N G

before

COMMISSION ON SEX DISCRIMINATION
IN THE STATUTES

on

SEX DISCRIMINATION IN MARRIAGE AND FAMILY LAW

Held:
February 13, 1980
Labor Education Center Auditorium
Rutgers University
New Brunswick, New Jersey

COMMISSION MEMBERS PRESENT:

Senator Wynona M. Lipman (Chairperson)
Theodosia A. Tamborlane (Vice-Chairperson)
Greta Kiernan
Clara Allen
Phoebe Seham

ALSO:

Alma L. Saravia, Executive Director
Commission on Sex Discrimination in the Statutes

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I N D E X

1-23:IV
24-39:III
1A-19A:II

SENATOR WYNONA M. LIPMAN (CHAIRPERSON): Good morning. We're going to begin this hearing on sex discrimination in marriage and family law. I'm sorry we're beginning late, but we had some adjustments to make.

Welcome to the Commission on Sex Discrimination in the Statute's public hearing on Sex Discrimination in Marriage and Family Law.

I would like to introduce the members of the Commission present this morning. I will start on my right. This is Clara Allen, Director of the Division of Women, and this is Alma Saravia, who is the Executive Director of the Commission. She is our right arm. I am Wynona Lipman, Senator. This is Theodosia Tamborlane, public member. This is former Assemblywoman Greta Kiernan and this is Phoebe Seham, public member. I hope that we will get to know each other a little better as you testify.

The Commission on Sex Discrimination in the Statutes was created by Governor Byrne to conduct a thorough review of the statutes containing sex-based classifications and to propose a comprehensive modernization and revision of those statutes. In October, the Commission released its first report, "Sex Discrimination in the Employment Statutes." Marriage and family law is the second in a series of studies.

Today, 93% of the American families fit patterns other than the traditional role of a breadwinner father, homemaker mother and two or more dependent children.

Families are changing and are significantly influenced by a variety of external forces such as government policies, the industrialization and organization of our society and the media's image of families.

Divorce and separation are increasingly common options when marital problems seem insoluble and these options in turn create new problems among children and parents.

A majority of adult women now work outside of the home and their wages are vitally important to the maintenance of the family.

The sex roles of men, women and children within families are being redefined.

As a result of these changes within the family, we must develop new approaches to the care, custody, support and rights of children and to the rights and responsibilities of adults in the traditional and non-traditional families.

To meet the needs of our families, we must therefore re-examine our laws and revise those that are sexually discriminatory in view of contemporary standards of equality.

Now, we would like to ask those persons who are not on the agenda, who came to testify, at some point, to come and sign the sheet, so we will know who you are and put you in a position to testify.

Now, I would like to call, first, Ms. Joan Wiskowski, who is Deputy Commissioner of the Department of Labor and Industry.

J O A N H. W I S K O W S K I: Good morning. My name is Joan H. Wiskowski and I am the Deputy Commissioner of the New Jersey Department of Labor and Industry. I appreciate the opportunity to testify, once again, before this Commission on Sex Discrimination in the Statutes, and I am confident that today's public hearing on sex discrimination in marriage and family law will be as successful and productive as the Commission's public hearing on sex discrimination in the employment statutes, held on June 27, 1979. Senator Lipman, you and the distinguished members of the Commission on Sex Discrimination are to be commended for the attention which the Commission's initial hearing on sex discrimination in the statutes has brought on the issues of civil service reform; Worker's Compensation Act reform; unemployment

compensation reform; stereotyping, per se; wage differentials or equal pay for work of equal value; increased membership of women on commissions, boards and agencies; and sex neutral language for all proposed legislation and administrative regulations. I am also pleased to hear that Senate Bill S-748, as introduced by Senator Lipman, to implement recommendations and legislative revisions made by the Commission on Sex Discrimination in the Statutes, has been reported out of committee.

This morning, I would like to address an issue which I feel is very important for all of us in New Jersey, one which cuts across the Commission's interest in sex discrimination in employment and the Commission's interest in sex discrimination in marriage and family law. The issue is child care, the need for expanded, quality child care services in New Jersey, given the lack of adequate, present provisions for child care, and in particular, the lack of employer involvement and interest in the provision of child care services. The lack of attention given to the child care issue in the past is, I feel, a form of discrimination which affects the entire family. Given the positive effects that supportive services such as child care have on employability; that increased employability has on potential employment; and that employment has on family income; failure to make quality child care available to those who need it forces families to either forego employment opportunities for one member of the family or, as in the case of the single-headed household, requires that families settle for minimum custodial care or no care at all.

As the hearing on sex discrimination in the employment statutes demonstrated, women with little work experience, particularly displaced homemakers, forced to provide for a family, incurred a long-range problem of a lack of a credit rating in a so-called credit economy, as well as a lack of social security benefits or hospitalization and other medical care benefits. I believe that this situation would be improved a great deal if employability development services and supportive services such as child care were readily available to such individuals who need these services. I would also like to see that our social security laws be amended to allow women to participate while " employed" as housewives.

An important extension of the need for supportive services and employability development services such as child care is in the area of child support and alimony. When either the custody of a child is considered, or alimony proceedings take place, an important determinant in awarding custody or alimony is the present and potential employability of the parents involved. In the case of alimony, the court's consideration of prior work experience and future employability is an important factor in determining whether alimony should be payed and, if so, how much. If the assumption is made by the courts that the spouse to be receiving alimony can and should work, there is a very real need for employability development services and support services such as child care to enable the spouse to reach his or her employment potential.

A spouse's employment history and employment potential are also important factors in the case of child custody. Employment potential is obviously enhanced if quality child care is available to the parent. In addition, the possibility of one parent being able to arrange for quality child care services for the child or children in question, should be taken into consideration by a judge presiding over a child custody case. In particular, the availability of quality child care services would be a very important factor in the case of single custody.

I would like, now, to discuss an attitudinal change which is required in New Jersey and throughout the nation regarding the provision of child care services. I view the the present shortage of adequate child care facilities to be, in large part,

a discriminatory act of omission, rather than commission. Government, labor, and both public and private employers each have not been responsive enough to the increasing demands and needs for quality child care services. In terms of considering the variety of flexible approaches to providing such services, neither have they been as innovative or responsive as I feel they should. As I detail for you the demand for quality child care services and the different approaches towards increasing the availability of these services, I would ask the members of the Commission and those participating in or attending this hearing to keep in mind what is the underlying premise of both this testimony and the Commission. That is, as the role of the family changes in society, we're confronted with new problems and new ways to deal with the changing role of the family. These problems require new and innovative solutions. Just as many of the State's laws contain discriminatory provisions based on sex and reflect policy judgements which are no longer acceptable or meaningful in society, so have our attitudes toward the provision of expanded child care services failed to reflect the realities of a society whose labor force has undergone dramatic compositional changes due to both cultural and economic factors. The spiralling inflation and divorce rates and the increasing number of single headed households and displaced homemakers has created an employment imperative for many parents of pre-school and and school-aged children. In accordance with these changes, we need to create a new and revised perception of the role in which government, public and private employers, and organized labor and the business community must play in the provision of quality child care services.

The resolution of the issue of the demand for child care services would accomplish three objectives:

1. Enhance the labor force participation of presently employed and unemployed parents in New Jersey, particularly, single heads-of-households, displaced homemakers and parents with low incomes;
2. Improve the economic standing of many families in New Jersey;
3. Provide quality child care services to many children in New Jersey who have heretofore received inadequate care or no care at all. Such quality child care would certainly aid in the educational, social and psychological development of these children.

At the Commission's initial hearing on sex discrimination in the statutes and the reports subsequent to that hearing, the increases in female participation in New Jersey's labor force has been well documented. A number of those individuals who testified attested to the fact that women with young children have been entering and will continue to enter the labor market in increasing and unprecedented numbers during this decade. Several speakers testified that the inadequate supply of and quality of child care centers and facilities presented a significant obstacle to the employment aspirations of many members of the potential labor force. In addition, a number of other forums have brought out the need for expanded quality child care programs in New Jersey. The Governor's Task Force on Unemployment in Atlantic City held public hearings at the end of 1979 and the impact of the public hearings was to demonstrate the real need for child care on the part of employed and unemployed residents of the Atlantic labor market area. A 1978 study of women and employment questioned personnel directors of businesses in Ocean County regarding the greatest obstacles women face when applying for employment. The directors agreed that inadequate transportation and inadequate child care facilities were the two greatest obstacles to employment. Finally, a 1978 survey conducted by the Rutgers University Occupational Advancement Project identified inadequate child care services as a primary reason

for union members and their families not participating in either educational or employment and training programs.

I would just like to briefly discuss the extent of the need for child care services, as well as explain a few of the economic and social consequences which result to the family, given the lack of such services.

A study which was recently completed by my office, entitled, "Employer-Subsidized Child Care--A Study of Child Care Needs in New Jersey", indicates that as many as 195,000 women who are already in the labor force have children of pre-school age and are probably in great need of child care services. 415,000 working women have children of school age between the ages of 7 and 13 and may be in need of child care services. Furthermore, of this group of 880,000 working mothers in New Jersey with children under 13 years of age, nearly 82,000 of the women are single heads of households with over 42,000 of these women earning less than $7,000 annually. There is another group of women who are outside of the labor force in New Jersey totalling approximately 30,000, by our estimates, who would want to enter the labor market, but cannot because of home responsibilities or discouragement about their chances of finding a job, and I would just like to say that this is a very conservative estimate. Therefore, there are at least 910,000 women in New Jersey who have children of school age and pre-school age who are working or want to work.

Looking at the number of children of school age and pre-school age, there are approximately 1.9 million in New Jersey under the age of 13. Of this group, approximately 1.1 million are school aged and about 700,000 are of pre-school age. Of this group of almost 1.9 million children in New Jersey under the age 13, approximately half have working mothers. Of this group of close to one million, 466,900 are between 1 and 5 and 489,000 are between 6 and 13.

If you are anticipating that the next statistics I will present will represent the number of children in New Jersey actually receiving child care services, you are correct. It was curious to me, because it seemed very small, but we continued to check the figures and they are accurate. The number of children in New Jersey receiving child care services at the State's licensed child care centers is, at most, 69,000 or 3.7% of the total number of school or pre-school aged children in New Jersey, and only 7.2% of the children of school and pre-school aged children with working parents. This figure does exclude home care arrangements and care which takes place either in the home of the child or in the home of a friend or a relative. Most of these arrangements are exempt from State licensing regulations and, as a result, very little is known about the number of children receiving child care in this manner or about the quality of such child care. It becomes clear that we have not come close to providing the necessary level of quality child care service in New Jersey.

The study conducted by my office also examined the costs associated with the provision of child care in New Jersey. While costs do vary according to such factors as the type or quality of the service rendered; the number of paid staff at a child care center; and the ages of the children to be served; our study indicated a tremendous disparity between the amount of funds expended for the State's existing child care system and the amount necessary to meet potential demands for child care services. Using methodologies which are probably a little too complex to go into here, although they are available for your review, the annual cost for providing comprehensive, quality child care in New Jersey is estimated to be approximately $1.8 billion--exceeding, by a great measure, the present expenditure of $171 million for child care.

If the figure of $1.8 billion is reduced to terms applicable to individual families, it becomes apparent that the cost of developmental child care often greatly exceeds the average working family's ability to pay. A 1971 study performed by the Mathematica Corporation found that a family will not pay more than between 10 and 15% of its annual income for child care services. The study also found that without financial assistance, most families would opt for informal child care arrangements, which are more convenient and less expensive. These facts, in combination with the very high cost of quality child care services, demonstrate that both government and employer involvement is required for the provision of improved child care services.

The combination of three factors--the cost of quality child care to the individual family; the need for child care services; and the relatively minor involvement to date of the employer community in the provision of child care in New Jersey--poses some interesting questions to all of us gathered here today.

Who can afrord to provide their children with quality child care services in order to allow the parent or parents to participate fully in the labor market? Is the lack of institutional arrangements for the provision of affordable, quality child care, in effect, discriminatory?

Should the individual family have to shoulder the financial burden of quality child care alone? Should the parent opt for less desireable, less expensive child care services, or worse, no care at all?

These are difficult questions, but I suggest that there are answers. While there is no comprehensive system of child care in any state in the United States today, there are numerous instances of child care services being successfully delivered. Variables, which I mentioned earlier, such as cost, location and extent of need, have led to different institutional arrangements for the provision of child care, involving family, the employers, government and the community. Child care has been provided in the home of the child, at a relative's or friend's home, at the parent's site of employment, at schools and at community child care centers throughout the State and throughout the nation.

I would like to encourage industry involvement in the provision of child care services and some of these institutional arrangements, which are already underway on a pilot basis throughout the country, have ranged from the provision of total or developmental child care services to the mere provision of information about the availability of such services. The five most prevalent models for the provision of child care services are:

1. Employer-owned centers.
2. Purchase of service.
3. Voucher payments.
4. In-kind services.
5. Employer consortiums.

Industry has participated, to some extent, in the provision of child care services for reasons they list as:

1. Employee relations or goodwill.
2. The advertising effect of being known as a company which provides such services to employees.
3. As a benefit to attract and retain local and skilled labor.
4. Increased worker productivity.
5. Decreases in worker turnover and absenteeism.

6. Tax considerations.

7. Overall cost effectiveness to their business.

I suggest to you today that we must strive to increase the role of the private sector relative to child care.

State government, while somewhat limited in its ability to provide direct tax and financial incentives, can and should take on a leadership role in encouraging local and regional firms to provide child care services for their employees. At the state level, we can take an aggressive position in alerting businesses to the profit and tax benefits which they can realize. We can advise business of the resources, both financial and technical, that are available to assist in the organization of quality child care services. We should incorporate child care services as a part of our economic development efforts. As an example of this approach, in New Jersey, we are in the process of exploring with the POrt Authority of New York and New Jersey the possibility of establishing child care centers in their proposed urban industrial parks, for tenant firms in those parks.

Other ways in which state government can facilitate the development of child care services include the following:

1. Coordinating and making available all information on industrial child care.
2. Providing techinical assistance to companies interested in establishing centers and including an explanation of licensing requirements and procedures.
3. Making known all possible financial and tax incentives available to providers of child care centers.
4. Sponsoring education campaigns on the need for child care centers and the benefits to workers in the private sector in helping to meet those needs.
5. Locating and making available, at a minimal or no cost, underutilized public buildings for pre-school and after school child care services.
6. Providing grants, interest free or low interest loans to make available capital investment or start-up funds to non-profit organizations establishing child care centers.

In conclusion, Senator LIpman and Commission members, in the testimony I have presented, I have attempted to very briefly and superficially describe the magnitude of the need for child care services in New Jersey and relate this need to the issue of sex discrimination in the marriage and family law statutes. I believe that the basis of this relationship is that expanded child services would allow for greater participation of women and men in the labor force and in educational and skill training programs. It has become apparent that such work experience and attachment to the labor force are important considerations in the determination of both alimony and child support cases.

We are, in effect, confronted with the challenge of enabling present and potential workers to utilize and develop their talents, while, at the same time, providing for the care of their families. I do not feel that government, labor, business, or workers alone can adequately satisfy the real and growing demand for child care services. Rather, I feel that a partnership among government, business, labor and workers is necessary to affect the very large changes that we are discussing here today.

As the lack of adequate child care services is the single most important obstacle to the full participation of women in the labor force, I believe that government

must assume a position of leadership and involve business and labor in a meaningful way in our efforts to address the need of the family and of working parents with quality child care services.

One of the major conclusions of the study that was completed by my office is the consideration of child care as a fringe benefit to be bargained collectively and that appears as if that has the greatest promise of expanding the adequacy of child care. I appreciate the opportunity to testify and I'm available for any questions tht you might have. Thank you.

SENATOR LIPMAN: Thank you very much. Clara?

MS. ALLEN: I don't have a question, but I wonder if you would elaborate a little bit on the extent of the concept of child care as we found it in Atlantic City, with the need for child care centers 24 hours a day?

MS. WISKOWSKI: Yes, and thank you, Clara. I would just like to make note of the fact that Clara is a member of the Governor's Task Force on Unemployment in Atlantic City and we've all taken a very special interest in the access to employment opportunities, especially for women, in the Atlantic City labor market area. At a public hearing that held at the end of the year, the people who had testified before us spoke about the particular type of demand for employees in the Atlantic City labor market area. Given the casino gambling employment and the fact that this is a 24 hour a day operation, child care is no longer spoken of as day care. It is 24 hour around the day child care service. There is no where, to my knowledge, in this State or elsewhere, where there is a provision for 24 hour child care. The women were very concerned, of course, that it would be their children who would be suffering, as a result, and had made very affirmative statements to the Task Force for considering solutions to the child care problem in Atlantic City. I don't know if that's enough of a remark.

MS. ALLEN: That's fine by me. I just wanted to open the thinking to the fact that 24 hours a day, even though we're now talking about Atlantic City, could also be an acceptable theory in many, many other communities where you have round the clock operations in corporate life.

MS. WISKOWSKI: I think the one comment that I would like to make about that is, in our discussions with the Port Authority of New York and New Jersey, the firms that are going to be housed in the industrial parks will be three shift operations and our discussions with them have not centered only upon day care, but upon adequacy of care for the three shifts.

SENATOR LIPMAN: Theo?

MS. TAMBORLANE: Joan, I have a couple of questions. In the studies that you've done with regard to existing facilities, looking at the ones that are supported by businesses, what percentage, if you have a figure, roughly, of New Jersey businesses are now providing any kind of child care services or support systems, such as paying for child care as a fringe benefit?

MS. WISKOWSKI: Very few. I don't have a percentage, but it probably wouldn't even equate into a percentage. There are some notable exceptions. Hoffmann-LaRoche has been a leader in the field and provides a voucher system for child care services for their employees. There are other exceptions to that, but I would say that, generally, there has been a lack of interest in the use of child care or a consideration of the child care benefits by employers, I think not so much as a denial of the need, but just a lack of awareness of the demand. I think this results largely from the fact that in the last ten years, we have had an unprecedented number of women enter the labor force and an unprecedented demand for child care services,

that just wasn't there in that number before. I think it is a question of catch-up and it is my feeling that government should assume the leadership in raising the consciousness level and helping to catch-up a little more quickly.

MS. TAMBORLANE: Another question that came to mind when you were speaking, while in New Jersey, New Jersey law establishes equal financial responsibility for support on both parents. We've moved from the common law where men were looked at as being traditionally the financial support for the family into viewing both parents as having financial responsibilities and you alluded to the fact that when a marriage ends and there is a divorce, divorce awards are often with the understanding that both parents will go to work, depending on whether or not that possible given the day care situation.

MS. WISKOWSKI: Yes.

MS. TAMBORLANE: I have two questions related to that. One would be whether, again from your studies, you have broken down by counties where the day care centers are, what the availability is? That could be, perhaps, distributed in some type of an educational program to the judges that are sitting in our matrimonial courts throughout the State, with the consideration that they have, again, this information as they're sitting there and making these decisions. Secondly, would you recommend, maybe above education in this area, that perhaps a statute be enacted of some type which would be directly relevant to the existing financial support laws that are on the books, that would speak to this issue of child care?

MS. WISKOWSKI: Yes. In answer to your first question, the study did break down the availability of child care by county basis and that information is available, certainly, to the Commission and we would be happy to make the report available also. Secondly, yes, I would recommend such a statute be drafted. I think it's important to have child care be an essential part of the deliberation by a court. I think, also, that there are resources available which, perhaps, are not known to the court beyond the child care facility and the availability of those child care facilities and services. For example, displaced homemakers can qualify for an entire program of employment counselling by our State Vocational Rehabilitation Agency if the problems associated with their becoming a displaced homemaker, the trauma associated with getting back to the labor force prevents them from employment so that we can do with trained cousellors and the entire program of employment counselling in addition to locating child care facilities and services, counselling, assertiveness training, medical care, psychiatric and psychological counselling that would be necessary to support the employment. So, I would like to say that I would be in agreement with that type of statute.

MS. TAMBORLANE: Thank you.

MS. KIERNAN: Thank you, again, for coming before us again, Joan. You always have an articulate and interesting statement to make and it's a pleasure to sit across the table from you on any occasion. I was very interested in an article that was in the Bergen Record this past week about illegal aliens and the number of them that are working in Bergen County as assistants in the home, minding the children. In other words, doing personal child care, and the women who were interviewed, who have hired people like this say the reason that they have done so is that they cannot find child care and they don't want just a "housekeeper", but they want someone that the children can relate to, where they really feel there is some status and some stability in the home. I wondered if you had some comment on how we're going to make, if we develop these child care centers, which I thoroughly agree with you that we must do, make that the kind of position that American women and men would

consider a position of status, that they would like to go into that business?

MS. WISKOWSKI: Okay. I think the point that you're bringing out about the illegal aliens is a very important one. By our conservative estimates, we have, probably, about ½ million illegal aliens working in the State of New Jersey. The State of New York has about twice that many and those are conservative estimates. I do not know how many of that number are people who are taking care of children in the households, but I would expect that it would be fairly substantial, given the lack of alternatives for families. I think the primary way to give dignity to the profession of child care is to pay for it. I think that in our economy a salary often is an indicant of the level of worth associated with the employment. Child care is very expensive. It's difficult for people who are earning $10,000 to pay for the cost of quality child care. I know about a year and a half ago, I spoke with Commissioner Klein about the cost of child care in the licensed facilities and about that time, the cost was $55 per child and that was not a profit making venture. That was State licensed child care. So, it is very expensive.

MS. KIERNAN: For what period of time was the $55 per child?

MS. WISKOWSKI: I'm sorry, that was per week.

MS. KIERNAN: In a group situation?

MS. WISKOWSKI: In a group situation, in a State licensed child care facility. That is very expensive and you can see if you had one or two or three children, if you're earning about $10,000, it becomes prohibitive. I think those are two confounding problems. We need to pay for the service in a way that we'll be able to recruit people of talent or with an interest or career motivation toward that area. However, most consumers of these services are not able to afford what it would cost for that care. I think, therefore, that we must really pursue, since most employment is in the private sector, we must really pursue private sector employment opportunities for child care and that is considering child care as a fringe benefit which can be bargained. If that's the case, if the employer community will consider child care as some form of fringe benefit, whether it be on a voucher or a partial payment basis or fee for service or actual construction of the facility adjacent to the workplace, I think we'll be able to pay for a certain quality. If we can pay for that quality, I think it is incumbent upon us to produce the work force that has the skill level who will be working in the industry, and to do that, I think we have to establish training programs in our community colleges for that purpose. So, I think if we can, number one, pay for the quality that we want and we need for our children, and number two, provide a career path which incorporates training and upward mobility in the field of the child care industry, using our community colleges as the basis for providing that care, then I think we'll be able to, number one, get around the cost, and number two, certainly get around the problem that there is a lack of people, not only in New Jersey, but nation-wide, who are really equipped to deal with children in child care facilities.

MS. KIERNAN: Do you think, again, another incentive to business would be some kind of tax incentive?

MS. WISKOWSKI: Yes, absolutely, and I have a reason for saying that. We, last January, began to implement the Targeted Jobs Tax Credit Program. That was a program which gives employers throughout the nation, under their corporate income tax, an advantage for hiring people who fall in certain categories, seven target groups. Displaced homemakers, by the way, are just being added within the next month. They will be the eighth category added. New Jersey moved forward very aggressively on the Targeted Jobs Tax Credit Program. In fact, about two months ago

New Jersey had about 52% of the vouchers nationwide. As there has been a catch-up, we've fallen a little behind in the statistics, but we can see a very real impact. Employers were much more interested in hiring people from these seven target groups because of the clear bottom line advantage it has given them and it was a very sizeable tax benefit for them. The second thing is that it was not complicated or cumbersome. There was very little in the way of red tape. They didn't have a lot of people knocking on their door asking them to employ certain target groups. They just did it through their normal corporate income tax and corporate accounting functions and it was very easy, no red tape. So, they were able to put people to work very quickly. It's been very effective in New Jersey and, as I said, there is some catch-up going around the rest of the country, but I believe targeted jobs tax credit is a useful comparison for the type of program you're talking about.

MS. KIERNAN: All right, thank you.

SENATOR LIPMAN: Pheobe?

MS. SEHAM: You raise all kinds of fascinating things and I would like to go and talk to you about some of the things you are raising, but we don't want to take too much time here. I too would like to have copies of some of the reports and studies that you refered to. I would like to ask you specifically, when you talk about counselling available for displaced homemakers, your definition of "displaced homemakers" is the one that I have heard, which is that this is someone who has no children under 18 and therefore does not qualify for welfare. If that is your definition, then child care is not one of her needs, but I do understand that there are many definitions of displaced homemakers. Another one which sometimes is used would require CETA eligibility for most of the programs I know of which are available for displaced homemakers. Will you tell me whether your counselling involves either of these definitions?

MS. WISKOWSKI: All right. That's a good question. I was using the term, "displaced homemakers", probably more broadly. Our vocational rehabilitation program in the State can provide employment related services to anyone who wants to be employed but cannot be employed because of some kind of barrier, whether that be a barrier related to an orthopedic handicap, a psychological-psychiatric handicap or whatever. You do not have to be CETA eligible to receive those services. So, if you're a young woman with two or three children and you're divorced or separated or your spouse is absent, and you want to return to work, if you have an employment objective and you have a barrier to realizing that objective, DVR can provide services, a full range of services, and they are individual services. An individual rehabilitation plan is developed by a trained rehabilitation counsellor and that counsellor stays with you for the course of the year while you're working within that plan to realize your employment objective. The only criteria for the provision of services by DVR is that there be an employment objective.

MS. SEHAM: Can you give me an example of the kinds of barriers that would apply? Is it simply having been out of the job market for X number of years, would that qualify as a barrier?

MS. WISKOWSKI: I'll give you a real life experience. Not too long ago, I was doing a tour of some of our State offices in the Monmouth County area and one of the places I went to was our DVR office in Monmouth County. As I usually do, I asked about the nature of the referals that have been coming in for the past month. Did the people there notice any shift, any difference in the kinds of referals? What they indicated to me was that they had. They had noticed a number of inquiries

coming in from people who would be considered displaced homemakers and what the women coming in had discussed with the counsellors was the trauma associated with returning to work. It wasn't an orthopedic barrier. It wasn't even what could be described as a psychiatric barrier. It was the kind of barrier which prevented them from really feeling that they could go to an employment interview with assurance and confidence. There was a great deal of trauma associated with their personal situation and that was compounded by the trauma of their going forward and presenting themselves to employers with confidence in their background. So, the kind of services that would be made available to those people would be employment counselling and support services. Some of them required only minimal kinds of services and some of them required extensive counselling. The interesting thing was that in various other areas of the State, as I usually do my county rounds one day a month, the same problem came up in every vocational rehabilitation office. The new clients that they were seeing were displaced homemakers and I think that they were not really restricting that term to what we really know the term to mean under the CETA legislation, but they were meaning, broadly, women who had not thought that they were going to have to be the financial support of their family. They now faced that situation and needed assistance.

MS. SEHAM: Thank you very much.

SENATOR LIPMAN: I would like to ask a question related to the statute that you said you thought may be necessary. Are you saying that the State should expand its contribution to day care centers and establish more day care centers?

MS. WISKOWSKI: Yes, not necessarily at State cost, but by encouraging the private sector to give consideration to that.

SENATOR LIPMAN: That's a different kind. That's encouragement of the private sector.

MS. WISKOWSKI: Yes.

SENATOR LIPMAN: We have several different levels of day care, now, in the State. If a day care center is entirely State supported, then, there is a different contribution, but if there is only a contribution from the Division of Youth and Family Services, that's different.

MS. WISKOWSKI: Yes.

SENATOR LIPMAN: So, we have a rather steep, uphill battle every year to maintain the community day care centers, those which only get a contribution and do not get money for the entire operation from the Division of Youth and Family Services. So, I think that we may find more resistance than we realize in trying to accomplish this. However, if the need is great enough, there is a tendency, also, as Phoebe has mentioned, to use target areas to get poor mothers off welfare, to establish day care centers and pay for day care centers only in this area. The picture that you present is a broad spectrum. All kinds of young mothers need day care centers. I think it is in this area that we also need to address particular attention so that all the criteria will not be based entirely--when a young mother is separated and must support her family, her income is not so large, although she does probably receive support payments. Usually, the criteria is the income of the family, all together, and so we have to think of different criteria. You certainly have presented some provocative moments for all of us. I'm sure that we have to have a new concept, entirely, of what day care means in this state.

MS. WISKOWSKI: Senator, I would just like to make one comment with respect to your very good comment on targeting. Yes, targeting is absolutely essential.

This was the broad picture. The same picture could be targeted or I could present, if time had permitted, a more targeted approach and I think that's very important. The closest that we come to success in a targeted approach is through our WIN program, our work incentive program,and last year, 1979, we were able to place a little bit more than 10,000 AFDC mothers into productive employment, unsubsidized employment as a result of the WIN program, which provides, as a very essential component, child care. Not only did this program provide these 10,000 women with some sense of dignity that they deserved and some sense of confidence in themselves and their families, but it also allowed the State to realize $17 million in welfare grant reduction expenses as a result and I think that that is a concept which has proved very, very successful nationwide and we should give more consideration to that.

SENATOR LIPMAN: Yes, very good.

MS. ALLEN: Could I make a comment, before you leave, on this matter of involving the private sector in day care. It is kind of a new concept to people, but in the field of collective bargaining where one talks wages and fringe benefits, a new concept happened many years ago when we talked about including health benefits. At that time, that was particularly outlandish and now the concept of child care, braced by the amount of women in the work force, who help to make up the collective bargaining demands that will be placed before employers, should certainly enhance the opportunity of child care becoming a fringe benefit. I don't like the term, benefit, because those sort of things that are negotiated become a part of the cost factor to the employer, their operating expense, and it does have another value to the worker, in that it is not taxable income to the worker.

MS. WISKOWSKI: Thank you very much.

SENATOR LIPMAN: Thank you for coming, Joan. Mr. Howard Danzig, attorney?

H O W A R D D A N Z I G: Thank you Senator Lipman and members of the Commission. As Senator Lipman just mentioned, I am an attorney. I don't know whether that is good or bad because we have, along with the judges, been criticized for many of the problems that people face in going through our divorce system. My practice is mainly in the area of divorce and child custody. There are many, many issues that this Commission will have to face. I am here, really, to testify only with respect to the custody statutes, specifically, N.J.S.A. 9:2-3 and 9:2-4. I will not read to you what these statutes provide, but will skip over to a suggestion amendment of these statutes to try to point out the difference.

On page 3 is a suggested amendment to 9:2-3. Now, that statute is the basic statute that governs how the courts operate in custody matters and how these cases begin. The significant change here that I propose is that the child not be removed from the dwelling place, which is the family home, at the time one of the parents moves from the dwelling place to live separately, until the issue of custody of the child is determined, as provided by law. The purpose of this change is to avoid a problem that we face every day, where two people are still living together, one wants to leave, doesn't know what to do with the children and so takes the children, thereby disrupting their lives. At one time, this was done very frequently. Then, the Roberts case was decided by the courts, which required a hearing before one spouse could force the other spouse out of the house. At one point, you could just file a complaint saying, "I've been hit, I've been beaten," and the judge would throw the alleged guilty party out. After the Roberts case came in, you couldn't do this so easily anymore, so we found the parent who was ready to leave just taking the child. That has got to be stopped and statutes such as this will do it. It would

maintain the status quo until the court could make a decision.

The second statute at issue is 9:2-4 and the recommendation is that it be entirely deleted to be replaced by a joint custody statute. At present, the statute makes no mention of joint custody, but some judges think that they have the power to award joint custody and others don't. Some judges believe in joint custody as a personal matter and will award it. Others don't. We must take away from these judges that kind of power to employ their own personal beliefs in deciding the lives of other people's children and a joint custody statute such as that proposed on page 3 and 4 is the suggestion.

Moving along to page 5, courts routinely incorporate separation agreements in uncontested divorces where the parties have agreed as to which parent shall have custody of the minor children. Similarly routine are court determinations in contested cases, where only the financial aspects are lititgated, the parties having agreed on who will have custody. In these cases, the court makes no inquiry as to the fitness of the custodial parent or the wisdom of the parents' decision on custody. Thus, consentual joint custody in the above settings should stand on no different footing than should an agreement granting sole custody. In other words, you and I can agree to get divorced and we can agree that you will have the child or I will have the child, regardless of whether we are fit or unfit, and the judge will not look into that decision. If you and I agree that we should share custody, the judge should not look into that decision either. He either should look into all of them or none of them, but should not be able to take it upon himself to say, "I don't believe in joint custody and I'm not going to let you two parents have joint custody," which is happening in this State.

The real issue to be faced by our courts is how to resolve custody disputes between two fit parents, both of whom want custody. I'm excluding for consideration the situation where one parent is fit and the other is an alcoholic or a junkie. Judges don't have problems dealing with those cases. We're talking about where two ordinary, nice people both would like custody of their children.

Our present system of awarding custody to one of these two fit parents is not a viable method of dealing with the children of divorce. This is especially so where one parent is willing to share custody, but the other insists on sole custody. Judicially imposed joint custody, rather than judicially imposed sole custody, which is what we have today, is the logical alternative.

Joint custody is not easy and it may fail in some circumstances. But no worse failure than the result of our present method of adjudicating child custody disputes can be imagined. Research has documented the abnormally high rates of agressive, antisocial and uncontrolled behavior in children of divorce, and their tendency to feel abandoned and rejected. It must be significant that their rate of psychological examination at outpatient clinics is twice that of other children.

Removal of the non-custodial parents' parental rights and obligations frequently creates a new post-divorce battleground over support and visitation. The courts are jammed with the results of this fallout. The final result is that the non-custodial parent feels emasculated and cheated. He may ignore financial obligations and fade out of the lives of the children. Or, the battling continues for years or, as is happening with greater frequency, the non-custodial parent kidnaps the children. None of these results are good for the kids.

The real losers, of course, are the children. They see a father who has little or no authority and a mother who may subtly or overtly disparage the father and undermine what little relationship is left between the father and child. Feelings

of guilt and abandonment, yet conflicts between love and hate for the father and mother emerge. Needless to say, the eventual dropping out of their lives by the non-custodial parent or the non-custodial parent's kidnapping the children and thereby removing the other parent from their lives, becomes the most cruel and final blow.

There is a way to avoid these problems. It is a method to preserve a father's sense of self-worth, of parenthood. This in turn will cause him to contribute more willingly to the support of the children and make him less critical of the mother's decisions. This attitude of cooperation on his part should negate a good deal of the hostility on the part of the mother. The stage will then be set for more responsible action on the part of both parents in fulfilling their obligations in the best interest of the child.

Give the children both of their parents after the divorce by preserving both fatherhood and motherhood albeit the familial home is broken.

Joint custody, split custody, shared parenthood, whatever you want to call it, is the method for preserving parent-child relationships.

Shared parenthood does not necessarily mean that the children divide their time, their living time equally between father and mother. Rather, shared parenthood is primarily a psychological and legal concept, not a logistical one. For it is the psychological or emotional devestation that creates the post-divorce turmoil which is scarring all parties to divorce and threatening to create in our army of children of divorce, a new lost generation.

To turn that negative psychological or emotional response around and make it work positively is the goal of shared parenthood. The first positive effect is that in joint custody, there is no "winner" and no "loser". Both parents are awarded joint custody, assuming both are fit and both want custody.

The father no longer feels beaten by his former wife or cheated by a system that he otherwise sees as unfair. Parental rights, as well as financial obligations, remain his. The mother can no longer use her title as custodian of the children against the father and further deprive him and the children of the love and affection, nurturance and companionship that the law dictates is the child's due from both parents. Both parents are put on notice that they have mutual obligations and rights and that cooperation between them will be looked upon favorably by the courts and that lack of cooperation will be punished.

Shared parenthood means that the psychologically damaging phrases such as "I have custody, you don't" and the term "visitation" will be discarded. Each parent will have physical custody at different times, but they both will always have legal custody.

More importantly, the emotional impact on the children is positive. Since they know they still belong to both parents, the feelings of abandonment will be diminished. They will be more secure in their knowledge that both parents love them and want them. They will grow up knowing both father and mother as authority figures. Idealization or rejection of one parent will be minimized.

There is opposition to the concept of awarding joint custody over the objection of one parent, that is, where one parent says, "I'd like to share these children," and the other says, "No, I want them for myself." The thesis is that if one parent objects to it, then joint custody won't work. Presumably, so that theory goes, since you can't force cooperation upon an objecting parent, don't bother to try. Yet, where that objecting parent is the mother, the chances are nine to one that she'll end up with sole custody. Thus, there is no incentive for her to settle, and where she prevails, the court will actually be awarding custody to the very parent who eschews cooperation.

The belief that joint custody should not be imposed upon a parent who wants sole custody emanates from the belief that divorced parents can't make decisions together. The conventional wisdom is that since the parents couldn't communicate with each other while married, mutual dealings after divorce should be kept to a minimum. Let them go their separate ways and make new lives for themselves, is the theory, and where are the children while they are making new lives for themselves.

The inescapable fact, however, is that judges who espouse this theory are ignoring the public policy of this State. The law is that the welfare of the children is paramount. Certainly, divorced parents should make new lives for themselves, but not at the expense of the innocent victims of divorce, their children.

The welfare of the children demands both children after divorce. The law also dictates that there be cooperation after divorce between the parents. Go into any courtroom, on any day, and listen to what the judges say about cooperation. They tell the people to cooperate. But then, look at what the judges do. The courts pay lip service to this concept by refusing to set the emotional stage for cooperation that shared parenthood presents. Instead, the court seeks cooperation in the winner take all roulette, which,by its very nature, stifles cooperation.

Why is it assumed that joint custodial parents will fail to cooperate, that the required contact will cause more, not less, bickering? Why is it assumed that just because two people couldn't handle, while married and while locked in combat in court, the myriad issues that need resolution in marriage, when relieved of all but one issue, the children, cooperation will be just as elusive? Certainly, the litigation posture forced on the parents in our adversary system, in order to prevail, is not a fair test of their ability to cooperate. Yet, routinely, we hear judges comment that the parties have demonstrated through that very litigation itself that they can't cooperate. Well, of course they demonstrated that because our system forces them to try to prove the other side a bad guy.

Married parents, by the way, disagree as to their children too. They learn to cooperate and so can divorced parents. One will get his way on one issue in exchange for the other prevailing on another. Finally, there is always the court to whom the parents can always turn to resolve their disagreements, and the penalty should be that the loser will pay both his own attorney's fees and those of the other parent. Will joint custodians really go to court to ask the judge to decide what summer camp the children should go to, knowing that one of them will have to pay several hundred dollars for that decision?

The other argument against joint custody is the belief that joint custody creates instability for the children. This argument is grounded on outmoded hypotheses concerning child rearing, just as outmoded as hypotheses of people who think that children shouldn't be in day care centers, and is not based on any empirical evidence that joint custody doesn't work.

This argument against joint custody is based on the belief that children need roots, that they can't have two homes. This argument is a idealization rooted in happier times, when families didn't divorce and remained in the same neighborhood, indeed, the same house, for generations. It fails to recognize that the American family has changed, that divorce is all too often a reality, that over 3 million divorced mothers with children under the age of three hold full time jobs, that 50% of all American women work, and 67% of all divorced women work. That's why we have the kind of important testimony that my predecessor here gave, that in our mobile society, the entire country picks up and moves once in every seven years, that mental health experts have discovered there is a substitute for a mother's love.

The new roots for the American children are the relationships with their parents, not their house. They are often the only roots that our children have in our society today. Yet, in refusing to provide our children with both parents, the courts are destroying the very concept of roots that they seek to preserve.

This objection, the roots, or logistic objection, also fails to come to grips with the fact that shared parenthood is primarily a psychological concept, not a logistical one at all, and that the logistics are incidental and changeable, depending upon the needs of the people involved.

Joint custody does not pretend to foster love and affection between divorced parents. Rather, it seeks to minimize custody battles and post-judgement motions by defusing the issues of this sensitive area. Most of all, it seeks to improve the well being of children of divorce.

Why should a parent be compelled to accept joint custody? The answer is very simple. Cooperation after divorce is the goal of all of us. If litigants knew that the courts (1) encouraged cooperation; (2) penalized the lack of cooperation; (3) award joint custody as a presemption--and that is what the proposed statute suggests; (4) will award sole custody, as between two fit parents, to the one who desires joint custody, meaning if I desire joint custody and my spouse says, "No, I want the whole ball of wax," then I get the whole ball of wax; and (5) if the litigants also knew that the courts will remove joint custody from the parent who proves uncooperative after divorce, the "winner" and "loser" atmosphere in custody cases will lessen. Litigants will have more respect for the system, which they have none at the present time. Backlogs will shrink. Fathers will more willingly pay support. Judges will not have to make hair-splitting decisions as between two fit parents, and most importantly, we may help the children of divorce who are presently being ill-served by our system.

Joint custody may not be for everyone. Both parents must be good and must be fit and both must want custody. Those are the sole prerequisites, however. The mere fact that one parent refuses to agree to joint custody voluntarily should not automatically result in a court refusal to award joint custody. Nor should the pre-divorce bickering result in a conclusion by a judge that post-divorce relationships will remain poor. Obviously, if there were no pre-divorce bickering, there would be no divorce case pending. The courts have an obligation to our children to attempt to ameliorate the post-divorce situation. Joint custody must be given a chance and must be enacted in this State, as it has been in four other states, most recently, in California, just the beginning of this year.

I thank you for the opportunity to testify before this Commission and I would be happy to answer any questions that you may have.

SENATOR LIPMAN: Clara?

MS. ALLEN: Yes, Mr. Danzig, you indicate that the issue is between two fit parents and in describing fitness, you gave the example of an alcoholic or a junkie as unfit. Do you term alcoholism to be an illness?

MR. DANZIG: Oh, absolutely. I'm only using what I think is an incorrect view, but the view that prevails in courts. There are a lot of things that are sicknesses. When I said an alcoholic or a junkie as being unfit, what I was refering to was, if you have two parents, one, because of the illness of alcoholism, is really not capable of providing a good environment for the child, at least until he or she is cured and the other parent is. There, perhaps, joint custody wouldn't work. There, perhaps, the child should be awarded to that parent who doesn't have the problem. But, why, when you have two fit parents, neither one of whom has any problem

that anyone might say might make it difficult to raise children, why should one win and the other one lose? That's where the concept of fitness comes in. Now, don't ask me to define fitness.

MS. ALLEN: That's what I was going to ask you.

MR. DANZIG: One of the problems is that judges have such incredible discretion that if you brought every matrimonial judge before this Commission and asked them to define fitness, you would get a different definition from every single judge that sat here, and to me, that presents a terrible problem because you're giving the power to decide the lives of their children to 21 different judges with an incredible discretionary power, much of which, because we're dealing with child rearing, has to do with the way they were reared. Let me give you an interesting example. While nine out of every ten custody cases results in the mother getting custody, there is some midwestern state, I think it's Wisconsin, where there is a female judge, who is a divorce court judge, and she routinely awards custody to fathers and when asked why, she explains that her mother died when she was very little and she was raised by her father, so she knows fathers can do it. Now, that's an equally absurd basis on which to award custody. But, unfortunately, our judges bring to these cases their own backgrounds, their own experiences.

MS. ALLEN: So, what you're proposing here would not change the status quo in determining fitness.

MR. DANZIG: Well, it would.

MS. ALLEN: In what sense?

MR. DANZIG: Where there is no unfitness proof by one side, where they can't prove whatever fitness is or unfitness is, then automatically, they don't get custody. Now, what this as a practical matter means, when two people go into two different lawyers, the wife goes to lawyer A and the husband goes to lawyer B, to discuss a possible divorce and what their rights are, the lawyer is going to say, "Well, in this state we have joint custody which means you both are going to share the children." He'll say, "Mrs. X, is your husband a bad guy, is there anything wrong with him", and she'll say, no. Meanwhile, his lawyer will be asking him if his wife is bad or has any problems and if he says no, then each of those lawyers, independently, is going to tell their clients, "Well, we're not going to have a fight over custody because you both are going to win," and they can both walk out of their lawyer's office kind of happy. One of the problems is that a lot of women don't want to face the societal stigma of having lost custody. So, they fight even though they think their husbands should share. If that issue isn't presented to them, they can go around and say, "Yes, we share custody, it's the law of this State." I think that's a healthy thing for mothers.

MS. ALLEN: Thank you.

SENATOR LIPMAN: Mr. Danzig, I just want to ask one question. In your concept of joint custody, if you made it up, the mother and father would share equally in the number of months and days of the year?

MR. DANZIG: No, not necessarily.

SENATOR LIPMAN: Would you discuss that?

MR. DANZIG: Yes, ma'am. Joint custody is really three things. It is a legal concept, a psychological concept and a physical concept. The legal concept is that you and I have a child. When we get divorced, we should still have that child. We both should have certain rights and responsibilities as well. Let me give you a sinple example. Right now, the non-custodial parent doesn't get report cards. The non-custodial parent doesn't automatically get invited to parent-teacher

conferences, and very often, when he calls the school up and expresses a desire to be invited, the school recoils and says, oh, oh, because they're not used to dealing with this situation and very often, they have to go to court and spend good money on lawyers to get a report card. If they had joint custody, they're entitled to those kinds of things. The custodial parent, at the present time, can decide, without even conferring with the non-custodial parent, as to the future of this child. Now, they're both custodial parents. They both have the legal right and obligation to plan for a child's future. That's the legal aspect of it.

SENATOR LIPMAN: That isn't the aspect of it I'm discussing or questioning. I'm just asking about the practical living arrangements.

MR. DANZIG: The second aspect is the psychological, it makes everybody feel better. The thing you're concerned with is the living arrangements. That's the least significant.

SENATOR LIPMAN: I'm suggesting that, perhaps, if the child, if they're not going to live under the same roof--

MR. DANZIG: No question about that.

SENATOR LIPMAN: All right. If he split between one for sometime and the other one for sometime, would he not, in a measure, also, make his behavioral change?

MR. DANZIG: No, I don't think so. First of all, he need not even be necessarily be split. I know of joint custody arrangements where the mother lives in California and the children live out there during the school year and the father lives in New Jersey and the children are with him during the summer. I know of other arrangements, where, believe it or not, the children stay in the marital home and the parents shuttle back and forth. There are all kinds of physical arrangements. There are other ones where the children spend one week living in the father's place and one week living in the mother's place. Now, obviously, that can only be done where they live very close by and the children can walk home from school or to either place. There are myriads of ways that you can deal with the physical ramifications of custody. That's the least significant problem. It's the legal concept that we've got to get across to our judges and we've got to get across the fact that psychologically it is better for everyone concerned. Then, the physical aspects will fall into place. It depends on a lot of different factors.

There is one other area of legislation, which I don't want to go into at any length, and that is the establishment of a family court, which has been talked about for I don't know how long, but nothing seems to be done about it. It is something that, perhaps, is beyond the scope of this Commission's study. You have, goodness knows, an awful lot of things to do as it is. But, a family court would also go a long way to establishing the legal rights of our children and equalizing the legal rights of our male and female parents in this state. There is an incredible discrepancy as to the quality of our judicial system from one county to another of what our system provides. For example, in Bergen County, you can get free psychological evaluations from Bergen Pines, a county institution. This helps people who can't afford to hire a high powered psychiatrist to come into court and tell a judge what he thinks should be the custody decision. Other counties, you don't have that. We need much more support for our judges. They cannot do this kind of job alone. They're not trained to do it and they don't have the time to do it. The backlogs are huge and something must be done. I think, initially, the changes in the statutes that I have suggested is the best possibility, short of anything else.

MS. TAMBORLANE: Mr. Danzig, you certainly, this morning, have presented to us some things that the Commission has been thinking about in reviewing the statutes that we have, including the ones that you pointed out to us this morning. In the very emotional statement that you have made here, you certainly have evidenced to us that you have a broad knowledge about the existing situation with regard to custody in New Jersey today. I think that I can support, personally, one of the things that you are talking about, in terms of the concept of joint custody because I am a non-custodial parent who, many years ago, traded away custody in order to achieve the economic status that I had to have because I did not have resources available to me being a woman in the home for many years raising small children. So, I can relate to what you are saying and I would like to just say the non-custodial parent, the emphasis throughout your testimony is on it being the father and I think that is shifting. There are more women, also, from what I have heard talking to attorneys throughout the state who are being advised to give up custody, if necessary, in order that they can get themselves on their feet and live in an atmosphere, especially if there has been a battering or beating towards them, but not toward the children. So, we're going to see more women as non-custodial parents if the existing system is allowed to continue. My concerns, however, with regard to joint custody and with regard to the proposed changes to the statutes that you made, are two. One, with regard to joint custody, how do you see the support will shift, the alimony will be handled and that decisions affecting the children in regard to education, health, etc., what are the legal rights in all of these areas going to have to be, what changes will we have to see if the concept of joint custody becomes the presumption?

MR. DANZIG: I think there will be a lot of changes that will be for the better. I think, first of all, they will depend on the given situation, firstly. For example, if, in your joint custody agreement, the children live with you half the time and with your ex-husband around the corner half the time, then obviously, the support provisions will be quite different because you each will only have the children half the time. Then, where one parent lives in California during the school year and the other lives in New Jersey and has them over Christmas and during the summer, I think it will be a much more equitable distribution. You will sit there with your lawyers and instead of fighting and spending thousands of dollars over who is going to have the children, you will be spending time discussing the nuts and bolts of it, meaning the kinds of things you are concerned about. We've now agreed, because it is the law of this State that we share. So, let's not waste time beating each other over the head. Let's discuss how we can share most fairly. How much do you need to take care of the children for the period of time that you are going to have them? How much do I need? Can we afford it? If we can't, then maybe we have to do something different. I think it will make lawyers' jobs, in some ways, a lot tougher and, in some ways, a lot easier because we'll be dealing with what we know best about, which is the nuts and bolts, not the emotional things which judges and lawyers are not trained to know about. We're trained in the law. We're not trained to decide whether you're a better parent or I'm a better parent. Take that decision away from us.

MS. TAMBORLANE: So, what you're saying is that with joint custody as the presumption, these things will be easier to be worked out, that you really don't know or have any feel for what the courts would or would not do in terms of legal rights.

MR. DANZIG: Well, right now, the courts are awarding joint custody. Some courts are and some courts aren't. I don't think that they should have that power just because you and I live in county X.

MS. TAMBORLANE: I understand that.

MR. DANZIG: Why should we spend $30,000 on legal fees to have a judge tell us, "I don't believe in joint custody," and if we live in county Y, in the same state, we know because the judge agrees, in fact, likes it, we don't have to spend any money on lawyers. I'm in favor of lawyers not earning the kind of money they're earning in these cases.

MS. TAMBORLANE: The other question, with regard to the statute and your statement that the physical place is least significant after the divorce, and your statute indicates that you have a feeling that the physical location is most significant prior to the divorce by mandating, as you suggest in the statute, that the child not be removed from the marital home and in order to remove the child, there is an affidavit process that should be gone through. My initial response to that is that might, in some instances, be detrimental to the children, especially in a case where there is a battered woman and her children, who, perhaps, cannot wait to get affidavits through the court system before she can take her children and remove them, one evening, say, for instance. What is your response to that?

MR. DANZIG: I think that, certainly, is an important exception. What I'm talking about is not removing them for one evening to save one's bodily health or emotional health, but to avoid the situation where I just decide that in order for me to win, it is better for me to leave and sneak off someplace with the kids so that by the time we get into court, the judge says, "Well, the status quo is that these children are with their father now, so I'm going to leave it that way until a final hearing," and then we sit around for about a year and a half with the backlog before we come to the top of the list to have a judge try the case. Then, we get to court and the judge calls the lawyers into his chambers and says, "Look, I have a lot of cases, these kids have been living with their father for the last year and a half and I'm inclined to leave the children where they are," before he has heard one word of testimony and where we can spend nine months trying Doctor X and two years trying IBM, you walk into court and tell a judge that this a custody case that is going to take two days, they go off the wall. Two days to try a custody case? Well, these are these kids' lives for crying out loud.

MS. TAMBORLANE: Thank you, Mr. Danzig.

SENATOR LIPMAN: Greta?

MS. KIERNAN: Thank you, Mr. Danzig. I am inclined to agree with you, basically, with what you are trying to do here. I always felt that two spouses divorce each other, they don't divorce their children, nor do their children necessarily divorce the parents at the same time and that there ought to be a different agreement made at that point about whose feelings are what and who is best served by what is about to happen to them. I think, probably, the basic question we should be asking, given our mandate, is, do you believe that the effect of the current law is discriminatory against either sex?

MR. DANZIG: Yes. It's mostly discriminatory against the children, but given your mandate, if nine out of every ten children--let me give you this hypothetical. You have a town with two schools in it. In one school, 90% of the kids are black and in the other school, 90% of the kids are white. Is there discrimination being practiced in that town? I think there is and I don't care what excuse people might give for why the schools happen to be set up that way. I think that anybody who

would say that there is no discrimination would be rightly branded a racist. If nine out of every ten children that come before our courts wind up in the custody of their mother, I don't see any difference. There's something wrong. You can't tell me that nine out of every ten mothers is a better parent than their spouse.

MS. KIERNAN: Now, when these cases that you're talking about, the nine out of ten, those would be cases where both parents indicated the desire for custody?

MR. DANZIG: Right.

MS. KIERNAN: These are not cases where they both did not have that desire?

MR. DANZIG: No. We're talking about where both fight it out and each one wants custody.

MS. KIERNAN: You feel, although it is not in the law, it happens, that it is discriminatory against men who wish to have custody of their children?

MR. DANZIG: What I'm saying, I guess, this statute, because of its vagueness, because it doesn't really come to grips with the problem, it gives the judges the kind of discretion that lead them to rule in a discriminatory way.

MS. KIERNAN: Because of their basic background and what they bring to this decision, as every other decision.

MR. DANZIG: Right. But, this is a unique area because in almost all cases, juries decide the facts. So, you at least have six or twelve people, so somewhere you may get a sympathetic ear. Here, one person decides where these children are going to live and none of us know what that person's background is, interestingly enough. You know, there are a lot of places where you apply for a job and they give you psychological tests to find out if you're attuned to that kind of thing. Judges are appointed. In fact, right now, there's a commission of the Supreme Court, in response to the angry cries of the public of this State, that's looking into our matrimonial system and most judges don't want to sit as matrimonial judges. It's a punishment, practically. I don't want my child's life decided by a judge who is not happy making the decisions he's making or because he wanted to be a judge and in order to become a judge, he had to take this particular assignment. These are extremely sensitive issues and we're dealing in a situation where the wrong people are making the decisions.

MS. KIERNAN: I read the report that you are refering to and I guess I get to the point where I begin to wonder whether this should be handled at all in the courts, whether there ought not to be some other mechanism.

MR. DANZIG: I think there should be a very different mechanism.

MS. KIERNAN: That's a different subject and we probably shouldn't get into that at this point. Just one other question, you say, in your testimony, lack of cooperation would be punished. Now, I'm trying to think of a situation in which we would really have a lack of cooperation between parents with joint custody. An example that comes to mind would be, perhaps, a custodial spouse who would say, "I want the child to attend the private school that I attended, I believe in a private school education for my child," and the non-custodial spouse would say, "I've always believed firmly in the public school system and I want my child to have that kind of an experience. Finances are not the problem, but it is my gut feeling that this is the right place for the child." What happens if they cannot agree?

MR. DANZIG: In the present system, where you have custody and non-custody, the custodial parent wins. In fact, there's a fairly recent decision on religion where the two parents were of different religions, married, the mother converted to the husband's religion, they got divorced, the mother got custody of the children, reverted back to her religion and changed the children's religion in midstream,

and that is her right because she is the custodial parent. What we're really doing is we're abdicating when we say, "just because you have custody, everything you decide is right." That's an abdication. It is running away from the more difficult decision which you are going to have in joint custody, where you have two people who think they're right. Your example, the one who wants private school and the one that wants public school, let's deal with that issue, let's decide. Maybe the public schools in this particular town are not good, on an objective scale and maybe the child should go to private school. Let an arbitrator decide that. Let a judge decide that, based on the facts, rather than saying, as we do now, "Well, the custodial parent says private school, so that's what it is," or the custodial parent says, public school. So, no matter how crappy that school is, to use the vernacular, the kid goes to that school. How would you like it if you had a gifted child and your spouse had custody of that child and that child was being sent by your spouse to the worst public school in the State of New Jersey? You wouldn't be happy and a judge probably wouldn't help you out. But, with joint custody, a judge might and he would be helping that child out because he would evaluate it, not who has the right to say what school the child goes to, but from the neutral viewpoint of, okay, here's two parents, this one says, A, this one says, B, which one is better.

MS. KIERNAN: Just as you would have in a normal marriage situation when parents disagree and they have to come to some sort of agreement.

MR. DANZIG: Sure. How many times does a kid run to his father when he comes home from work and says, "Daddy, can I have this and so," and Daddy is tired and says, "Oh, sure", not realizing that a half an hour before there was a battle royal between the child and the mother who said, "No, you can't have it." Then, the parents fight later that night after the child is asleep. It happens all the time.

MS. KIERNAN: Thank you, Mr. Danzig.

SENATOR LIPMAN: Phoebe?

MS. SEHAM: I agree that the situation that you are describing is a problem situation and I think I agree with a lot of your objectives. I'm not sure I agree with your methods. I think the problem is huge, that it begins in the way in which we handle divorce alltogether, that to try to resolve it just by tackling the custody question is insufficient and, perhaps, not even directed at the root of the problem. I would really want to look carefully at whether this is within our mandate and I agree with Greta that I'm not at all sure that divorce should be handled by the courts. I would like to get it out of the courts alltogether, into a different system. I've practiced matrimonial law. I have not done so for several years, but I'm aware of a case--I won't say in what county--in which the two parties were evaluated psychologically by a local public facility. The man had been beating his wife and there were a number of witnesses to that and the evaluation of him is, "Gee, he's really disturbed by the fact that his wife wants a divorce, but otherwise, he's fine." The evaluation of her was, "It's hard to believe the story she tells." Because her story was so extreme, it cast out on her credibility and therefore, on her suitability as a balanced person. I'm feeling so skeptical about all mechanisms that have been proposed and I really can't come down on one and say, "this is going to solve all the problems." I recognize the magnitude of the problems and my real question, I guess, is whether this Commission is really set up to handle this particular problem. I think we're going to have to think about it very carefully. How far it is a matter of sex discrimination and how far it is other factors that have to be studied, perhaps, by other bodies, I don't know. I have read, and you probably

have too, a book called "Beyond the Best Interests of the Child", which, from the point of view of the well-being of the child, comes to a completely different conclusion from yours.

MR. DANZIG: That has been rejected time and time again and, in fact, is being revised by its authors to take away most of the horrible and absurd things that they said originally.

MS. SEHAM: I think everybody recognizes that there are horrible things happening and I think there is a lot of disagreement about what the solution is.

MR. DANZIG: I grant you that this does come on the very fringes of your mandate, but what I'm afraid of is that it is going to come on the fringes of everybody's mandate, so no one will do anything because no one has done anything for ages and I think, and I don't mean to charge you with a responsibility that you don't want to assume, but I do. I charge this Commission with the responsibility of, if it can find a way to include this in its mandate, that it do so. You have listed a bunch of issues for today and February 26, all dealing with the divorce laws and I think that if your conclusion is, at the end of these hearings, is that you have no mandate to deal with the divorce laws, then the public is going to wonder why, and if your mandate is viewed differently by you and is only a mandate dealing with the dollars and cents of the divorce laws, then one segment of the public is going to wonder what happened to men's rights before this Commission and what happened to children's rights before this Commission. So, I think it is incumbent upon this Commission to try, if it can, to include this kind of thing in its mandate.

SENATOR LIPMAN: Mr. Danzig, since you have given us such a charge, perhaps we will have to talk to you again before making our final decision and if you have more statistics about how divorces break down and what is the proportion of joint custody cases now being granted, we would be delighted to hear it then. Until then, thank you so much for coming.

MR. DANZIG: Thank you, it was a pleasure. (See page 1X for statement)

SENATOR LIPMAN: It was very innovative. Thank you. Mr. Anthony Gil?

A N T H O N Y J. G I L: Senator Lipman, members of the Commission, ladies and gentlemen, good afternoon. The views presented in our report to the Commission are those of members of the Family Law Council. However, we believe that these views are shared by thousands of people who have to resort to our judicial system in the hope that we can find some solution to family problems created in divorce.

The litigant does not realize that we are going to be exposed to a very subtle form of sexual discrimination, as practiced by many attorneys in this state and the judiciary. This forum is very difficult to prove, but we hope that we can demonstrate that fe facto sexual bias exists, once we penetrate the written letter of the law.

Let us examines what happens in the area of matrimonial law regarding spousal support and alimony. The issue of spousal support and alimony is a perfect example of judicial abuse of a statute, which in writing appears to be fair and non-discriminatory to either sex. Basically, the statute states that either sex, male or female, is entitled to alimony. This appears to be fair yet, in practice, alimony is an issue of bitter contention once the mother is brought before the court. The animosity and hostility which surrounds the granting of alimony is directly related to judicial practice. The law states that alimony is awarded at the discretion of the presiding judge, and it is here that inequity and sex discrimination is most evident.

We know, presently, of only two cases in New Jersey where a man was awarded alimony, and in both cases extremely extenuating curcumstances were involved. In both cases, less than token monetary awards were granted. Therefore, the majority of alimony settlements are awarded to women.

It is our contention that alimony be based solely on the need of the spouse, and a spouse's earning ability must also be taken into consideration in determining his or her need for additional income. Alimoney should be viewed in this way. It should be considered as one aspect of the spouse's income. Alimony should be considered as a means of augmenting the other spouse's income.

The spouse's entire financial picture must be viewed by an expert who can accurately and ojectively determine the financial needs of the spouse. It cannot be awarded in token fashion by a person, or a judge, who has had no training in these matters and whose main consideration centers around expediency of the court.

Another major problem area is that of the division of any property that may have been acquired by a husband and/or wife during the marriage. The rule of equitable distribution is supposed to be applied in any judicial decision, but it opens the door to the question of what is equitable. The practice of sexual discrimination by attorneys and judges can come into play in this distribution. We have had reports that women have been getting as small as 20 to 30 percent of matrimonial assets. There is little investigation of the original contributions by either party and of their intentions. The lack of proper guidelines means that a judge can make a decison based on his whim. Time after time we have been left with the question of what was fair about an "equitable" distribution.

Marital assets can be used to inflame an already delicate situation when two people decide to divorce. At the time people are going through the trauma of a divorce, it makes no sense to add to the psychological impact by including long hearings on marital property.

The preferred method of disposing of marital assets is to include a

provision for such an occurance at the time of acquisition. The question of whether property should be singly or jointly held should be settled beforehand. This is probably the best time to do so since both parties are amicable and do not have the pressures of a divorce on them. In the event that a couple did not think of divesting themselves of any assets, the matter should be left to financial officers on our proposed panel of experts on the family. The Family Law Council is advocating this panel. A careful examination should be made by the officers and a proper financial plan be developed so that monetary damage is minimized to either party.

Mr. Danzig, the speaker before me, went into great depth on child custody and we fully agree with his views. We have come to the same conclusions as Mr. Danzig. I would like to add a few more words on that issue.

Again, the Child Custody and Support laws appear to be imminently fair and non-discriminatory. There are one or two obscure sections. Mr. Danzig pointed out the one where, in the event of a marital dispute or separation, mothers are to take the children with them whetever they go. Or, if the father leaves the home, the children stay in the home -- again, with the mother. To that end, we have pursuaded Assemblyman Saxton to introduce legislation which would eliminate that provision.

Although the custody and support laws seem to give equal rights to both parents, we have found that in the vast majority of awards, childlren are put in the custody of mothers. Mr. Danzig said that it was approximately 90%. We believe it is higher, probably somewhere in the area of 95%. Very few contested custody awards are ever given to the father, very few indeed. Since most custody awards are to mothers, the courts seem to feel it is unnecessary to order mothers, specifically on support-- We have uncovered very few actual financial support orders given to mothers. Instead, the court seems to imply that any excess expenses not borne by the fathers are to be met by the mothers. This can take place in a variety of forms, such as providing a home, baby-sitting, and so forth.

We have also arranged to have Robert Burns introduce another bill, which we feel will supercede the one that Jim Saxton has introduced. This is Bill No. A-3366, and which has been co-sponsored by Greta Kiernan and a good number of other members of the Assembly. If Bill A-3366 is enacted, custody matters would be out of the hands of the courts entirely. The only time the issue would be brought into court would be if the arrangement proved harmful to the children. Only at that time would the courts be consulted. This approach would go far in eliminating the trauma that children usually suffer in a divorce and stops the practice of parents using the children as pawns against each other.

The states of Massachusetts and California are also making inroads towards establishing joint custody. Bill 1403 has been introduced in Massachusetts and, recently, California enacted AB1480. Last week I got further news that in the State of New York Bill 8629 was introduced on January 22nd.

We have also received recent reports from the State of California that because of the passage of that law, the judges are convening to discuss means of subverting the intent of the law. We must be on guard that this does not happen to New Jersey.

We seem to keep coming back to the fact that the laws appear to be imminently fair, as written, but they are not being implemented and the discretionary power of the judges is subverting the entire intent of the legislatures.

The last subject deals with traditional and non-traditional families.

We feel that the family problems that we are aware of, and have discussed this morning, apply to both kinds of families. What we are really seeking is some sort of aid to the solution of these problems, whether or not the family has a lifestyle that is similar to the others. The problems that families encounter and the relationships established are the same, whether males and females go through a ceremony or privately join. Any statute should be designed to recognize the biological fact of parenthood, and the responsibilities that people in general have to each other. We are asking for a new therapeutic approach to family problem-solving, applied to all those who need help and who cannot cope on their own, under certain circumstances.

Briefly, we have some other reforms that we would like to see enacted and they are in the area of pre-marital counseling, counseling during marriage, and increased education at the high school and college level as to relationships of people in marriage. We would certainly like to see the creation of a panel of family experts in the Executive branch of government substituting for the present judicial system.

SENATOR LIPMAN: Excuse me, Mr. Gil, are you going to give us a list of what you are now reading?

MR. GIL: Yes, ma'm, I shall do so.

SENATOR LIPMAN: Before you leave.

MR. GIL: We would also like to see the recogniation of marriage contracts. And, we would like to see the elimination of alimony in favor of this new approach of really examining the needs of the spouses and the ability of the spouses to meet support requirements.

Overall, we need a new humanistic approach, a more helpful method of handling divorce cases - a new mechanism, as was mentioned before. Only until that is in place can we really and truly say that we have gone a long way towards eliminationg this de facto discrimination that exists in our legal system. We need reform now. We cannot wait. We have been going on for years under this burden and it makes no sense to continue this way.

I would like to add one more comment about the creation of this panel, or the mechanism by which family problems can be solved. One of the most important elements in all of this is to fix responsibility for the decision on the decision-maker. This is something that is really not done today. The judge comes in with an award, or an order, and at that point he walks away from the whole situation and he hopes, or believes, that it will work, but very often it does not work and this is the cause of court cases coming back time after time, months later, after an original decision was made. We feel that if the responsibility for the decison was fixed on the party that is making such a decison, more consideration and more due care would be taken by that party, knowing that whatever that person suggests must be workable, and will work.

Thank you for this opportunity. We are at your dispoal for any work that you wish done on the Division of Marital Law or Divorce Law. Thank you very much.

SENATOR LIPMAN: We think you have done quite a bit of work already. I truly would like to have - as I asked you before - those suggestions, especially the last suggestion about marriage contracts, all right?

MR. GIL: Yes.

SENATOR LIPMAN: Clara, so you have any questions?

MS. ALLEN: No, I have no questions. You have given us a very concise, I believe, picture of your viewpoints, and a lot of material which I would like to study.

SENATOR LIPMAN: There is just one small question. In the legislation that Assemblyman Saxton put together for you, A-1872, I take it, is the old number?

MR. GIL: Yes.

SENATOR LIPMAN: It is about the law providing mothers temporary custody when there is a marital dispute. That, you say, is discrimination?

MR. GIL: Yes, absolutely.

SENATOR LIPMAN: Would you have the two parents live together while the dispute is going on, or while the courts are deciding?

MR. GIL: Well, technically, legally speaking - I am not an attorney - from the way I understand it, no one is supposed to take any kind of action in a marital dispute. In other words, theoretically, both parties are to remain in the matrimonial home until such time as a decision is made that one party or the other can leave. Otherwise, the party that leaves can be subject to dissertion, and this charge often comes up. So, I don't advocate that they stay in the matrimonial home. I think it is horrendous to continue fighting. If something has led up to the possibility of a divorce, perhaps there might be a more expedient means of coming to a decision as to who could leave. Again, the mechanism should be there so that that particular problem, at that particular time, can be speedily resolved. Nobody wants to continue a bad situation for months until the court system gets around to hearing motions.

SENATOR LIPMAN: You said that there have only been two cases in New Jersey where a man has been awarded alimony?

MR. GIL: We have only found two cases. I have one in the report, Rauto vs. Rauto. I am not able to come up with another. I have asked several attorneys to come up with more awards to males, and they have failed to do so. So, again, we come to de facto discrimination. The percentage of alimony awards to males is minimal in this state.

SENATOR LIPMAN: Greta.

MS. KIERNAN: I just want to thank Mr. Gil for coming. It is a pleasure to see you again. Also, I would like to tell you that the bill you referred to - A-3366 - which was introduced by former Assemblyman Burns -- I don't know if it has been reintroduced in the new session yet. You know, bills had to be reintroduced this past January. Since Assemblyman Burns was not re-elected, I don't know if someone else picked up that legislation or not. I think you might want to take a look at whether that has been reintroduced.

MR. GIL: It has been picked up. We know that it died at the end of the year. It was not pre-filed. But, I have it from Assemblyman Visotcky that it will be reintroduced.

SENATOR LIPMAN: Very good.

MS. KIERNAN: Thank you.

MS. SEHAM: I have nothing to add. Thank you very much.

MS. TAMBORLANE: Thank you very much.

MR. GIL: Thank you.

SENATOR LIPMAN: Mr. Emanuel Needle, Fathers United for Equal Rights.

E M A N U E L N E E D L E: Good afternoon, folks. I am here not only on behalf of Fathers United for Equal Rights, but also I am here as a concerned attorney, who does quite a bit of practice in the area of family law. I am not getting

paid. I am not a lobbyist. I never acted as a lobbyist for anyone. But, I am talking to you today about something that I am very much concerned about. I want to express my concern.

If I talk too long, it is because I may be too involved with my thoughts and I would ask you to please stop me, okay?

SENATOR LIPMAN: All right.

MR. NEEDLE: Because I don't know what the time frame is. But, there are a number of thoughts that I have to share with you. I am doing this from the persepctive of seeking some positive results for the benefit of the community at large.

First, I am sure it is no secret that we are all concerned that there is a crisis in the family today. Our legislature has seen fit - back in 1971 - to substantially liberalize our divorce laws. Perhaps it was a good thing. I am not passing a value judgment on it. Certainly, if people are unhappy, there should be some legitimate means by which they can separate and build new lives for themselves.

The problem is, although the father and mother can get divorced the children are not divorced. They are still the children of the parents, and the parents still have a relationship with them. But, by opening the doors on liberal divorces, we have completely overlooked the concomitant problem of how to deal with children. What has happened is, the problem of custody and visitation has been magnified by the tremendous increase in divorces. Yet, nothing really has changed as far as the basic approach that the law has taken in dealing with children is concerned.

One of the areas that I am concerned about has to do with this concept of custody. To just briefly review with you the way the pendulum swings, at one time it used to be that the father - this is going back well over 100 years ago - was automatically the paterfamilias and he was the final word. If there was a divorce, it was assumed that he was the one who took over and was the custodian. Then, over a period of time, as social changes took place, we got involved with this concept of the tender years doctrine, that is,the courts began to swing the other way: When a young child was involved, the mother should be the natural custodial parent. We are now first beginning to realize that there is a difference between a biological parent and a psychological parent, and that it doesn't necessarily follow according to the sex of the parent, but rather the psychological makeup of the individual as to who can be a better parent. That, frankly, will apply whether we are dealing with an older child - a teenager - or even an infant of less than one year old. The father could still be the psychologically the better suited parent. It depends upon the circumstances of each matter.

But, the problem we are facing with this concept of custody is that it has been thrust in an adversary arena, and I really think that is doing a lot of harm, a lot of harm, to the children. If both parents are desirous of having custody of the children, they each go out and get a lawyer and there is a battle royal. Now, obviously, there is no problem if one parent is clearly unfit - an alcoholic, on drugs, and so forth - and the other parent appears to be a decent type of person. There is no problem there. The problem really is - and I think one of the earlier speakers alluded to it - where we seemingly have two fairly decent people and it is a question of the judgment of Solomon: "Are we going to cut that child in half? How are we going to deal with this child, or children"? What happens is, by

putting it in an adversary situation, each lawyer is like a hired gun for that particular parent and has to do his level best to win custody. The parent is not hiring the lawyer to act as an impartial abritrator. He is not hiring the lawyer to sit as a judge. He is hiring the lawyer, and spending good money, because he wants results. He wants that child for himself, or she wants that child for herself.

So, what happens then? We start digging. Dirt comes out. Exaggerations take place. Each one preys on the emotions of the child, and the child becomes a football. The tragedy is, the child becomes an emotional cripple in the process. Those are the kinds of things that I am concerned about. What is happening to our children? Because whether it is by agreement or by a contest in court - and it can be disastrous emotionally, not only on the parties, but I think the attorneys and the judges also; they suffer for it - what happens to the children? They are like chattel. They are like possessions. They don't really have a say in these proceedings. Yet, they perhaps have more at stake than anyone else. We can talk about money, and changing property, and support, but isn't it more important to talk in terms of the lives of children and how the twig is being bent and how they are going to grow and what their direction will be, and how their whole life is being distorted by being involved in the emotional upheaval of this divorce litigation?

I don't know if, as a result of what I have been talking to your about, there will be specific suggestions I can make. I have several thoughts I am going to share with you as I summarize. But, one area I am very much concerned abut has to do with the entire procedure by which custody is worked out, and by which there is visitation rights. Invariably, under our system - the adversary system - the judge has to make a decision. One parent has to be the custodial parent and the other parent has to be the non-custodial parent, therefore the custodial parent is painted the "good guy" and the non-custodial parent, tragically, ends up being the "bad guy", and perhaps this is the subliminal message that is coming across to the children as well. I think that is terrible, but that is exactly what happens because the custodial parent ends up regarding their child as a possession - not as a child with all the emotional hopes, dreams, and emotional problems that a child has - that can be used against the non-custodial parent. That is part of the tragedy.

How often I have come across cases where the parent has called me - the non-custodial parent - saying that they can't see the child because the mother or the father - I don't want to use the sex now; I am talking about custodial or non-custodial parent - will say, "I have other plans; you can't see the child," or, "The child is sick," and it turns out that the child is not sick, or, "You can't talk to the child on the telephone." Imaginative as the mind is, those are the excuses that come up.

Now, what does the non-custodial parent do? He is shut out from the life of that child. I find too many cases where the custodial parent has one object in mind and that is to discourage the non-custodial parent as much as possible from maintaining contact, and, hopefully, just getting them out of their lives. That is a tragedy, because again I say, they may be divorced from each other, but that child is entitled to two parents. He is not an orphan, or she is not an orphan, but that oftentimes is what is happening.

Now, as to how the courts make the decisions in our system, let's face it, we have someone wearning a robe who represents his own peculiar bias. The

judges in our state are all hard-working judges, they are well intentioned, but each individual judge is the sum total of his own experiences. He was a lawyer before, or she was a lawyer before and have a parcicular perspective on a problem. Perhaps most of us, in the present or the older generation, take the view that the mother should be the custodial parent. Or, or to put it another way, why shouldn't the mother be the custodial parent? So, we already start out with a bias. It is true, the law says that they are equally entitled to custody and we have this nefarious test: "What is in the best interest of the children"? But, that is interpreted -- as there are many judges in the state. So, this is also a problem. As to whether or not this type of decison, which is so important to our society and the future generation, should be made in an adversary area - should be made by judges who, perhaps, by training or psychological makeup may not be particularly suited to handle these matters - orshould be made in an atmosphere of bitterness and contest -- perhaps the answer should be that it should be done not in an adversary situation, but should be done in an impartial type of atmosphere - namely, perhaps in arbitration. Perhaps it should be done with a board, consisting of a religious leader, a social worker, a professional who is knowledgeable in the area -- I am just suggesting concepts now. I don't think the system has proven to be successful enough for us to continue to use the adversary system.

Now, another area which is somewhat related and that I would like to express my concern over, has to do with this concept of enforcement of court orders. The custodial parent in nine out of ten cases, if not ninety-five out of one hundred, as the prior speaker has indicated, is usually the mother. She will get the child. She will also get an award for support. Now, unless the court orders otherwise, that support order will be enforced through the probation office in the county where the father resides. The father makes his payment through that probation office. They log the payments. The forward the money to the mother. They monitor the payments. If he falls behind, he starts getting threatening letters. If he falls behind more than a few weeks, he can find himself being hauled into court. It is a very debilitating experience. Regardless of what the legitimate reasons may be-- And, I am not trying to back or justify the father who may just be trying to squirm out of his obligation. I have no respect for that type of individual. But,I am talking about a father who may have, let's say, lost his job, or who has been ill for a few weeks - whatever the reason, it is a legitimate reason - and he hasn't been able to send support. It is not the probation officer that has to listen to the reason and pass a value judgment. He has no choice. He has to bring him before a judge and it is the judge that has to make the decisions. And, it is a debilitating experience, to be hauled before the court on an order to show cause why you should not be held in contempt. That is the frame of reference: "why you should not be held in contempt." Too often, a man comes in and he has the feeling of being a second-class citizen.

There is something more basic that I am concerned about with this. Here we have the entire apparatus of the court system to enforce a specific type of order, an order for support. Perhaps that is the only realistic way to do it; I don't know. But, on the other hand, what about the concomitant rights - the father who has the right to contact his child, to speak to him on the telephone? If he goes through these one hundred excuses that I described earlier and can't get to speak with his child or see his child - basic visitation rights - what happens to that father? Can he go to the probation office? Will they monitor this situation

and help him? Absolutely not. He has to go out and hire an attorney, at no small expense. Papers then have to be drawn, he has to go back into court, and there has to be an argument. And, chances are, nine out of ten - maybe even a greater percentage - that the judge will make some admonishing remarks, will warn the mother if, in fact, he thinks there is some merit or truth in what the father has to say, and that is the end of the problem. It is so rare that a judge will punish a woman who he knows is deliberately flaunting the orders of the court, that it makes a mockery out of the orders.

I have had situations. I will give you one example of what happened last Summer. The mother, at that time, was the custodial parent. The father had made arrangements to take his son on vacation and the mother decided she didn't want the child to go on vacation with the father. This was after having hearings and discussions and the judge making that decision. She ended up hiding the child. He want through thousands of dollars worth of expense, hiring investigators -- he is still paying this off -- and hiring me to help him to try to locate that child. Only by a stroke of fortune, the mother appeared in court on one of the return days of the order and the judge was very polite and very tactful to her, trying to explain to her how important it was for her to cooperate. The bottom line was that she was about to leave the courtroom and the father still didn't have the child and the order still hadn't been obeyed. I pointed out to the judge that if the roles were reversed, if this man had not been paying support, is there any question what would have happened next? He would have had handcuffs on him. He would have been led away. There would have been nothing to talk about: "Either you pay the money, or you go to jail." It is as simple as that. But, it is not that simple with enforcement of visitation rights.

Finally, after quite a bit of urging, the judge did "detain" the woman. I didn't say he locked her up; he "detained" her. But, by using enough pressure in that direction - at first she didn't even want to reveal where the child was - it took us all day in court and finally she revealed where the child was and arrangements were made for the child to be turned over to the father. But, why should the father have to go through all this expense and aggravation to get his rights? Why shouldn't there be some type of system by which we have an apparatus in the court to help him also?

I know of another case where the man deliberately withheld making payments because he wanted to come into court. He had nowhere to turn. He couldn't afford a lawyer. He deliberately withheld making payments, just so he could be brought into court and explain his predicament to the judge: that he was not seeing his child. He had not seen his child at that time for well over six months. When he explained the situation, the judge was very compassionate. He explained to him that it may very well be that the woman is not complying with the orders, but he has only one concern right now, and that is whether he is making support payments. So, he told the man, "You have to make the support payments, or I have no choice, I am going to put you in jail." It is true. "I am sorry to hear what is happening insofar as your seeing your children, but you are going to have to get a lawyer." The man went into hock to get a lawyer. He had no other alternative Why should he have to do this? This is a man who was making maybe $12,000 a year. He could just about make ends meet for himself with the amount of support he was paying. I don't know how long it is going to take him to pay off this legal bill, but it is just not right.

It would be easy for me, a lawyer, to sit back and say, "Well, that is business for lawyers," but I am taking an overview of the problem. We can't handle these problems on a piecemeal basis. We can't say that everytime there is such a problem, the man should have to see a lawyer and the lawyer should have to knock himself out to try and get enforcement. Even then, the end results are dubious. There must be some organized procedure to reduce the emotional tension, to provide an orderly procedure where the rights can be enforced as to visitation. We have no such procedure right now.

SENATOR LIPMAN: Can you please summarize now?

MR. NEEDLE: I will. Okay. Now, to summarize, I would suggest the following areas for the Committee's consideration. Number one, I think there must be a mechanism by which the probation office should take on the responsibility to enforce visitation, and they should monitor the situation. They should initiate any appropriate action so that just as the woman shouldn't have to go to a lawyer to collect monies, the man shouldn't have to go to a lawyer to enforce his basic rights.

Perhaps if there is a dispute or a question about what the problem is with visitation, either a probation office, or some type of administrative agency, should be set up to handle the problem, to informally interview both parties and discuss it. After all, we are not dealing with criminals, we are dealing with people who have their own emotional problems. It would have to be someone who is compassionate and understanding.

I don't think calling someone into the arena of the court and having two lawyers playing one-upmanship on each other is really going to settle the problem. It is not going away. They will be back in court a few months later. That is one area of concern.

Another that is a possible alternative - although I will share with you why I don't think it is really a better alternative - is to consider making support payments contingent upon compliance with the orders for visitiation. The problem there is, why should the children suffer from this terrible conduct of the parents towards each other? So, I give you that as an alternative. I am certainly not in favor of it, but I am trying to grasp possibilities.

I think another area we should be concerned with is, it should be made crystal clear - there should be no ambiguities in the courts of our state - that both parents are equally entitled to custody. It is true, we have general laws that could be interpreted that way, but the fact of the matter is, the implementation of the law and the decisons made by the courts are what we go by. That shows that at least nine of ten cases where there is a question of custody - perhaps even a higher percentage - it is the mother who ends up with custody, invariably. To me, that reflects a built-in bias from another era.

With regard to the question of alimony, I think that certainly our laws provide that alimony is according to the needs of the individual. So, we certainly have a mechanism by which alimony can be awarded to either the wife or the husband, depending upon the circumstances. Although, from my own experience, I know of no case - and I just learned something this morning - where there has been an awarded alimony to a father.

I had one case where a man was suffering from a fatal illness - I think it was Hodgkin's - and it was just a matter of time. At that time, his wife was making twice as much as he was making, and it was just a matter of time when he

would no longer be able to work. I approached him about the possibility of arranging for support. It was a legitimate circumstance, if ever there was one, and he should have been getting help. He was just too proud, just too proud to ask for it. So, that may be part of the problem: That is, the male ego that rejects geting alimony.

In any event, there is this concept of rehabilitative alimony that should be explored by the Legislature. There have been some cases at the trial level where the court has awarded rehabilitative alimony, only to be struck down in the Appellate Court. The concept of rehabilitative alimony is one that provides that - and we are talking about the woman, basically - she be given the opportunity to adjust, to make that transition from being dependent - perhaps because she has few skills - to independent. In that way she can get the training and be on her own and not have to be dependent upon the whims, perhaps, of the former husband. I think that is an excellent concept and I know many women favor it as well. But, unfortunately, the way the present decisions are going, they have rejected that concept. Perhaps the legislation should deal with that.

I mentioned to you the need for special training, perhaps, for our matrimonial judges. Not just any competent lawyer who becomes a judge is particularly qualified to deal with family law matters? I think there is a great need to sensitize the judge as to the problems that are involved in decisions affecting the lives, not dollars, of children and the future of their parents.

I indicated to you that it is important to discourage the use of the adversary system, and I believe I touched upon the concept of an arbitration panel. I spoke about rehabilitative alimony. I spoke about the different standards of enforcement of court orders.

I have just two other brief points. One is the concept of joint custody. I know that it was very well covered by Mr. Danzig earlier. I have been attracted to this concept of joint custody for some time now. I think there is a lot to commend it. Certainly, we can't brag that the system we presently have is working out. So, I look at it this way: Considering all the possible benefits of joint custody, what would we have to lose to at least try it on an experimental basis? I think this really goes back to the concept that parents may be divorced from each other, but they are not divorced from the children. Joint custody would take that very concept into consideration. There would still be a relationship.

To answer one of the questions asked by the panel earlier, joint custody doesn't mean sharing the child, fifty-fifty, in terms of their time. It is a concept of parental control. It is a concept where both parents feel that they are parents and they have something to say about the education of their children, the health of the children, their well-being, and the raising of the children, just the same as they would have something to say if they lived together. There are disputes among people who are married as to how to raise a child. All right, that is part of life. The same disputes can develop among the parents when they are separated. We are talking now about not permitting the children to be used as footballs. It would be a great stride forward to encourage this concept of joint custody.

Finally, I would like to mention the rights of the child. We now have an adversary system. We have the mother hiring a lawyer. We have the father hiring a lawyer. Whether they successfully negotiate an agreement, or whether they fight it out in the court arena, it is those two principals who are involved. What about the child? What does the child have to say about all of this? His life is being

affected by these agreements and these decisions, and he has absolutely nothing to say. Perhaps it is high time that we have some type of guardianship concept, some type of representation of the interest of the child. Because we might be surprised to see that the interests of the child differ from what the parents are trying to accomplish, and maybe what they are trying to accomplish is to use the child for their own alterior motives. That should be avoided.

SENATOR LIPMAN: Mr. Needle, can I ask you a question?

MR. NEEDLE: Yes.

SENATOR LIPMAN: Are you saying that the child should have legal representation, as well as the parents?

MR. NEEDLE: I realize this could be a very expensive proposition. But, I think there are circumstances where legal representation is very well merited. Perhaps as a step in that direction, we could have an on-going agency that is charged with the responsibility of looking into this every time there is a question of custody, to check into the ramifications and to see, regardless of how the two parents agree to handle it, whether, in fact, it is in the best interest of the child.

SENATOR LIPMAN: That would sort of be an arbitration panel.

MR. NEEDLE: That would very nicely fit into the concept of an arbitration panel.

SENATOR LIPMAN: Mr. Needle, who would appoint this panel? The judge? The court?

MR. NEEDLE: I really have no hangup as to the particular mechanism. I am more concerned with the concept. But, I can see where the judge could appoint this panel. We have plenty of precedent. We have condemnation proceedings. There is a panel that is appointed by a judge to make evaluations there. We have malpractice problems, where panels are appointed by a judge - malpractice litigation. I am sure that if I thought further, there must be other areas of law where panels are appointed. We have the concept of standing masters.

SENATOR LIPMAN: I am not questioning the concept; I am just asking how it would come into being.

MR. NEEDLE: Realistically, it would have to be the judge that appointed the panel.

SENATOR LIPMAN: Yes. Have you finished your testimony?

MR. NEEDLE: Yes. I really appreciate your letting me talk like this. I realize that I have submitted written remarks, but I felt that I wanted to speak about what really troubled me and share my concerns with you. I am sure each and every one of you has concerns, and I don't envy the task you have before you. It really is quite a challenge because this, to me, what you are doing, is much more important than the question of budgets and finance. We are talking about the structure of family life. Really, the frightening part to me is when I consider that the statistics are one out of every three families are breaking up. How does this affect the children of these families? We are talking about millions of children now. How is their psychological makeup going to be in the next generation when they are parents? What happens then? There is no more family. We each go our own way. I don't know, but we have to do something about it now.

MS. ALLEN: I don't have any questions, I would just like to say that this is the year of the child and I think that you expressed that concern very deeply.

MR. NEEDLE: Thank you very much. And, I want to thank each and every one of you for letting me ramble on, talking.

SENATOR LIPMAN: Theo?

MS. TAMBORLANE: Following Clara's comment, I would just say to you, as I tried to indicate to Mr. Danzig, I think that if the focus is on the child, we should stop continually pitting women and men against each other and begin to talk about custodial versus non-custodial parents, as long as we have this system, prior to moving to a different system, perhaps.

SENATOR LIPMAN: Greta?

MS. KIERNAN: I have no questions. Thank you very much.

SENATOR LIPMAN: Pheobe?

MS. SEHAM: No questions.

MR. NEEDLE: Thank you very much.

SENATOR LIPMAN: Thank you, Mr. Needle.

It is getting towards lunchtime, but I think we will try and take one more witness before lunch, and then we will see where we are on the witness list before returning this afternoon.

Ms. Pamela Kaufelt. Ms. Kauflet is from the American Civil Liberties Union.

P A M E L A C O P E L A N D - K A U F E L T: I am also a practicing attorney and a member of the New Jersey State Bar Association, Womens' Rights Section.

SENATOR LIPMAN: Thank you for coming.

MS. COPELAND-KAUFELT: I listened with great interest to all of the speakers here this morning. I was interested to see that so many male attorneys practice in this area because some of my colleagues call matrimonial law, "the womens' ghetto of the law." I know that it constitutes at least 50% of my practice. I have a very different perspective from what some of them are saying. My remarks focus on the area of matrimonial property, although I do deal with custody as well. I would first like to start with the queston of spousal support and alimony. Supposedly, the law, in an on-going marriage, states that a man is responsible for his wife's necessary expenses. However, the fact is that no court will interfere in an on-going marriage. This effectively gives the husband a right of veto over any purchase. A graphic illustration of this happened to me recently. I staff an ACLU free clinic in Somerville, about once a month. A woman came in with what she said was a marital problem. She really didn't want to file for divorce; she felt the relationship could be saved if her husband got counseling for his drinking problem. She wanted to know what she could do about the fact that he had broken her nose when he got drunk and beat her up one night. He wouldn't pay for a nose job to fix it. She asked what she could do about this and I had to tell her that the only way she could get a court to say that he had to pay for this was by filing divorce papers. If she did not file divorce papers, there was simply no way that she could force him to do this for her.

MS. SEHAM: What about tort action?

MS. COPELAND-KAUFELT: I suppose she could have brought a tort action. That is a good idea; I hadn't thought of that.

SENATOR LIPMAN: You two are attorneys.

MS. COPELAND-KAUFELT: We are speaking our own language.

SENATOR LIPMAN: You skipped a whole step in explaining that to us.

MS. COPELAND-KAUFELT: A tort is a legal wrong and she could have sued him for the tort that he committed by hitting her, thus forcing him to pay for it.

SENATOR LIPMAN: A short while ago, she couldn't have done that.

MS. COPELAND-KAUFELT: That's right.

SENATOR LIPMAN: That is only a very recent action and that is what I want you to express.

MS. COPELAND-KAUFELT: I see, yes. There is no longer any inter-spousal tort immunity. Husbands and wives can sue each other for illegal wrongs. That is an excellent suggestion.

At any rate, as you know, we have a common law system of marital property in this state. The only exception is in a divorce where we have the concept of equitable distribution, where property is distributed equitably and fairly, regardless of financial contribution. The court takes into consideration non-financial contributions of a non-working spouse. The irony is that under this system, which is contrasted to community law states, where the presumption is that spouses own an undivided half of all marital assets-- The irony is that in our present system women can possibly be better off divorced than married or widowed. If you are divorced, at least you can get the court to order support. If you are married, no court is going to step in and order something like this. You can drive yourself insane trying to collect on the support order, but that is another question. She would be better off divorced than married because there is no presumption in an on-going marriage. You are entitled to management of the family assets. It may work out that way. Your husband may turn over his paycheck every week and you pay all the bills, but under our present system, there is no presumption that this is correct. And, if you are divorced, as I stated, we do have equitable distribution, so the property can be distributed regardless of financial contribution.

A woman would be better off divorced than widowed because until Governor Byrne signs into law the Uniform Probate Code - which I believe is still sitting on his desk - New Jersey is still one of only four states in the Union which allows a person to cut his or her spouse out of a will. The Uniform Probate Code provides for what is called the elective share, which permits a spouse who has been disinherited to take a statutory share of the estate.

I alluded earlier to the fact that alimony and child support orders can be difficult, expensive, time-consuming, and frustrating to collect. I just heard Mr. Needle's testimony about getting the husband thrown into jail. I wish I could get some of these guys thrown into jail. I have tried so hard. My experience has been utterly to the contrary. The probation departments are so swamped with husbands - and usually it is the husband that pays the support order - who are in arrears that they simply can't deal with all the cases that come up. They come up to the hearing. They are dragged in, kicking and screaming, and they always manage to fork up just enough to stay out of jail. But, the worst thing of all is the fact that once these large arrears are built up, you have no assurance, whatsoever, of collecting even a penny because there is retroactive modification of any support order.

I would urge that New Jersey look into a system of vested support payments, which means that it is due the day it is due - just like any other legal debt. This puts the burden on the spouse with the support obligation to modify the support order if circumstances change, i.e., if you lose your job, if you have a prolonged illness, whatever. You then have to go into court and say, "I need relief from this order." Under our present system, the spouse who is supposed to be receiving support is forced to wait a sufficient period of time to build up enough arrears to make it worthwhile to go into court. You can virtually forget probation. It

takes them years to get around to this stuff. Women are just forced to hire private attorneys to collect these things. In the meantime, while they are waiting all this time to approve the arrears, often they have to go on welfare, having the former marital home go into foreclosure proceedings and they face all kinds of terrible consequences. I see no reason why that spouse should have to face the possibility that once they get into court, the arrearages are cut to zero. To my knowledge, the states that have such vested provisions in their laws are Connecticut, Illinois, California, Kansas, Nebraska, and Minnesota.

What is even more shocking to me, however, is that I recently saw the results of a study of 226 matrimonial cases disposed of in Bergen County in April of 1978. Alimony was provided in only 20 of these cases. That is less than nine percent. Of those, half were in marriages of over 15 years duration. Now, this probably just recognizes that fact that, according to the Bureau of the Census, in 1975 only four percent of divorced or separated women received any alimony whatsoever. So, perhaps the courts feel that there is no point in ordering something that will never be lived up to. Nevertheless, I find this whole situation disgraceful and would urge stronger enforcement provisions and penalties in the few instances where the alimony is awarded.

As far as there only being two men - one of the other gentlemen referred to this - who have received alimony orders, in view of the earnings gap between men and women - no doubt, you have heard of that - I think that it is only reality that dictates this. In 1974, women,who worked at full-time jobs, earned only 57¢ for every dollar earned by men. This was a finding of the U. S. Department of Labor. They concluded that despite all of the various factors that go into that, there is still an earnings gap that couldn't be accounted for, only by sex discrimination. As a practitioner in the area of employment discrimination, I can tell you that it is rampant. Just try getting relief; it is very difficult.

The people who have testified before me have spoken at length about joint custody and child custody. I concur in their conclusions. Custody was becoming a hot item even before Kramer v. Kramer. We are seeing a lot of fathers who are demanding to be included in the child rearing experience. I am seeing more and more women who feel not a bit of stigma about voluntarily relinquishing custody of their children. Even the judges are starting to take account of this by ordering more joint custodial arrangements.

I think the California system, which requires the judge to state specifically why joint custody is not awarded when it is not awarded is a good one. It is a presumption. Joint custody is a presumption and when it is not awarded, the judge has to state specifically why. I disagree violently with the proposition that the person who doesn't want joint custody should be precluded from having custody. I think that is a terrible idea.

Something else that Mr. Needle brought up was the independent representation of children. I can tell you that having been appointed to represent a child in a martimonial situation, we already have this provision and I think it should be encouraged. I don't know of any specific legislation that could deal with this. I know that I have been appointed to represent children in martimonial cases and it has worked out very well. In fact, when I just did this one case, the parties fought like cats and dogs over absolutely everything, but one thing that we resolved and that was worked out was custody, visitation, and support of the children I was representing. I would like to take full credit for it. I think that the parties realized that they could fight over the Christmas ornaments, but they didn't really

want to wreck their kid's lives. So, I think that had a lot to do with it. But, I think my presence probably helped and I think that sort of thing should be encouraged.

It has been my perception that it is not necessarily the laws on the books that are so discriminatory; it is the enforcement, or lack of enforcement - the unequal administration of the laws - that is so difficult. As has been stated previously, the New Jersey Supreme Court is undergoing a sweeping study and, hopefully, there will be a revision of matrimonial law in the state. I believe that some of the recommendations that have been made are very worthwhile. I am particularly in favor of a system which removes the whole dissolution of marriage from the adversarial concept. I think Mr. Needle had sound suggestions along that line.

I have submitted, along with my written remarks, a proposal from the Wisconsin Commission on the Status of Women, regarding marital partnership property. I believe it breaks very ovarian middle ground between the common law system that we have presently and the community property system, which some states have. It provides for certain instances of individual property - things that you bring into the marriage and things that you get by inheritance - but it presumes that marriage is a partnership, just as happened in New Jersey upon divorce, and only in divorce. This would legislate this concept of marital property, even in an on-going marriage. I urge all of you to consider this proposal very carefully. I think it is excellent. Perhaps you can write to the Wisconsin Commission for a copy. I think it is a very good proposal, and I urge its adoption.

That concludes my remarks. Thank you.

SENATOR LIPMAN: Thank you. It seems like somebody would like to ask you a question. Theo?

MS. TAMBORLANE: Maybe in three sentences you can further define a little further the concept of vested support. Some of us have not heard this before.

MS. COPELAND-KAUFELT: Okay. Perhaps what I could do that would be even better is to duplicate this, or perhaps you could write away and get re-prints of this from the Womens' Rights Law Reporter. It is the June, 1975 issue, Volume Two, Number Four. It is a proposal regarding enforcement of interspousal support obligations. The concept of vesting is simply one where, just like any other legal debt that you incur, the support obligation is due on the day it is due. If you expect to receive $50 per week, then you get $50 per week. And, if you wait ten weeks and your ex-spouse ows $500, then that ex-spouse can't come in crying poor-mouth to the judge by saying: "But, Judge, I lost my job and I can't pay it." That obligation is due and you can get a judgment on the arrears for $500. There is no retroactive modification. The burden is on the spouse who has the support obligation to go into court when circumstances change and the obligation can no longer be met.

MS. TAMBORLANE: Thank you.

SENATOR LIPMAN: Greta?

MS. KIERNAN: Yes. Ms. Kaufelt, I was very taken with your opening statement about the "women's ghetto of the law." Not being an attorney, but being a former member of the Assembly, I found that all the phone calls I got that would reach outside of the area of my expertise were from women who were going through divorce proceedings. I never once had a phone call from a man. Men called me about men's rights in the divorce proceeding, but never about exactly what to do next. Women are very much affected by the proceedings and the law. They have no background and they don't know quite where to begin nor what to do next. So, the phrase itself really intreagued me.

You also mentioned that the Uniform Probate Code hadn't been signed. If there is any way that anyone in this room, yourself included, can write to the Governor and give him the logical and important reasons why he should sign it, I wish you would do so. I think your point was well taken, that you are better off if you have a terminal illness to divorce him.

MS. COPELAND-KAUFELT: You absolutely can be better off. You can have more property rights.

MS. KIERNAN: Absolutely.

MS. COPELAND-KAUFELT: I was shocked because I was doing this in the course of preparing a speech last week to be delivered before the National Association of University Women. I was asked to compare the legal status of women, regarding marital property, in an on-going marriage, in divorce, and in death. It simply never occurred to me before that this was the case, that you can be better off divorced under our present law. This strikes me as a terrible irony. We are trying to preserve the family in these days of change and something has to be done about that.

MS. KIERNAN: It is very important and the Governor has until the end of the month to make his decision. I am under the impression that he is not leaning towards signing it. Therefore, I think we should bring out the importance of this bill, not for women's rights only but for people. It is very vital and any way that anyone can help us with that would be appreciated.

MS. COPELAND-KAUFELT: It absolutely affects men just as well as women.

MS. KIERNAN: Thank you.

MS. SEHAM: I have nothing to add, except thank you for your ovarian report.

SENATOR LIPMAN: I think we would all like to hear from you again. Ms. Kaufelt, we would like to ask you to return to talk to us again at another time and explain some of the ideas you have.

MS. COPELAND-KAUFELT: All right. If you can tell me in advance what you would like me to elaborate on, I would be happy to come. These remarks were prepared in some haste.

SENATOR LIPMAN: I think we will now have a break for lunch, which will only be for about one hour. There are lunch facilities next door. We will return in about one hour.

(lunch break)

AFTERNOON SESSION:

MS. TAMBORLANE: I am going to begin the hearing. Senator Lipman will be with us just as soon as she can. I am Theo Tamborlane the Vice-Chairperson for the Commission. Unfortunately, Clara Allen who was here this morning has a prior commitment this afternoon. She will not be returning. Greta Kiernan will be back. She also has calls to Trenton that she is dealing with right now. So, Phoebe and I would like to welcome you back again to the afternoon meeting.

Is Ms. Sally Cann Purrazzella here? (No response)

Next we have Ms. Sylvia Kordower from the Organization of Women for Legal Awareness. Thank you for waiting.

S Y L V I A K O R D O W E R: My pleasure. We printed up something for the Commission, and I will hand them to you at this time.

It is my pleasure to be here. As I said, I am submitting the written text and I will try to make it short, because we were told that it should be limited to ten minutes. There is so much to talk about that we have given you supplemental material that is probably two hour's worth.

I am proud to be taking part in this innovative action on behalf of New Jersey women and in addition I am proud to be a constituent in a state that I feel is a forerunner in bringing attention to the plight of one group of displaced homemakers - divorced women.

New Jersey's leaders have proven themselves to be attentive to the needs of these women. As far back as 1973, 1974, 1975 and 1976 OWLA wrote many letters, articles, newletters and made phone calls on the varying problems particular to divorce litigants and particular to female divorce litigants.

The organization felt that the problems were for the great part created by the legal and judicial societies. We thereby then suggested a statewide committee be instituted to study the matrimonial courts and we further suggested public hearings be instituted. When Governor Byrne was running for re-election we wrote him letters requesting the formation of such a committee and requested that when he continued his role as state leader he institute the hearings. I am pleased to say that this is the one instance wherein a politician kept his word by fulfilling pre-election promises after being elected.

I think you probably know that last year a committee to study the matrimonial courts was established and chaired by the Honorable Justice Pashman. Justice Pashman assisted by Justices Mountain and Schreiber completed phase one of the study with a 51 page report - "The Interim Report of the Supreme Court Committee on Matrimonial Litigation." It is a worthwhile report reflecting most of the experiences of matrimonial litigants. The report is of such perception that the ranks of the legal and judicial societies have found it necessary to become defensive. Rebuttive articles appear in the Bar Journal publications, newspapers and the like. The trend of these articles has been to say that the emotional state of litigants in divorce is for the most part responsible for their dissatisfaction with the courts and their matrimonial lawyers. This is and has always been the ploy by which professionals brush aside the layperson's criticism of the legal or judicial society or the members of these societies. The second theory is that laypersons don't understand the legalities.

The records of OWLA confirm that these explanations of the source of laypersons criticisms of the legal and judicial societies are generally without

basis - founded on the emotional anger of the legal and judicial professional who don't understand or accept - or don't want to - the perceptiveness of many litigants. It is hard for them to accept laypersons as sohpisticated members of our society who demand performance from the lawyers they pay and from the judges whose salaries they also pay via taxes. OWLA records affirm the legal and judicial society's resentment of intelligent and demanding litigants - and especially of intelligent and demanding female litigants.

These litigants do become emotional but not due to the divorce - but due to the denial of that which they are entitled to - usually the assets of a marital partnership.

It is the numbers that anger the female litigants - the disproportionate size of the fees which the lawyers demand for far too frequently what is inferior services, the disproportionate percentage of the marital estate awarded them, the disproportionate time it takes merely to stipulate what percentage of their assets they should receive, and finally the disproportionate percentage amount they actually receive, if they ever receive anything at all.

Finally, too frequently they find themselves before judges who lack proper training or experience, who have a lack of objectivity or who lack the emotional stability to deal with the issues.

It is apparent that both the legal and judicial societies are concerned about the OWLA study and Justice Pashman's forthright comments. This concern may be one of the motivating factors prompting the expansion of Justice Pashman's committee to include 12 to 15 judges and lawyers. In effect, a legal and judicial army is being placed between Justice Pashman's committee and the public. The reality is if those who are in the position to effectuate court reform, legislation, and changes, were truly interested in the litigants complaints - they would turn to the same litigants for data and suggestion.

I commend our leaders for forming the Supreme Court Committee on matrimonial litigation, for forming the commission on sex discrimination in the statutes and for conducting public hearings on sex discrimination in marriage and family laws. I challenge the results by the lack of - until today - input from matrimonial litigants. It is mandatory that the Supreme Court Committee and Commission conduct more substantial outreach for information from those who have personal experiences with the legal and judicial societies - the litigants.

You will then hear, as OWLA hears each day, stories from women of their suffering and trauma equal to stories of the victims of World War II's holocaust. These stories are told by a society of the hidden oppressed - displaced homemakers. In New Jersey, there were 29,000 divorces filed in 1979 in comparison to 52,000 marriages. The national statistics are 1 million divorces to 2 million marriages. Approximately 95% of the families on welfare are headed by females. These statistics do not include the women, who because their children are emancipated are ineligible for welfare, or the women who work for welfare or the women who work for income of poverty level which make them ineligible for welfare. This does not include the women who live on charity and handouts from members of their families.

It is up to our legislators to provide laws to protect the rights of these women. It is the job of the judiciary to implement these laws. It is unconscionable for any group, as the legal society, to enrich itself upon the misfortunes of those who turn to them for professional representations.

The records affirm that this is the present situation. It is the responsibility of all to see that no member of a society is unfairly taken advantage of.

It is unfair to expect women to provide services in a marital partnership during their productive and prime years - with the probability that if the partnership ends and thereby so does their "job," they will then be delegated to poverty. Their plight can be overted when we reach the plateau of a truly egalitarian society whereby each person, male and female, travels parallel roads throughout their life, developing equally their capacity as money earners and sharing equally the daily tasks of spouses, homemakers and parent.

Until such time we must act to protect the inalienable rights of those who by their own choice,by circumstances or by request of their spouses, have chosen to provide services in the ranks of homemakers.

OWLA's study citing the problems encountered by matrimonial litigants and citing the solutions to these problems is respectfully submitted to this commission to supplement our testimony. In addition, we request the commission acquire and consider Justice Pashman's committee report.

I have also attached to the statement from our organization a shopping list, so to speak,of 18 issues we feel need attention by the Commission, and by everybody in this State. If you want me to, I will read them. They are rather short, and you may want to ask questions about them.

SENATOR LIPMAN: Fine, you may read them to us.

MS. KORDOWER: The first, which we felt was the most important,was the fact that perjury, tax fraud, collusion, non-compliance of court orders are overlooked by the courts without any actual penalization - matrimonial courts. Orders are meaningless.

Two, the court's non award of pendente lite legal fees denies the women equal representation. Non award of legal fees to women's attorney throughout the case denies women equal representation.

Three, pendente lite support orders are either non-existent or inadequate. That pertains to temporary support.

Four, fragmented court systems - lack of a family court in New Jersey. Municipal court handles atrocious assault and battery complaints; Juvenile court handles the problems of children who act out; Domestic Relations handles support of women with children who are recipients of welfare; Superior Court handles all issues of divorce, and has the power to remove battering spouse from home. The municipal court does not have that power.

Five, unethical, incompetent lawyering overlooked by the courts and all divisions of the court system. Ethics complaints whitewashed when lawyer has an established position in the community.

Six, court house step settlements.

Seven, motions used as harrassment - due to nonresolution by the court - recommend mail in motions.

Eight, rules and laws not adhered to and non enforcement by court - 150 day rule for discovery, et cetera.

Nine, judges have too much discretionary power - deciding percentage of support, distribution of assets, et cetera.

Ten, judge's have no tax, accounting, family law training or experience.

Eleven, matrimonial attorneys are such by self-designation.

Twelve, bifurcation needs law prohibiting such.

Thirteen, tax consequences of female litigants awards are not considered - while net income of male is considered.

Fourteen, too frequently support awards and percentage of equitable distribution affirms the court's inability to view the homemaker contribution as being financially equal to the money earning spouse - usually the male.

Fifteen, mandatory financial disclosure should be a statewide requirement one week prior to trial.

Sixteen, court powers are presently not used to enforce thorough discovery.

Seventeen, legal fees should be determined by the judge - in open court on all cases - in all instances.

Eighteen, battering spouse left in the home - during litigation, until divorce and in some cases after the divorce. We have one case where a husband broke the wife's back, literally broke it, and he was in the house for eight months after the divorce. He just said he had no place to go.

These eighteen points are an outline of what we have in our more extensive report and also what you will find in Justice Pashman's report.

SENATOR LIPMAN: Thank you very much. Theo, do you have any questions?

MS. TAMBORLANE: I would like to lead off with a statement. I have been aware of your organization since its inception. I think you are providing very important services to women during very traumatic times, and I congratulate you on the work your organization has been doing, including the kind of service that you are doing, because that is one of the requisites for effecting any change. Without statistics, nobody listens to you.

In terms of the statute that you mentioned before the Governor, would you like to speak briefly about that a little bit more?

MS. KORDOWER: That is a bill prohibiting bifurcation. Bifurcation is the granting of the divorce without deciding what the woman is going to receive, such as support, custody, equitable distribution. Everybody has been aware of this. In fact, Chief Justice Hughes prohibited bifurcation, and Wilentz did also. Last year there were 7,000 cases bifurcated, so prohibiting the judges to do it, is not effective. You have to have a law, and this bill is before Governor Byrne. He just has to sign it.

There is another part to the bill which is important and that is eliminating gifts and inheritances from equitable distribution. I wasn't going to talk about that, because I think that is not an element particular to divorce. The ramifications there affect everybody. I have two daughters and if I were planning an estate and wanted to leave them something, I would have to know that right now in New Jersey if they were married and got divorced, their spouses would get probably half of what I would leave them now. So, that is another part of the bill that is very important. As to equitable distribution, if a woman has an inheritance, I will tell you, the only way that it is used is they deny her the marital assets. We have another woman who was married 38 years who received one-third of the marital estate, but half of the one-third was her inheritance from her mother. And, her husband received the bulk of the estate, about two-thirds of the estate, but in effect it is really five-sixths. You know, the figures are interesting. If that is not a case where you should get 50-50, I don't know where you should. That is a lifetime, 38 years.

MS. KIERNAN: I don't have any questions, thank you.

MS. SEHAM: I don't have any questions, either.

SENATOR LIPMAN: Thank you for your assistance. This morning we heard from Mr. Danzig about the interim period in which children should be left in the home. You obviously do not agree with that if it is a case of battering.

MS. KORDOWER: I know Mr. Danzig very well. He has come to OWLA, and he wanted OWLA to work with him. I know about his own situation and so forth. As far as custody, if you notice, in our statement, we really didn't go into that at all. We don't see it as a problem because last year--- I wasn't going to talk about this, because maybe there are others who were going to --- But, last year there were 29,000 divorces filed. Out of the 29,000 divorces, I think, 450 fathers filed for custody and out of the 450, 400 dropped their custody suits when the wives gave up money. Only 50 out of 29,000 actually followed through to the end.

Frankly, OWLA tells the women, or we try to share with them what we feel we have picked up, and that is, perhaps it is time we let the fathers have custody of the children, because we can develop our own abilities, earning abilities. We are not against fathers having custody and we are not against joint custody. So, we are in concurrence with him on that.

SENATOR LIPMAN: Thank you very much. We will ask you to return if we need you at the end of our deliberations.

MS. KORDOWER: I would be glad to. Thank you.

SENATOR LIPMAN: Ms. Betty Hutchinson, Vice-President, Organization of Women for Legal Awareness.

B E T T Y H U T C H I N S O N: Good afternoon. I thank you for having this Committee meet, and having women come here to talk about what their problems are. I am not going to be lengthy, because my associates have brought forth all the points that we have spent a long time getting together. However, many women who have talked to me were not able to come to this meeting, and they asked me to bring forth some of their problems and some of the things that they have been confronted with.

Now, we have heard a lot of talk today about discrimination, and, is it discrimination for one judge to allow something in one court and if it is a woman in another court, the other judge deny it? Is it discrimination? We don't know if that is it, but judges have certain discretionary powers that we see many times as discrimination. There was a case of a woman who went to court to amend her complaint after three months and she had filed on another course of action, and she wanted to amend it to adultery. Her husband happened to be a lawyer, and the judge denied her the opportunity to amend that case.

There was another case, after the parties had been apart for four years, the husband went back into court to amend his complaint to adultery. This businessman, who advertises very extensively on television, was allowed to amend his complaint. So, there we have two cases where in one court a judge denied it to a woman, and in another court, the judge allowed it for a man.

There was another case where a woman had written a diary during a period of time when she was undergoing depression and shock treatments. Her diaries had many things in them. The diary was asked to be entered into evidence

during a matrimonial course of action, and it was allowed. In another case, there was a very prominent minister who had diaries, and there were a lot of things in those diaries that would show him to be a mentally disturbed person, and also in this case there was a $600,000 estate of marital assets, jointly. This diary was not allowed to be entered into evidence. He was a minister who was very prominent, and the woman, out of this twenty-four year marriage was given $20,000 of the assets. The husband got $600,000 of the assets. Now, is this discrimination, or is this discretionary power causing some appearance of discrimination?

There was another woman whose husband has a business on Dunn and Bradstreet worth $19 million. This woman was given $300,000 in equitable distribution, and it was over a twenty-year marriage. In fact, the $300,000 in equitable distribution was to be paid up over a twenty-year period. This is not a settlement. This is a judgement, and the twenty-year period, the judge states, at the end of this period this woman should have a good job and be able to support herself. She will be 72 years old at the end of this twenty-year period.

We have the case of a woman who was married for twenty years, and the husband was the sole owner of a corporation, over a million dollar corporation. The divorce action began in 1974. The financial issues are still going on. This family is also a family of a businessman, a very affluent businessman, ended up on welfare. Now, how did that happen? Right in the same county where he had this big business, and yet these three children and the wife ended up on welfare. People who talk to me wonder how this happens. The man had over $100,000 in expendable income coming in. The woman right now is going through the part of her case where she has not gotten the final decision on her share of the assets, six years later. She is not on welfare now, but that is through no help of the court or the system. She has tried to represent herself, because this man who owns the corporation can pay for all his legal fees out of the corporation. How does the system allow this to happen? Can we call it discrimination? It is like whoever is in control of the money has the upper hand, and until the women get the control of the money--- That is why I think we have to look at community property, and I don't know if anybody has brought it up, but community property is a partnership, and it is an equal partnership and why then, if we are going to have equal custody, can't we get to the money part and have equal partnership where the assets are gained during that marriage? Certainly the woman, if she has control of some of the assets, will not be in the position where she ends up on welfare, and that is one of the things we are going to have to correct.

I am sure today when I heard these people, the fathers are concerned about their children, and certainly we see thousands of cases at OWLA, and I wonder why they aren't that concerned about the support to keep these children in braces and things that are needed, paying the dental bills? We heard talk about having some sort of penalization. We see penalization of a Puerto Rican man who comes in and has to pay his support. We see him being taken to jail, but we don't see a lawyer being taken to jail who is $8,000 in arrears. We don't see the doctor being put in jail who is $12,000 or $20,000 in arrears and has let the house go into foreclosure. There has to be specified carried out penalization when it comes to support. That's it.

SENATOR LIPMAN: Are you suggesting that some sort of guidelines be established for judges to use in making these judgements?

MS. HUTCHINSON: Absolutely.

SENATOR LIPMAN: Or less discretionary power?

MS. HUTCHINSON: Yes. I know they will be relieved not to have that. I think a lot of the judges will be relieved.

SENATOR LIPMAN: Right.

MS. KIERNAN: I was just interested in what you said about community property. Would that not include the gifts that we were speaking of previously that Ms. Sadow mentioned?

MS. HUTCHINSON: Yes.

MS. KIERNAN: So, in other words, the gifts would become part of the 50-50 settlement.

MS. HUTCHINSON: Well, unless we have the law A-762 passed which would eliminate gifts from both sides then, so as parents you would be able to know that your children were going to get the inheritance. So, we could eliminate that.

MS. KIERNAN: Without that, that would be part of the community property. I see some kind of a discrepancy in the positions that you are both taking from the same organization.

MS. HUTCHINSON: Community property? Well, no, because if we had the A-762 and we have community property, it doesn't matter. The inheritance and gift would not be part of the pot, if A-762 were a law.

MS. KIERNAN: And if it is not?

MS. HUTCHINSON: If it is not, I think it should be. It is on the Governor's desk and it is sitting there for some reason. I don't know why.

MS. KIERNAN: From time to time he has been known to do that with legislation, at the end of the session, as someone who has a bill there as well in the same pot.

MS. HUTCHINSON: We didn't talk about another thing which is very important and that is medical coverage. Most women are not covered after the divorce. If they were joint owners of that policy during the marriage, then they would not have to worry about their husband dying or if they split up, she would be able to continue that same policy.

I know there was a bill A-1101, and I don't know what happened to it, which would allow a spouse to pick up the coverage, and that would mean any insurance coverage. If the company has a group policy, she would be allowed to pick the coverage up. So, that is another form of discrimination. You are knocked off as a person who is covered by medical insurance, usually at a time of your life when you are going to maybe need some medical care, and you are going to spend a great deal of money for this coverage.

MS. KIERNAN: Don't the courts sometimes use that as part of the settlement?

MS. HUTCHINSON: They don't say that he has to pay for it. Very seldom do the courts do that. The judges don't do it. If it is part of the settlement, they will do it.

MS. KIERNAN: Thank you.

SENATOR LIPMAN: Thank you. Our next witness will be Elizabeth Rott, a member of the Organization of Women for Legal Awareness.

E L I Z A B E T H R O T T: Good afternoon. I was asked to appear before the Commission on behalf of OWLA to relate my personal experiences before the Chancery Division of the Superior Court of New Jersey in a divorce action which I instituted in 1977. The Organization of Women for Legal Awareness apparently feels that my experience was not unique, but is a recurring problem before the courts.

I am a resident alien residing in New Jersey and a citizen of Austria. My former husband was also a resident alien and citizen of Austria. Prior to the divorce, we both had been living here for fifteen years as a result of my husband's employment in the United States. While the matter was pending before the Superior Court, my husband was discharged as Senior Vice President with European American Bank. Before my filing for divorce and during the divorce action my husband made repeated threats to leave the United States and permanently return to his native Austria to escape the jurisdiction of the New Jersey courts. He threatened to remove all our liquid assets as well, which could be easily accomplished, since our assets consisted of intangible personal property in the form of cash, stocks and a lump sum pension distribution in the total sum of $350,000. Furthermore, there were considerable assets in Austria which were already outside the jurisdiction of the New Jersey court.

In view of these facts, my attorney specifically requested that my husband be ordered to post a bond to insure compliance with the court order enjoining and restraining him from leaving the United States. Despite my attorney's exhaustive attempts in this regard, the judge refused to require a bond.

My husband subsequently fled the United States with all the intangible property previously described by me. As a result, it was impossible for the Superior Court to properly comply with the equitable distribution statutes. I was left with the marital residence in New Jersey, a condominium apartment unit in Florida, both with substantial outstanding mortgages, and three unimproved lots in Florida. I was forced to sell the condominium to support my dependent child and myself and I had to transfer two lots in Florida to my attorney in partial satisfaction for his fee. In effect, I was left with a marital residence and one lot in Florida which represented less than one-third of our total marital assets.

The limited assets remaining within the court's jurisdiction were further seriously dissipated by the time I was able to obtain a job to support myself and my daughter, which was not an easy task since I had not been working during my marriage of twenty years.

The posting of a bond would have given me a chance to a fair and equitable distribution and a better chance to start my new life with dignity and without fear in at least a similar style to the one I had been accustomed .

I hope that my story demonstrates the urgent need to modify the statutes and court rules for requirments of bonds, in cases where there is a strong likelihood that a spouse could flee the jurisdiction of the court - and even more compelling so,if the suspected spouse is the breadwinner of the family.

Thank you for permitting me to express my views.

SENATOR LIPMAN: Thank you very much. Ms. Loretta Snook.

L O R E T T A S N O O K: My name is Loretta Snook. I come before this Commission wearing two hats, if that is possible. First, I would like to address women's problems when dealing with or in Chancery-Matrimonial Court. I will address the issue of spousal support and alimony, child support, child custody and the relationship of parents and out-of-wedlock children. I feel I can address these issues because of my experience of having two divorces and having been subjected to many decisions of the court system.

Let me explain that I received my first divorce under the old divorce statutes where one of the parties must show fault. My second divorce was a no-fault and much easier to handle emotionally. However, let's examine the difference in what happened to spousal support and alimony, child support, and child custody.

First, spousal support and alimony - I received no support of any kind from my second husband. I received from my first husband $20 a week for ninety days. I firmly believe that women that have had the primary responsibility of homemaker should receive some type of rehabilitative compensation, or in other words, money, so that she may resume training, or schooling, or something.

Consideration should be given to the ages of the children and if transportation is available and the emotional state of the woman. Because some women need it and some somen don't.

Child support - I received no child support for my child by my second husband. I received $20 a week from my first husband, which he paid until I became pregnant by my second husband. He stopped paying, and no court, probation department, or welfare agency has tried to extract the money from him. It has been almost ten years, and at $20 a week, he owes me, $20,000 or $30,000. I don't know. I gave up counting.

Child custody - I have custody of my two sons. However, I have had many problems with the courts regarding my oldest son. I would like to explain that I was granted full custody with visiting rights granted to my first husband. Problems began when he started to refuse to return the child at the specified time granted by the court. What can a person do if your child is not returned? Let me tell you. Nothing - not very much. The police won't help you, nor will any law enforcement agency. All you have is a piece of paper that states that you have custody of your child, subject to visiting rights of the father. All I can say is, big deal. That piece of paper is worthless, and I know this for a fact, because my ex-husband took my son for three months, and I didn't get him back for three months and no court in the State of New Jersey would help. It was a very trying ordeal, but I got my kid back because of me, not because of any judge or any law enforcement agency in the State.

I guess you are wondering how this relates to discrimination? Well, you try to go in front of a male judge to explain the problem of custody, or that support is not regular. Your "ex" brings up issues not related to the problem before the court at that time. He accuses you of abuse or child neglect or whatever. That starts a process of investigation by DYFS or the Probation Department or the Prosecutor's Office, or whoever will listen. The "ex" goes before the court and gives the performance of his life, and the male judge starts giving the female in this scenario the shaft. The judge has helped, though. I encountered probation investigators that wrote a report that was

one lie after another. I was told to appear at the office. I went. I was supposed to go for some kind of testing. I went. I couldn't afford the testing, and the judge ordered my "ex" to pay for it. He didn't pay for it. I went on the date specified, and because I couldn't pay, the woman investigator said I was uncooperative. The judge believed the official crap and with the acting of the poor concerned father,everything my "ex" wanted he got. He even got to talk to the judge while when I tried to state that the report was a lie, I was told to shut up or be held in contempt. I never had a chance, and my lawyers told me so. It appeared that someone's hand was greased with green.

At any time, all I wanted was an unfamiliar word that the court has never heard of, simply,justice. The dictionary defines justice as moral rightness, equity, fairness, good reason, fair handling or treatment.

Even when my "ex" took my son, which I call kidnapping, and refused to return him for three months, I never felt I received justice. The courts were powerless to: One, prevent a child from being removed from the custodial parent; two, have the child returned to the court's jurisdiction.

The biggest problem lies in the fact that some stranger now has the power to decide important issues in your life. You lose total control of your life and now must start to please this unknown judge. He has the power to interpret any act that you do either favorably or unfavorably. You are now subject to a judge's whim - yes, whim. If he gets up in a foul mood, someone that day will suffer and justice is not considered. Hopefully with the passage of the Uniform Child Custody Act, maybe justice will prevail, but somehow in the pit of my stomach I know someone in one court in this county or another county is getting the shaft.

Out-of-wedlock relationships - I can relate the experience of a friend. She went to court to ask for support and custody of the child. What she got was temporary custody and no support. She has since gone back to court at least twice for the same request and has been refused the request. Is this justice? A man states that he is unemployed, yet he collects no unemployment checks, but has money to pay rent, buy food, gas, and clothing. Doesn't that seem strange? He receives no public assistance, SSI or disability benefits, yet all he has to do is tell a judge that he has no money or job and he doesn't have to pay for support. I have seen other cases where the unwed father is paying through the nose. Does justice rely on who can lie the best or who is the better actor? I hope not, but sit in the courts and you will watch the most outrageous decisions being handed down from the bench. What most people want is fairness, something that is equal to both parties. The problems lie with the written law, who interprets the law - mainly judges, outside agencies- probation, DYFS, welfare, et cetera, lawyers, either party's lawyer, they should be told to go sit some place.

The one thing that is difficult to prove to anyone is that in the court system you were discriminated against because of your sex. Judges scream that they are following the letter of the law, and that they favor no party in a dispute, but go listen in a court. What you hear is a different story. Go check the appeals that are filed because of stupid decisions by the courts. The written laws are one thing, and the way the court system carries them out is another. The two sometimes never get together.

If you listen to people that have gone through the system, men will tell you the courts favor the women. Women will tell you the system favors

the men. I say it is a toss up. It depends who hears the case, his mood, and any other factor that is unknown. Most of the time the system stinks. Why? Money. If you have enough of it and use it productively, you can accomplish exactly what you want by using the written laws. You can also do some shady dealing and come out on top.

Now I will put on the hat for the man's side. Some men feel the shaft when they come into the court system for a divorce. Case in point, a man divorced in Florida returns to New Jersey after having lived in Florida for years and recieved his divorce in that state. He is complying with the terms of the Florida divorce to the letter. Ex-wife comes up here, starts a court case here. The shaft starts. She gets the Florida divorce amended to the point of unequal justice or in other words by taking the man to court every three months she gets another decision that almost grants her a New Jersey divorce. The guy is a working stiff and doesn't have a lot of money, but the "ex" decides she wants as much as she can get and goes after it. She uses the system and uses it well.

The man wants to know what can be done about, one, letters that are sent to the judge hearing the case without the opposing lawyers knowing the contents; why are accusations allowed in court without benefit of evidence being allowed to the contrary, i. e., he is not sending support checks, yet he has all cancelled checks, but he is not allowed to enter them into the record, only her word is taken; why should a man be publicly humiliated with arrest when he can prove all support has been sent - i. e., arrested, handcuffed, driven over nine miles out of the way and put in the workhouse. The car was driven past ex-wife's house when it didn't have to be done; Judges that threatened to rule unfavorably if you didn't settle out of court; why can't a reasonable 50-50 settlement be reached; why are the bookkeeping procedures always behind in the probation department; it becomes very difficult to prove your payments are up to date if that is the only method the judge will accept. Why can't a man go to the probation department and ask questions and get answers? If you go there, they refuse to talk to you and they won't even deal with you, and yet your life lies in these strangers' hands; why is the probation department given so much power? One word from them and a guy gets carted off to jail on their whim.

I am not sure if you understand what I am getting at, but all I can say is that most people that are involved in family law only want the elusive word, justice. How can they get justice when the person deciding is not qualified? My biggest gripe is that one person called a judge decides. What qualifies him for that position, the biggest campaign contribution, who he is friends with, who he went to law school with? For me, none of the above shows me that the man is qualified. The system that allows men to be chosen judges must be examined and changed.

I recommend that: One, the people be allowed to speak in the courtroom when it pertains to their case, as to the facts of the case; two, limit the role of lawyers; make sure investigations of agencies are done properly. I can't see how you can have an investigation when no one goes out of the office and your friends and relatives and people you work with and deal with are not questioned. I can't function unless I go out into the community and know what is going on, and the investigators should do the same thing. You have to get

off your duff and get out where the problems lie. Also, when an appeal is won, it should be reversed to another judge. Why give the case to the same judge that screwed it up in the first place? Write laws that are understandable to the lay person so they can use the pro se method. And, above all, find some uniform justice for everyone. Thank you.

SENATOR LIPMAN: Thank you very much.

MS. SEHAM: On the agenda it says, "Women Helping Women." Is that an organization?

MS. SNOOK: Yes, that is an organization within the county. It is located in Edison and it does work with battered women and other women. I have no affilication with it, per se, but I do know them, and I support their battered women shelter and the work that they do. I primarily work within the New Brunswick community with minority clients and I am on the Board of Legal Services in Middlesex County.

MS. SEHAM: Thank you very much.

MS. TAMBORLANE: I just have a statement to make in response to your very fine lengthy testimony which I know, putting testimony of this kind together, takes something of one's energies and emotions to do. The one statement that you made in there that I think we can respond to right away is that what this Commission is about is changing the letter of the law,which you mentioned, which is where the judges go first when they are inclined to justify their decisions. It is the laws of the State of New Jersey that this Commission has been empowered to look at and to recommend changes within, and you can be assured that your testimony today will be given not just our attention in a cursory way, but will become part of the work that we do to try and make that letter of the law less discriminatory.

MS. KIERNAN: I just wanted to comment. I think this is a very excellent presentation. You are a very articulate person and you write very well. I just wanted to say that I agree with Theo who said there certainly was a lot of emotionalism in this presentation and maybe that is why it is so strong and why it affects us so deeply.

However, I do think that we ought to go on record in our public hearing as saying the members of the Commission, although we want to hear what you have to say,do not necessarily believe that judges' palms are being greased with green, or do we think they are totally incompetent. There are good and bad people, males and females,on the bench in the State of New Jersey, and I think for the most part they are good quality people and they have a very difficult job to do. I am sure that in your strong presentation here, you may not have meant to be quite as offensive to a certain group of people because we are against discrimination of all kinds, including discrimination by lay people against people in the legal profession.

MS. SNOOK: I also didn't mean judges necessarily get their hands greased with green. I have seen lawyers sell out to clients and per se, I know from experience because of my friend, his ex-mother-in-law must be greasing every lawyer he has had, because they are for him, and they will help him one minute, and the next time he goes to see them, they are totally against him, and money talks, and he doesn't have it. You can tell that in every decision that has been made.

So, it is not necessarily the judges, but lawyers are in cahoots in giving money and not really working for the clients by missing appointments

and filing dates and other things, and believe me, it does happen. No matter what you say, it does happen. The only thing is, you can't prove it.

MS. KIERNAN: Well, I think that if you can't prove it, you shouldn't say it.

SENATOR LIPMAN: I would like to thank you for your testimony. I would like to find out, all in all, you think the laws are not so unjust, it is the implementation of the laws.

MS. SNOOK: The administration, the way the judge handles the case. You can get couples coming in there with the same facts with everything right to the letter and you get two different decisions, one in left field and one in right field. There is no middle ground.

SENATOR LIPMAN: We are discussing one more time the discretionary powers of the judges.

MS. SNOOK: There is too much, and it should be limited in some ways. If you can do it, good luck.

SENATOR LIPMAN: Thank you very much. May I just say, we have one gentleman who didn't get on, Mr. Schneyder.

E U G E N E S C H N E Y D E R: My name is Eugene Schneyder, and I am from Fathers United for Equal Rights. I am homeless right now. I live out of my car. If you are in need of my services, I will drive my office right up to your door.

I have been made an indigent through the courts, and I wish to impress upon you the fact that I am a sixth grade graduate. I have had very little formal education, and I am a product of the depression years, and going to court as a pro se didn't help me at all. I have gone through fifteen motions to try to claim back the assets that the court had taken away from me. I must give you a little bit of the history of the divorce itself, although I don't want to rehash my divorce case and make decisions on it. It just turns out that when I returned home from an educational group of people in the Middlesex County College, I found my house emptied of every single thing that I worked for over sixty years, including furniture and creature comforts of all kinds. It was done by my former wife and her boyfriend and she brought my children into it as well.

Unhappy with the situation as it stood, I left the country and went down to Mexico and later came up to San Diego and the California coast, and at which time I heard news that Gene Schneyder had chain-sawed his house in half and there was a warrant for my arrest. I couldn't find any peace without returning and answering those charges because they were false. During the days when this could have taken place, I was on the west coast, and I had a credit card for telephone calls, which were many, to establish the fact that I was not that person. I surrendered to the police and from there on it was a bunch of hell for me. I was charged with malicious damage. It went to grand jury, and the grand jury refused to indict me, because there was no reason for it, and there were no witnesses.

Shortly after that my divorce case did come up and there was a no bill before my case did come up that I could take into court. However, there was no need for the no bill because there were no questions ever asked for, against, why, where or when. There was no need for it, as far as I was concerned. The judgement reflected the fact that indeed Mr. Schneyder did

destroy his house, and because of it, all of his assets were taken away. Well, if you don't go along with the court's decision, you are ready for the Appellate Court, which I had absolutely no knowledge of, and I had no Fathers United to help me, or no where to turn, so I had to leave.

I lost my rights, and I filed 15 or more motions to try to get back my assets. The court had turned a deaf ear to me. As this young lady was saying that judges are on the take and everything, whether they are or not, we know the judges are appointed, and they are not elected to their office. I recommend to this Commission that there should be election of judges rather than appointments.

To help a person such as myself, there must be some legal course for me to take. There is absolutely none. When I returned, I returned with $66 at the beginning of my indigency. I went to 27 different organizations for legal assistance. I went to Mrs. Nelson and I was given a flat refusal from her. I went to Perth Amboy and talked with a Mrs. Chester, and I was given a flat refusal from her When I was in jail, there was a man there that she had aided in a divorce case, and they did take it. She said they did not. Since I had a mobile home in Union County and I tried to seek aid from them, and I got the same thing there. You have to realize that the situation I am talking about is where women were in the driver's seat. I want to make no discouraging remarks.

SENATOR LIPMAN: You are referring to the lawyers, now.

MR. SCHNEYDER: Yes. And some of the other organizations I went to, such as Rutgers in Newark; I talked to the Dean and asked for advice so I would be able to defend myself and be able to get back the assets that I had lost and it was no-go. I talked to the Veterans' of Foreign War, the American Legion, and nobody was going to represent me. That is a crime right there in itself. I am an indigent. I cannot fend for myself. The courts have taken away all my assets, and if that wasn't bad enough, they found $6000 worth of assets that did not exist, and when I brought it in under a motion to prove that they don't, they did not even want to hear me. So, armed with this, my wife has a chain to put me down the drain any time she wants to, and she has done the same thing several times, and I have been in jail. I suffered a trauma in jail. A man of sixty years old cannot take that, while a man of maybe eighteen could. I was in there for three days, and I felt like I was doomed. I was ready to cry out but my masculinity forbid it, and I fought until I could fight no more. It brought back to me the days I fought in Germany and I remembered seeing the Jews and Poles and dissidents thrown in the baker's ovens, and I put the same kind of justice behind me to think that this is no different; a country that I fought for is not giving me my rights.

I would say the court of New Jersey and Middlesex County in particular is the last place a person should look for justice. I would go out in the street and face muggers before I would face the court. I fear the court any day. Still it exists, and I can go to jail. Mrs. Chester did represent me in getting me out of jail for which my former wife's mother says, "Look, if we don't get this man stopped with his motions, we are going to put him away for good." Mrs. Chester said, "Yes, they can do it." Well, that is how I interpret the law.

Going down further, I don't believe in alimony, and I don't believe in talking out of both sides of my mouth. When you got married, you entered

into a contract, and if the woman breaks that contract, that should be the end of it, pay the two dollars that you paid to get into the marriage to get out of it. That is the same way. There are certain circumstances that prohibit the fact that a person is not permitted alimony, and I suppose they are few and far between, and since I don't believe in talking out of the same side of my mouth, I went for alimony. I went before Judge Furman, who I think is a magnificent man, a judge who cannot be bought and I swore that I would stand by his justice, but again, the justice that I see is that the man makes things pliable for himself. He builds his home and his livelihood and this home is his retirement plan for which I did retire, and they managed to take it away from me. Somebody has to make some kind of restitution. Somebody has to give. They can't keep on taking. I am under the assumption that I want to live in the same manner which I have become accustomed to; why should I not get the same. If that is not enough, I became totally disabled through a heart condition and my doctor says so, and her doctor says--- I must assure you that he doesn't say I don't have a heart conditon; he just clouds the issue. So, I have lost out on being able to live in the manner that I have been living in in the past, and Judge Furman, as just as he is, left the door open for me. I can come in and re-argue this in ninety days. I think I have a good right, but will I be granted it on the same conditions that women get alimony? I fear not.

SENATOR LIPMAN: Which county is this?

MR. SCHNEYDER: This is Middlesex County. I went before another judge with the same motion, and this judge didn't even hear a word I said. He just dismissed it. So, if people don't hear what is behind it, then there is not much use for the court.

Now, being arrested is not a pleasant thing. It is dehumanizing to be handcuffed in front of your children, marched in front of your neighbors and live in a condition that is not befitting to you, and you have doctors or ministers coming into the jail such as in Middlesex County, and they have the two commodes in the middle of the floor, one for urinating and one for deficating - in front of everybody. Isn't that even more humiliating and dehumanizing.

Well, I heard Mr. Needle dwell on the issue of 3366. It has been a dead issue since Assemblyman Burns is no longer in office. I think it should be revived. I think it is a very good bill, and I say this because God has given the children to two parents, not one or the other - yet the Judge makes the supreme decision among these people who can have the child and who cannot. If we do pass 3366, it would be the supreme right of every parent to walk in that court knowing that they both have equal rights to that child. The only difference is that there are drugs or any other reason to complain about it; it certainly is right.

We met, Fathers United and myself, with a couple of young ladies of the OWLA and we find that our needs are not that far apart. We are fighting for the same thing. I bring you my case, I am talking about individual cases and how people are dealing with certain areas and certain conditions.

Now, one of the things that I would like to mention is that the women's group - and I am not sure which one it was - had received a $5 million grant. Father's United and organizations for men, they don't have this same type of grant.

SENATOR LIPMAN: Do you know who that is?

MR. SCHNEYDER: I don't know.

MEMBER OF AUDIENCE: It was for all the state territorial conferences, and the national conference in Houston. It panned out to be 5¢ per woman.

SENATOR LIPMAN: Well, that is not exactly an operational expense. I don't--- What were you going to say?

MR. SCHNEYDER: I think the men's groups should be able to avail themselves to some kind of grant where they should be able to consider it themselves, and be able to find lawyers who would fight for indigents and so on. I see for the Organization of Women for Legal Awareness, under advisory board and officers, the total combined are more than we have members. The ladies here may have a lot of time on their hands, or they may be hard working people, but they sure are in the group. And, here, today on this board I see only women. Where are those other four gentlemen or five? Where are they today?

SENATOR LIPMAN: Well, one had to give up his duties, and we are waiting for another man to be appointed. One is a professor who had classes and schedules to be re-arranged, and the other one, for some reason, did not get here. He said he was coming.

MR. SCHNEYDER: Thank you for the explanation. I stand corrected, but still and all, I am just trying to make the point that we don't get very much representation as men.

SENATOR LIPMAN: There are men on this Commission, and they are equally represented here.

MR. SCHNEYDER: All right. I am sure your views are not prejudiced. So, I give them to you knowing this. I think I have covered most of what I wanted to say. I just believe that alimony, even though I asked for it myself, should be eliminated. It should not exist. It is a violation of the constitutional rights, the 13th amendment. A judge says the marriage is dissolved. I think that is the word, or finished, one way or the other, and I think that is the way it should stand. A man marries a woman and he doesn't make guarantees and he doesn't furnish her with so much money and let her use this money against him in the divorce court---

SENATOR LIPMAN: Thank you very much.

MR. SCHNEYDER: I would like to say that I do not have dislikes or distrusts for the ladies who are fighting for their own cause. Our goals are very much similar. It is just that they don't all seem to turn out that way.

SENATOR LIPMAN: Yes, I think Fathers United for Equal Rights is a lot newer group than OWLA, and so, for that reason, they are established and they know how to go about grants. I expect that the other group will catch on to that pretty soon.

MR. SCHNEYDER: Well, I will tell you just how bad off we are, I am a sixth grader, and I am their vice-president. That is how bad off we are.

SENATOR LIPMAN: You have a lot of experience, Mr. Schneyder. I believe we have one more gentleman here who wishes to speak.

M A R S H A L L R E S N I C K: Yes, I am Marshall Resnick. I am the past president of the Fathers United for Equal Rights in New Jersey, and I am going to be very brief. It is not the quantity of what one has to say, but the quality.

When I listened this morning and this afternoon, I heard both the men's organizations speak and the women, and two important points were brought out, one, everyone seemed to be dissatisfied with the judges and, number two,

with attorneys. Arbitration panels were mentioned. Now, Gene Schneyder, the previous speaker, brought out a very important point at the end, and that is, we are not that far apart. I spoke with both Sylvia and Betty and you are going to see something come about that is going to be dynamite, and that is, women's organizations and men's organizations getting together. You will read about this in the newspaper very shortly, believe me. We are going to strike out as a common cause against the injustices of judges who are incompetent and who should be relieved of their duties and also giving an arbitration panel set up, and take it away from the attorneys and put it in the hand of a social worker, psychologist, and an accountant. That is one of our proposed forms. Three people should be placed on this panel, a social worker, psychologist and an accountant, so you can get the money distributed--- These people can handle things much better than a judge - who was mentioned previously - who has in his own mind that he is going to give custody to either the husband or the wife. Justice must be served, and I will tell you, it is going to be a revelation.

Personally, I think both the men's fellowships and the women's fellowships should unite and by conditioning - as was mentioned by both Betty and Sylvia - we are going to air our views together, through trustees of both organizations and then bring it out to the floor where they will get together---

SENATOR LIPMAN: You will have to inform us about this, too.

MR. RESNICK: Yes, we will get back to you. But, there is a common cause, and we shouldn't be going against each other. We should tackle the main issues and, again, I will repeat, there are too many judges on the bench right now who are not doing their job properly, and I would like you as part of the Commission in doing your job properly to get the ball rolling immediately and start doing something. Whatever investigations have to be made, let's let it be done, or let's get them off the bench, and let's start doing something about an arbitration panel to replace attorneys when it comes to child custody and things of that nature. That is all I have to say.

SENATOR LIPMAN: Thank you very much. I am so happy to hear that you are going to have a united effort. It would be a movement which would help this Commission most, I can tell you that.

I know that there have been complaints made about the judges to the Chief Justice, to the Assignment Judges in each county, and it has been said that the most experienced judges were to be assigned to the matrimonial courts, that is, the ones who have the most experience.

But, so often no such judge is available to sit in a certain county at a certain time. Some of the appointments have not been made, and some places are left vacant and some other judges who have no experience are serving. They are short. The Governor has not appointed the number of judges he should have. And, in the cases where he has, the appointments may not fit the situations. So, that is the point we were trying to arrive at, having the right judges in the right courts.

MR. RESNICK: You will have to work quickly, because isn't it a shame where attorneys have said to me, that judges have made up their minds already. Months are spent with children involved, and they have made up their mind who they are going to give the custody to, without looking at all the information. They have already said, "I have made up my mind. This is the way it is going to be." One person decides this. This is intolerable. It

is terrible to have someone sitting in that kind of position with a robe on, and they are delegating all the authority - forget testimony, forget everything. One supreme person in his own mind, this is the way he sees it without taking all the facts and he is going to do what he pleases. Again, it was brought out that we have an awful lot of good judges. Let's not take away from them, but there are too many who are making the wrong decisions which affect a lot of children, the woman, the man, and because of that decision of that person, which may be a wrong decision, so many people are affected. So, we have to do something and do something right away.

This testimony that is being brought in front of you should be acted upon and we are relying on you to take the necessary steps. Just by having this panel discussion today, it was a step in the right direction. Let's move along as quickly as we can.

SENATOR LIPMAN: Thank you very much. Greta, did you say that you had a question?

MS. KIERNAN: I just wanted to comment that I think what you have said is most interesting, and most everyone who has spoken today was interesting, but perhaps our mandate, which is to deal with statutes and court decisions that are sex discriminatory,may not encompass the kinds of persons that are appointed to the bench. However, if there is some evidence that there is sex discrimination in the pattern of decisions, which I think is part of what you are saying, we might want to take a look at how the courts are handling this kind of area directly from the top.

MS. HUTCHINSON: One thing should be kept in mind, and that is, there is sex discrimination in the appointing of judges. You know, we only have a few female judges.

SENATOR LIPMAN: Yes, that is what we have been talking about. Thank you very much.

MR. SCHNEYDER: I wonder if I may make a further comment?

SENATOR LIPMAN: Yes, sir.

MR. SCHNEYDER: I have one suggestion, and Mr. Needle hit on it, but we differ on some things. I should imagine that we could have the court system revamped to a position where we would have five persons of the scholarly type, whatever, engineers, college-bred, and they would be taken on the same way that jurors would, to hear the case. I would like the judge to be the moderator, and I would like the appointment of two lawyers, either self-appointed or by the court, and no man would ever be given legal representation if it was a matter of money. A scale could be put on the earning power, or the amount of money that the lawyer could ask for it. In other words, it would be a separate entity of legal family law, and the represenation would be a lot greater.

I would also suggest that computers be brought in, and bits of information could be put on the computer, so when a person decides that more money could be had through child care or alimony or whatever, they consult the computer and the computer says, will not compute, and you keep on going down to a lower figure to find out just what that man can take out of his earnings and pay a person.

That is pretty much it. It has to be somehow refined, but too often we don't get the type of representation, because this divorce law business is a shambles, and there is a half a billion dollars invested in it every year and the lawyers dealing with these cases have little or no compassion, and

no feelings for human frailty, and no feelings for human misery that goes with it. It is just a matter of nickels and dimes and too often they discuss the case with the adversary, and you feel like you are alien to your own cause and you are paying this man. I know all this time I had a fool for a client, but it was better than having a lawyer who is a fool and pay him, and I should hope that something could be done in changing the structure of the matrimonial court. I also hope that A-3366 becomes reactivated.

SENATOR LIPMAN: Yes, I understand that Assemblyman Visotcky is going to re-introduce that and we will try and give it a push from this Commission if it is re-introduced. We also endorse legislation that is pending to try to get passed and try to get the Governor to sign it.

Thank you so much all of you for coming.

MS. KORDOWER: I just wanted to make a comment about the bill A-762, gifts, inheritances and community property. In our newsletter that we handed you which has the panel also set up, we do state that we are for the community property and there is no diversion in our outlook. A-762 would eliminate these gifts from equitable distribution, but we still say what is left gets divided equally, 50-50. And, community property should be split in half.

SENATOR LIPMAN: Did New York just recently pass a law that divided what was inherited. Wasn't it New York State?

MS. KORDOWER: No, New York has a bill for equitable distribution and it didn't pass. There was protest. They wanted it with the presumption of equal and equitable distribution and then the bill died. So, this is a problem.

I also wanted to comment that it was interesting to note, through my observation of those who testified, that contrary to propaganda, it was the women today who testified about money and the men testified about the intangible things, equity and so forth. Maybe we have to start viewing differently.

SENATOR LIPMAN: Thank you very much. It has been a very interesting hearing. We have heard some innovative concepts and certainly we have all gotten a pretty good picture of how dissatisfied everyone is with the matrimonial court. I just hope that you will all stay with us, as long as we are in these deliberations, and help us come to some good conclusions. Thank you so much.

(HEARING CONCLUDED)

TESTIMONY OF HOWARD DANZIG BEFORE THE
COMMISSION ON SEX DISCRIMINATION IN THE STATUTES

My name is Howard Danzig and I am an attorney in the State of New Jersey. I am a member of the American Bar Association Family Law Section and the Custody Committee and a member of the New Jersey State Bar Association Family Law Section as well. My practice is mainly in the area of divorce and child custody.

I am here today to testify with respect to the custody statutes specifically N.J.S.A. 9:2-3 and 9:2-4. At present those statutes make no mention of the concept of joint custody and if the former is read carefully there is a presumption apparent of custody in the mother.

R.S. 9:2-3 reads as follows:

> When the parents of minor children live separately, or are about to do so, the Superior Court, in an action brought by either parent, shall have the same power to make judgments or orders concerning their care, custody, education and maintenance as concerning children whose parents are divorced. The minor child when in the actual care and custody of the mother in such cases, shall not be taken by the father of such child forcibly or against the will of the mother from her custody, and the court having jurisdiction in the premises shall have authority to make such orders and judgments as will protect the mother in the maintenance of such control and custody until otherwise ordered by the court having jurisdiction.
>
> If the minor child or minor children have not, at the time of the commencement of the action, reached the age of sixteen years, and if it is represented to the court by affidavit or under oath that evidence will be adduced involving the moral turpitude of either parent, or of such minor child or children,

or that evidence will be adduced which may reflect upon the good reputation or social standing of the child or children, then the court shall admit to the hearing of such case only such persons as are directly interested in the matter then being heard. The records of such proceedings, including all papers filed with the court, shall be withheld from indiscriminate public inspection, but shall be open to inspection by the parents, or their attorneys, and to no other person or persons except by order of the court made for that purpose.

R.S. 9:2-4 provides:

In making an order or judgment relative to the custody of the children pending a controversy between their parents, or in regard to their final possession, the rights of both parents, in the absence of misconduct, shall be held to be equal, and they shall be equally charged with their care, nurture, education and welfare, and the happiness and welfare of the children shall determine the custody or possession. If a child is of sufficient age and capacity to reason so as to form an intelligent preference as to custody, the court shall consider and give due weight to his wishes in making an award of custody or modification thereo.

The court may make the necessary orders and judgments from time to time in relation to such custody or possession, but the father, as such, shall not have preference over the mother as to the award of custody of such minor child if the best interests of the child otherwise may be protected, and in no case shall the court having jurisdiction in this State over the person and custody of any minor permit such child to be removed from this State where the mother or father resides in this State and is the suitable person who should have the custody of such child for its best welfare.

It is recommended that these statutes be amended as follows:

Each parent of a child has a full and equal natural right to joint custody of the child. "Custody" means all the rights of parents with respect to their child under common law as declared and modified by the courts and under statutory law, and includes the rights to control and direct the activities of the child, to guide and discipline the child, to have association with and access to the child, and to have the services and earnings of the child. Each parent is fully and

equally responsible for the support, care, protection, education and welfare of the child.

R.S. 9:2-3 is amended to read as follows:

9:2-3. When the parents of minor child live separately, or are about to do so, the Superior Court, in an action brought by either parent, shall have the same power to make judgments or orders concerning their custody, support, care, protection and welfare as concerning children whose parents are divorced. [Unless the parents agree upon arrangements for physical custody of the child, the child may not be removed from the dwelling place which is the family home at the time one of the parents moves to another dwelling place to live separately, until the issue of custody of the child is determined as provided by law.] If the minor child or minor children have not, at the time of the commencement of the action, reached the age of sixteen years, and if it is represented to the court by affidavit or under oath that evidence will be adduced involving the moral turpitude of either parent, or of such minor child or children, or that evidence will be adduced which may reflect upon the good reputation or social standing of the child or children, then the court shall admit to the hearing of such case only such persons as are directly interested in the matter then being heard. The records of such proceedings, including all papers filed with the court shall be withheld from indiscriminate public inspection, but shall be open to inspection by the parents, or their attorneys, and to no other person or persons except by order of the court made for that purpose.

It is suggested that R.S. 9:2-4 be entirely deleted and that in its stead the following be enacted:

In any proceeding where the custody of a child between its parents or the responsibilities of parents to a child are to be determined, the rights of both parents to joint custody and their responsibility to the child as they exist under law in the absence of controversy over them shall be preserved to the fullest extent practicable, unless one or both parents are proven to be grossly unfit to such an extent and

in such a manner as to cause immediate physical or emotional danger or damage to the child or unless one or both parents abandon the child or voluntarily relinquish joint custody. When a proceeding involves or results in parents living separately, both parents shall share equally temporary and final legal joint custody, physical custody, visitation and support. The determination by the parents of arrangements for physical custody of a child is binding upon the court unless it finds based upon clear and convincing evidence that the arrangements for physical custody are not in the best interests of the child. The arrangements for physical custody are determined by the court when the parents fail to agree on the arrangements or to a significant change in them. Visitation shall alternate in accordance with the arrangements for physical custody. If a child is of sufficient age and capacity to reason so as to form as intelligent preference as to custody, the court shall consider and give due weight to his wishes in making or modifying an award of custody.

Courts routinely incorporate separation agreements in uncontested divorces where the parties have agreed as to which parent shall have custody of minor children. Similarly routine are court determinations in contested cases where only financial issues are litigated, the parties having agreed on custody. In these cases, the court makes no inquiry as to the fitness of the custodial parent or the wisdom of the parents' decision on custody. Thus, consensual joint custody in the above settings should stand on no different footing than should an agreement granting sole custody.

The real issue to be faced by our courts is how to resolve custody disputes between two fit parents, both of whom want custody.

Our present system of awarding custody to one of these two fit parents is not a viable method of dealing with the children of divorce. This is especially so where one parent is willing to share custody but the other insists on sole custody. Judicially imposed joint custody, rather than judicially imposed sole custody, is the logical alternative. The purpose of this article is to discuss why.

Joint custody is not easy and it may fail in some circumstances. But no worse failure than the result of our present method of adjudicating child custody disputes can be imagined. Research has documented the abnormally high rates

of agressive, antisocial and uncontrolled behavior in children of divorce,[1] and their tendency to feel abandoned and rejected.[2] It must be significant that their rate of psychological examination at outpatient clinics is twice that of other children.[3]

Removal of the non-custodial parents' parental rights and obligations frequently creates a new post divorce battleground - over support and visitation. The courts are jammed with the result of this fallout.[4] The final result is that the non-custodial parent feels emasculated and cheated. He may ignore financial obligations and often fades out of the lives of the children. Or the battling continues for years. Or, as is happening with greater frequency, the non-custodial parent kidnaps the children.

The real losers, of course, are the children. They see a father who has little or no authority and a mother who may subtly or overtly disparage the father and undermine what little relationship is left between father and child.[5] Feelings of guilt and abandonment, yet conflicts between love and hate for the father emerge. Needless to say, his eventual dropping out from their lives[6] or, in the event of kidnap, the removal of mother from their lives, becomes the most cruel and final blow.

There is a way to avoid these problems. It is a method to preserve a father's sense of self worth, of parenthood.[7] This in turn will cause him to contribute more willingly to the support of the children and make him less critical of mother's decisions.[8] This attitude of cooperation of his part will negate a good deal of the hostility on the part of the mother. The stage will then be set for more responsible action on the part of both parents in fulfilling their obligations in "the best interest of the child."

Give the children both of their parents after divorce by preserving both fatherhood and motherhood albeit the familial home is broken.

Joint custody, split custody, or shared parenthood, as the method for preserving parent child relationships is variously known is the way these goals can be accomplished.

Shared parenthood does not mean that the children necessarily divide their living time equally between father and mother.[9] Rather, shared parenthood is primarily a psychological and legal concept, not a logistical one. For it is the psychological or emotional devestation that creates the post divorce turmoil which is scarring all parties to divorce and threatening to create in our army of children of divorce, a new lost generation.

To turn that negative psychological or emotional response around and make it work positively is the goal of shared parenthood. The first positive effect is that in joint custody there is no "winner" and no "loser". Both parents are awarded joint custody, assuming both are fit parents and both want custody.

The father no longer feels beaten by his former wife, nor cheated by a system he otherwise sees as unfair. Parental rights as well as financial obligations are both his. The mother no longer can use her "title" as custodian of the children against the father and further deprive him and the children of the love,affection, nurturance and companionship that the law dictates is each child's due from both parents. Both parents are put on notice that they both have mutual obligations and rights and that cooperation between them will be looked upon favorably by the courts - and that lack of cooperation will be punished.

Shared parenthood means that the psychologically damaging phrases such as "I have custody, you don't" and the term "visitation" will be discarded. Both parents have custody in shared parenthood. Each one has physical custody at different times, but they both always have legal custody.

Most importantly, the emotional impact on the children is positive. Since they know that they still belong to both parents, their feelings of abandonment will be diminished. They will be more secure in their knowledge that both parents love them and want them. They will grow up knowing both father and mother as authority figures. Idealization or rejection of one parent will be minimized.

There is opposition to the concept of awarding joint custody over the objection of one parent. The thesis is that if one parent objects to it, joint custody will not work. Presumably, so that theory goes, since you can't force cooperation upon an objecting parent, don't bother to try. Yet where that objecting parents is the mother, the chances are nine-to-one that she will wind up with sole custody.[10] Thus, there is no incentive for her to settle and where she prevails, the Court will be awarding custody to the very parent who eschews cooperation.

The belief that joint custody should not be imposed upon a parent who wants sole custody emanates from the belief that divorced parents can't make decisions together. The conventional wisdom is that since the parents couldn't communicate with each other while married, mutual dealings after divorce should be kept to a minimum. Let them go their separate ways and make new lives for themselves is the theory.

The inescapable fact, however, is that judges who, espouse this theory are ignoring the public policy of this state.[11] The law is that the welfare of the children is paramount. Certainly divorced parents should make new lives for themselves, but not at the expense of the innocent victims of divorce - their children.

The welfare of the children demands both parents after divorce. The law also dictates that there be cooperation after divorce between the parents. But it pays mere lip service to this concept by refusing to set the emotional stage for cooperation that shared parenthood presents. Instead, the court seeks cooperation in the winner take all roulette which, by its very nature, stifles cooperation.

Why it is assumed that joint custodial parents will fail to cooperate, that the required contact will cause more, not less bickering? Why is it assumed that just because two people couldn't handle, while married, and while locked in combat in court, the myriad issues that need resolution in marriage, when relieved of all but one issue, the children, cooperation will be just as elusive? Certainly the litigation posture forced upon the parents in effort to prevail is not a fair test of their ability to cooperate. Yet, routinely we hear judges comment that

the parties have demonstrated through the litigation that they can't cooperate.

Married parents disagree as to their children. They learn to compromise. Divorced parents can too. One will get his way on one issue in exchange for the other prevailing on another. Finally, there is always the court to whom the parents can turn to resolve their disagreements. and the penalty to the loser should be that he must pay both his fees and those of the other parent. Will joint custodians really go to court to ask the judge to decide what summer camp the children should go to, knowing that one of them will have to pay several hundred dollars for that decision?

The other argument is based on the belief that joint custody creates instability for the children. This agrument is grounded on outmoded hypotheses concerning child rearing and is not based upon any empirical evidence that joint custody does not work.

This argument against joint custody is based on the belief that the children need roots.[12] They can't have two homes. This argument is an idealization rooted in happier times when families didn't divorce and remained in the same neighborhood, indeed, the same house, for generations. It fails to recognize that the American family has changed. That divorce is all too often a reality. That over 3 million divorced mothers with children under the age of three hold

full time jobs. That fifty percent of all American women work and sixty-seven percent of all divorced woman work.[13] That in our mobile society the entire country picks up and moves once every seven years. That mental health experts have discovered that there is a substitute for a mother's love.

The new roots for the children of America are their relationships with their parents. They are often the only roots that our children have today. Yet in refusing to provide our children with both parents, the courts are destroying the very concept of roots which they seek to preserve!

This objection, the roots, or logistic objection also fails to come to grips with the fact that shared parenthood is primarily a psychological concept, not a logistical one at all. And that the logistics are incidental and changeable, depending upon the needs of the people involved.

Joint custody does not pretend to foster love and affection between divorced parents. Rather it seeks to minimize custody battles and post-judgment motions by defusing this sensitive area. Most of all, it seeks to improve the well being of children of divorce.

Why should a parent be compelled to accept joint custody? The answer is simple. Cooperation post-divorce is the goal of all of us. If litigants knew that the courts (1) encourage cooperation (2) penalize lack thereof (3) award joint

custody as a presumption (4) will award sole custody as between two fit parents to the one who desires joint custody, and (5) will remove joint custody from one parent who proves uncooperative after divorce, the "winner" and "loser" atmosphere in custody cases will lessen. Litigants will have more respect for the system. Backlogs will shrink. Fathers will more willingly pay support. Judges will not have to make hair-splitting decisions as between two fit parents, and most importantly, we may help the children of divorce who are being ill served by our outmoded methods.

Joint custody may not be for everyone. Both parents must be fit and both desirous of having custody. Those are the sole prerequisites. The mere fact that one parent refuses to agree to joint custody voluntarily should not automatically result in a court refusal to award joint custody. Nor should the predivorce bickering result in a conclusion that postdivorce relationships will remain poor. The courts have an obligation to our children to attempt to ameliorate the postdivorce situation. Joint custody must be given a chance.

FOOTNOTES

1 See, e.g. Waite, Children of Divorce in Minnesota: Between the Millstones, 32 Minn. L. Rev. 766 (1948); Derdeyn, A Consideration of the Legal Issues in Child Custody Contests, 33 Archives Gen. Psych. 165, 168 (1976); Ellsworth and Levy, Legislative Reform of Child Custody Adjudication, 4 Law & Soc'y 167, 180 (1969); Patterson, Dobb & Ray, A Social Engineering Technology for Retraining the Families of Aggressive Boys, in Issues and Trends in Behavioral Therapy (H. Adams & I. Unikel eds. 1973).

2 Plant, The Psychiatrist Views Children of Divorced Parents, 10 Law & Contemp. Prob. 807 (1974).

3 Kalter, Children of Divorce in an Outpatient Psychiatric Population, 47 Am.J. Orthopsychiatry 40 (1977).

4 Miller, David J., Joint Custody, Family Law Quarterly Vol. XIII No. 3, Fall 1979 at p. 366.

5 McDermott, Divorce and Its Psychiatric Sequelae in Children, 23 Archives Gen. Psych. 421 (1970) at p. 424

6 Joint Custody, supra, at 355-6.

7 Id. at 356.

8 Id. at 365.

9 Stack, Who Owns the Child? Divorce and Child Custody Decisions in Middle-Class Families, 23 Soc. Prob. 505, 512 (1976).

10 See e.g., Watts v. Watts, 77 Misc. 2d 178, 179, 350 N.Y.S. 2d 285, 286 (Fam. Ct. 1973); Roth, The Tender Years Presumption in Child Custody Disputes, 15 J.Fam.L. 423 (1977).

11 Sheehan v. Sheehan, 51 N.J. Super 276 (App.Div. 1958).

12 Miller, Joint Custody, supra, at 366.

13 M. Roman & W. Haddad, The Disposable Parent (1978) at p. 76.

EXHIBITS

A

M 38306

FILED

HF&R
499-73

HODES, FELZENBERG & RANDALL
A PROFESSIONAL CORPORATION
17 ACADEMY STREET
NEWARK, N. J. 07102
(201) 622-1771
ATTORNEYS FOR Plaintiff

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
ESSEX COUNTY

Plaintiff

RONALD A. RAUTO

vs.

Defendant

ANN S. RAUTO

Docket No. M 9787-73

CIVIL ACTION

FINAL JUDGMENT OF SEPARATE MAINTENANCE

This matter being opened to the Court by Hodes, Felzenberg & Randall, Esqs., Jeffrey P. Weinstein, Esq. appearing, attorneys for and of counsel with the plaintiff Ronald A. Rauto, and Zucker, Lowenstein, Gurny, Fachar & Zucker, Esqs., Milton Lowenstein, Esq. appearing, attorneys for and of counsel with the defendant Ann S. Rauto, before the Honorable Neil G. Duffy, upon verified complaint for separate maintenance and answer and upon proofs being taken in open court; and the Court having duly considered the pleadings and proofs and having heard and considered

the argument of counsel; and it further appearing that the plaintiff and defendant were lawfully married on or about the 27th day of August, 1960, and the defendant abandoned the plaintiff and separated herself from him and refused and neglected to provide properly for him;

It is, on this 1 day of November, 1974,

ORDERED and ADJUDGED, subject to modification, as follows:

(1) Defendant is to pay the plaintiff the sum of $20.00 per week for the support and maintenance of the plaintiff. However, upon the sale of the marital residence located at 7 Franklin Terrace, Irvington, New Jersey, the defendant is first to be reimbursed in the amount of $10.00 per week for each and every week that she has paid to the plaintiff said $20.00 per week, before the equity in the house is divided.

(2) Plaintiff is to reside rent-free and not be liable for the payment of rent, on the first floor of the marital residence commonly known as 7 Franklin Terrace, Irvington, New Jersey.

(3) Defendant is to process all forms for reimbursement of medical expenses, prescription drug bills and nursing care incurred by the plaintiff through various insurance and government agencies, including but not limited to New Jersey Bell Telephone ME Insurance Plan, New Jersey Blue Cross and Blue Shield (including Rider J), and benefits accruing from Social Security

Administration. The plaintiff is to cooperate with the defendant in the processing of said forms.

(4) Defendant is to be liable for all medical and prescription drug expenses not covered by either the plaintiff's or the defendant's insurance policies, Medicare, Social Security or any other plans; however, said liability is not to exceed the sum of $500.00 per year; each year is to be computed from the 12th day of August, 1974.

(5) No counsel fees or costs is awarded to the plaintiff.

NEIL G. DUFFY JSC/TA

The undersigned consents to the form of the entry of the foregoing Judgment of Separate Maintenance

ZUCKER, LOWENSTEIN, GUMEY, FACHER & ZUCKER
Attorneys for Defendant

BY: _____
MILTON LOWENSTEIN

N.O.I.S.E. Abused Children of America, Inc.
12 W. 72 St., New York, N.Y. 10023

Address Correction Requested

FIRST CLASS

PLEASE FILL IN THIS FORM FOR A CONSULTATION

We take this step very seriously and promise to be truthful in our statements to the Family Evaluation Panel.

We are enclosing a statement dated _____
Date

by _____
Husband's full name

_____
Husband's full address

and a statement dated _____
Date

by _____
Wife's full name

_____
Wife's full address

Husband's phone: _____ _____
Business *Home*

Wife's phone: _____ _____
Business *Home*

Enclosed is a _____money order or _____certified check in the amount of $100.00 payable to N.O.I.S.E. Abused Children of America, Inc.

We have read your brochure and understand that the sum is not refundable but will be credited towards our registration if we are enrolled for the Family Evaluation Plan.

_____
Husband's signature

_____
Wife's signature

Another Way To Approach Divorce

Separation and divorce are by their very nature wrenching and traumatic experiences. Sadly the adversary nature of most divorce proceedings make the pain and dislocation even greater.

There is another way, mediation. Many couples can work out fair settlements of all issues involving their children, their finances and property, and their future security by sitting down with an experienced counsellor who will help them to do the job.

His task is to help you understand each other's needs and concerns, and to organize and analyze the financial and tax consequences and other factual considerations in such a manner that you can best find the solution which fits your situation.

Theodore Sager Meth
744 Broad St., Newark, New Jersey (201) 622-5530

Theodore Sager Meth, a graduate of Princeton University, Union Theological Seminary and the Harvard Law School, has taught and written in the field of family law in addition to having practiced for more than 25 years. A member of the New Jersey Divorce Law Study Commission, he was instrumental in the development of the present New Jersey divorce laws.

E

ASSEMBLY, No. 3366

STATE OF NEW JERSEY

INTRODUCED MAY 21, 1979

By Assemblymen BURNS, MARTIN, VISOTCKY, Assemblywoman KIERNAN and Assemblyman BAER

Referred to Committee on Institutions, Health and Welfare

AN ACT concerning the rights and responsibilities of parents with respect to their children, and amending R. S. 9:2–3 and 9:2–4.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. Each parent of a child has a full and equal natural right to joint custody of the child. "Custody" means all the rights of parents with respect to their child under common law as declared and modified by the courts and under statutory law, and includes the rights to control and direct the activities of the child, to guide and discipline the child, to have association with and access to the child, and to have the services and earnings of the child. Each parent is fully and equally responsible for the support, care, protection, education and welfare of the child.

2. R. S. 9:2–3 is amended to read as follow:

9:2 3. When the parents of minor children live separately, or are about to do so, the Superior Court, in an action brought by either parent, shall have the same power to make judgments or orders concerning their [care,] custody, [education and maintenance] *support, care, protection, education, and welfare* as concerning children whose parents are divorced. [The minor child when in the actual care and custody of the mother in such cases, shall not be taken by the father of such child forcibly or against the will of the mother from her custody, and the court having jurisdiction in the premises shall have the authority to make such orders and judgments as will protect the mother in the maintenance of such control and custody until otherwise ordered by the court having jurisdiction.] *Unless the parents agree upon arrangements for physical custody of the child, the child may not be removed from the dwelling place which is the family home at the time one*

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

of the parents moves to another dwelling place to live separately, until the issue of custody of the child is determined as provided by law. If the minor child or minor childhen have not, at the time of the commencement of the action, reached the age of 16 years, and if it is represented to the court by affidavit or under oath that evidence will be adduced involving the moral turpitude of either parent, or of such minor child or children, or that evidence will be adduced which may reflect upon the good reputation or social standing of the child or children, then the court shall admit to the hearing of such case only such persons as are directly interested in the matter then being heard. The records of such proceedings, including all papers filed with the court, shall be withheld from indiscriminate public inspection, but shall be open to inspection by the parents, or their attorneys, and to no other person or persons except by order of the court made for that purpose.

3. R. S. 9:2-4 is amended to read as follows:

9:2-4. [In making an order or judgment relative to the custody of the children pending a controversy between their parents, or in regard to their final possession, the rights of both parents, in the absence of misconduct, shall be held to be equal, and they shall be equally charged with their care, nurture, education and welfare, and the happiness and welfare of the children shall determine the custody or possession. If a child is of sufficient age and capacity to reason so as to form an intelligent preference as to custody, the court shall consider and give due weight to his wishes in making an award of custody or modification thereof.

The court may make the necessary orders and judgments from time to time in relation to such custody or possession, but the father, as such, shall not have preference over the mother as to the award of custody of such minor child if the best interests of the child otherwise may be protected, and in no case shall the court having jurisdiction in this State over the person and custody of any minor permit such child to be removed from this State where the mother or father resides in this State and is the suitable person who should have the custody of such child for its best welfare.]

In any proceeding where the custody of a child between its parents or the responsibilities of parents to a child are to be determined, the rights of both parents to joint custody and their responsibilities to the child as they exist under law in the absence of controversy over them shall be preserved to the fullest extent practicable, unless one or both parents are proven to be grossly unfit to such an extent and in such a manner as to cause immediate

physical or emotional danger or damage to the child or unless one or both parents abandon the child or voluntarily relinquish joint custody. When a proceeding involves or results in parents living separately, both parents shall share equally temporary and final legal joint custody, physical custody, visitation and support. The determination by the parents of arrangements for physical custody of a child is binding upon the court unless it finds based upon clear and convincing evidence that the arrangements for physical custody are not in the best interests of the child. The arrangements for physical custody are determined by the court when the parents fail to agree on the arrangements or to a significant change in them. Visitation shall alternate in accordance with the arrangements for physical custody. If a child is of sufficient age and capacity to reason so as to form an intelligent preference as to custody, the court shall consider and give due weight to his wishes in making or modifying an award of custody.

4. This act shall take effect immediately.

STATEMENT

The purpose of this bill is to make joint custody and full and equal responsibility for a child by both parents the standard in proceedings where custody or parental responsibilities are to be determined, unless one or both parents are grossly unfit, or abandon or relinquish custody over the child.

Under current statutory law, there is no general provision concerning the rights and responsibilities of parents with respect to their child. There is a provision which makes both parents equally entitled to the services and earnings of a child (R. S. 9:1–1). There are a number of provisions which concern problems in the family relationship, such as separation or divorce of parents, unfitness of parents, or termination of parental rights. In separation or divorce proceedings, the rights of both parents with respect to custody of a child are equal. In situations where parents are living apart but are not legally separated or divorced, and the mother has actual custody of a child, a father may not take custody of the child forcibly or against the will of the mother until custody is decided by the court (R. S. 9:2–3).

In practice, the courts have considerable discretion in custody determinations and the standard that is applicable is "the best interests of the child." The courts have tended to favor the mother of a child in custody determinations. Custody of a child of tender years is ordinarily awarded to the mother if she is a fit and proper person.

Joint custody is permissible under current law and there have been such awards. However, the concept of joint custody is relatively new and there is disagreement among courts and commentators over it.

This bill would provide in statutory law that each parent has a full and equal natural right to joint custody of their child. Both parents would be fully and equally responsible for the support, care, protection, education and welfare of the child. In proceedings where custody or parental responsibilities are to be determined, the equal rights and responsibilities of the parents would have to be preserved to the fullest extent practicable, unless one or both parents are grossly unfit, or abandon or relinquish joint custody over the child. When a proceeding involves or results in parents living separately, they would both share equally temporary and final legal joint custody, physical custody, visitation and support of the child. The parents' determination of arrangements for physical custody would be binding upon the court unless it finds by clear and convincing evidence that the arrangements are not in the best interests of the child. The court would determine the arrangements for physical custody if the parents could not agree on them or to a significant change in them. In situations where the parents are living apart but are not legally separated, a child could not be removed from the family home unless the parents agree on arrangements for physical custody, until the issue of custody of the child is determined as provided by law.

This bill would make joint custody and full and equal responsibility for a child by both parents the standard in custody cases in New Jersey, provided both parents are fit and devoted to their child. The "best interests of the child" standard would still be applicable, but the rights and responsibilities of parents would be more clearly recognized.

FOR RELEASE TUESDAY, JUNE 12, 1979

Family Law Council
P. O. BOX 217
FAIR LAWN, N. J. 07410

SHARED CUSTODY BILL INTRODUCED - A VICTORY FOR CHILDREN

One of the bitterest problems in any divorces--that of who gets the children--may finally be settled. On May 21 a Joint Custody Bill was filed in New Jersey, the third of its kind in the nation. It was introduced by Assemblyman Robert Burns as Assembly Bill 3366.

Over the years the traditional method for awarding custody has been to favor one parent or the other. Up to the beginning of the twentieth century, fathers obtained the children in a divorce, but in more recent years, mothers are awarded custody by the Courts at least 95% of the time. Recent studies have shown that single parent households may be at the root of mental unhappiness, child delinquency, and the use of children as pawns between warring spouses.

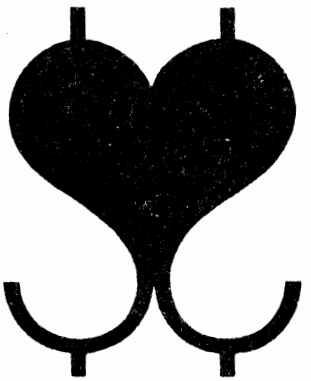
The new Bill is designed to preserve the relationship that both parents had with their children prior to a divorce. (Parents divorce each other--not their children.) Co-custody has been and is a reality in marriage. The fact that two former spouses have decided to part from each other does not mean that the roles of each should be diminished in the eyes of the children. Bill 3366 encourages parents to work out private arrangements so that both will continue to be interested in and responsible for the raising of their children.

The Court will continue to help those who have problems with their arrangements by the careful examination of the children who may suffer by irresponsible acts of the parents.

This Bill is a victory for children who no longer have to go through the traumatic effect of "losing" a parent through a divorce under the present system.

Anthony Gil
201-861-2592

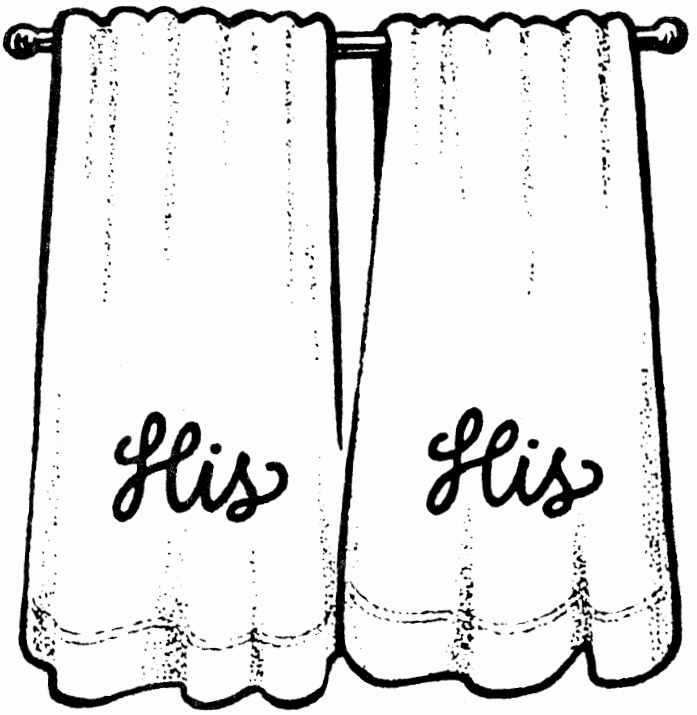
MARITAL PARTNERSHIP PROPERTY: A PROPOSAL FOR REFORM



WHY MARITAL PROPERTY REFORM?

Wisconsin's present separate property system as embodied in state property and tax statutes and case law is inequitable as applied to property acquired during marriage because:

- separate property fails to reflect the basic partnership nature of marriage and the widely held belief that property acquired during marriage is "ours" and not "his" and "hers";
- separate property fails to recognize the numerous, important, but non-monetary contributions of each spouse, particularly those of the traditional homemaker;
- separate property fails to provide any remedy during the ongoing marriage for the failure of the breadwinner to provide for the support of the nonwage earning spouse beyond that of a subsistence level, even when there is a clearly demonstrated ability to pay;
- present case law refuses to recognize a broad right of marital partners, either before or during marriage, to vary the terms of the state imposed marriage contract through enforceable individualized marriage agreements applicable to the financial aspects of the ongoing marriage as well as to dissolution of the marriage at divorce or death.



On the following pages, side-by-side, are a summary of present Wisconsin law as it deals with marriage and property, and the outline of a proposed reform system, called marital partnership property. ▶

For the past three years, an extensive research project on marriage and property laws has been undertaken under the sponsorship of the Governor's Commission on the Status of Women. Much of the basic legal work was done by University of Wisconsin Law School students who served as clinical interns at the Commission, enrolled in Law School seminars on sex-based discrimination, and wrote directed research papers. The basic research sources which were carefully explored were: the Uniform Partnership Act, the laws of the eight community property states (Arizona, California, Idaho, Louisiana, New Mexico, Nevada, Texas and Washington), the laws of the six common law property states (including Michigan, Colorado, Pennsylvania) which adopted community property legislation for a brief period in the 1940's and various comprehensive marital property reform proposals developed in the Canadian provinces.

An ad hoc committee of legislators, lawyers, and representatives of citizen groups was formed in 1975 to evaluate the researched alternatives and to make tentative policy decisions as to what should be included in a reform proposal. A bipartisan bill incorporating basic marital property reform in the form of a new property system (based on community property principles and called marital partnership property) is expected to be considered by the Wisconsin legislature during its 1979-80 session. This bill should serve as a model for marital partnership property reform legislation in the other 41 common law property states.

"With this ring I thee wed, with my body I thee worship, and with all my worldly goods I thee endow."

Book of Common Prayer
Solemnization of Matrimony

"Marriage never will cease to be a wholly unequal partnership until the law recognizes the equal ownership in the joint earnings and possessions."

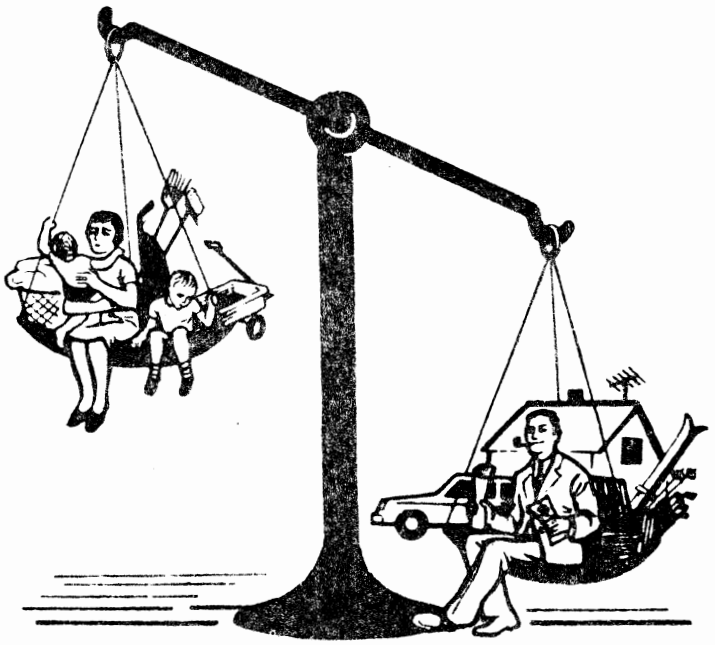
Susan B. Anthony, 1820-1906

Present Wisconsin Law

A woman by law is not entitled to economic credit from any labor performed as a wife: her husband is entitled to all profit from her work in the home or in a family farm or business (though he may agree to pay her for her work in a business).

Traditionally, only financial contributions to family assets have been counted: the unpaid labor of the homemaker has given her no legal ownership of her home or other family assets.

There is no such thing as marital property. Everything belongs entirely to the one who is given or inherits it, or earns it in paid employment. Traditionally, when property was held jointly (in joint tenancy or by tenants in common), this did not mean equal ownership in every respect. For tax or inheritance purposes, ownership was apportioned strictly according to who contributed *financially*. Recently, this financial contribution rule has been changed with regard to real property (land or buildings) held in joint tenancy by married couples, but there is still no recognition by federal and state tax authorities of equal ownership of joint checking and savings accounts.



Proposal: Marital Partnership Property

Marriage will be a contract between two equal partners for mutual responsibility and support. They will have equal ownership of the marital partnership property, and will share equally the right to manage and control it.

WHAT WILL BE MARITAL PARTNERSHIP PROPERTY?

1. All wages earned by either partner (in recognition that both contribute to the marital partnership through labors paid and unpaid).
2. All property that is not demonstrated by clear and convincing evidence to be separate property.
3. All profits, interest, dividends and rents based on either partner's separate property during the years of the marriage (this provision will allow one partner a modest interest in the separate property of the other, graduated according to the duration of the marriage partnership).
4. The natural net increase in the value of any separate property during the years of the marriage (this provision will help avoid legal disputes as to what part of any increase is due to the partner's labors, what part is profits, and what part is due to inflation).

WILL THERE BE SEPARATE PROPERTY?

Yes. Property acquired before marriage, after legal separation or divorce or during marriage by gift or inheritance will be separate property. So will any other property that is designated as separate property by a court or by a valid agreement between marriage partners.

WHAT ABOUT MIXED PROPERTY?

When property has been acquired partly before and partly during a marriage, or with some separate and some marital partnership assets (including labor), and there is need to determine who owns how much of the property in question, the property will be divided according to the amounts of separate and marital partnership contributions and *not* according to whose name is on the title.

"If you would marry wisely, marry your equal."

Ovid, 43 B.C. - A.D. 18
Heroides


"Modern inventions have banished the spinning-wheel, and the same law of progress makes the woman of today a different woman from her grandmother."

Stanton, Anthony and Gage
History of Woman Suffrage, 1881

Present Wisconsin Law

Since all wages are the separate property of the person who earned them, they are entirely at the disposal of that person. A homemaking spouse has NO legal right to share in the management or control of the wage-earner's income. In effect, the wage earner has complete discretion to determine the economic level at which the family may live, to make all the family financial decisions and to spend the income as he or she chooses. The wage earner's discretion is subject to only one limitation: that his or her "dependents" not become welfare charges.

Couples who marry today do not sign any agreement. Most couples do not know their legal rights and responsibilities in a marriage relationship. People usually only discover how the state enforces its interpretation of the marriage agreement when the government steps into their marriages, usually at a time of personal crisis: when a partner dies, at separation, or divorce.

The rights and responsibilities of marriage have been determined piece-by-piece over the years through specific court cases and scattered statutes. The state's terms and conditions are not set forth anywhere in any single written document.

Individual agreements, even when written, signed, and notarized have rarely been upheld. Marriage is generally regarded as a contract between the couple and the state which can only be changed by law or the death of one partner. Only one narrow category of contracts has been upheld: some agreements to limit the inheritance rights of the surviving partner. These agreements have often been made between mature people who have entered a second marriage and wish to keep property available for inheritance by children of an earlier marriage.

Informal mutual understandings between harmonious couples, that they operate a farm or business jointly as a marital partnership, for instance, have been overruled and thrown out by the courts.

Proposal: Marital Partnership Property

WHAT DOES EQUAL MANAGEMENT OF MARITAL PARTNERSHIP PROPERTY MEAN?

Both partners must give consent in any transaction involving land or buildings (real property) which belong to the marriage partnership and both must approve a gift made from marital partnership assets. Otherwise, either partner may independently manage and control marital assets so long as the basic requirement is abided by: that each operates honestly, in good faith, without intention to harm, obtain advantage over, or defraud the best interests of the partnership or of the other.

MARRIAGE CONTRACTS

All couples who marry will sign that they have read, understood and agreed to the essential incidents of marriage as codified in the statutes and summarized on the marriage application and certificate along these lines:

Marriage in Wisconsin

- Marriage is a legal contract between two equal partners. The partnership lasts as long as the marriage, and cannot be dissolved by the husband and wife as long as they are married. Husbands and wives may not employ each other for marriage and domestic services. Both husband and wife share the responsibility of heading the household.

- Marriage means that husband and wife agree to respect each other and support each other in whatever way they can, whether by earning money, caring for each other's personal needs, or making a home for each other. Both husband and wife have the right to manage and control the income and property of their marriage partnership and agree to exercise it carefully and prudently, so as to protect and conserve the income and property in the best interests of the marriage partnership and each other.

- All of this is part of the law of Wisconsin. No married couple may alter or abridge these essential terms when making an agreement or contract between themselves about their marriage.

". . . matrimony consists in an inseparable union of minds: a couple are pledged to one another in faithful friendship. The end is the begetting and upbringing of children, through marriage intercourse and shared duties in which each helps the other to rear children."

St. Thomas Aquinas
Summa Theologica, 13th cent.

Present Wisconsin Law

"A world-without-end bargain."

Shakespeare
Love's Labour's Lost

CREDIT

Only wage-earners or individuals with large assets that may be used as security are considered credit-worthy in their own right. A full-time homemaker (who is not independently wealthy) cannot get credit unless her husband agrees to let her use his.

DEBTS

Since a person who signs for a loan is responsible for its repayment, creditors usually require that both married partners sign, to make both of them liable. The separate property of the one who did not sign for a debt cannot be taken to meet a debt incurred by one who did sign.

Proposal: Marital Partnership Property

INDIVIDUAL MARRIAGE CONTRACTS

Any couple may enter into any property or financial arrangement it chooses and that arrangement will be enforced by the courts so long as:

- it does not violate public policy;
- certain formalities have been completed (putting the contract in writing, signing it, having the signatures witnessed);
- each party had knowledge of his or her legal rights, and understands the changes in these rights made by the agreement;
- there has been full and fair disclosure;
- agreement between the spouses was not obtained through undue influence, fraud or a material mistake in fact;
- there are no changed circumstances which would render the contract very oppressive or impossible to fulfill;
- the contract involves a reasonable exchange of goods or services (consideration) to ensure that the parties to the contract do not dissolve the *partnership* characteristic of the marriage relationship.

CREDIT

A full-time homemaker will be able to obtain credit based on her (equal) right to manage and control the marital earnings and property.

DEBTS

Either or both of the partners will be liable for most debts incurred after a marriage. The separate property of the one who does not sign for a debt will not be available to meet a debt incurred by the marriage partner.

"While in most states the divorce laws are the same for men and women, they can never bear equally upon both while all the property earned during marriage belongs wholly to the husband."

Susan B. Anthony,
The Arena, 1897

"We, one, must part in two:
Verily, death is this:
I must die."

Christina Rossetti, 1830-1894
Wife to Husband, 1861

Present Wisconsin Law

DIVORCE

The 1978 Wisconsin divorce reform act embodies basic marital partnership principles. At separation or divorce all assets held by husband or wife (except for inherited property) are split fifty-fifty. The courts may vary this division to make it more equitable after consideration of a number of factors such as the length of the marriage, the contribution by either to the marriage or to the education, training or increased earning power of the other, and source of the property. Inherited property is excluded from consideration for division unless its exclusion can be shown to create a hardship.

DEATH

If the homemaker dies first, s/he is considered to own nothing so can will nothing, other than property that was owned before marriage or that was received as an inheritance or as a gift.

If the wage earner dies first, everything coming from those wages is viewed as part of the estate and is subject to federal estate taxes and Wisconsin inheritance taxes to be paid by the survivor.

TAX

There is a confusing difference between federal and state income tax law: the federal system favors couples where one partner earns much more than the other because couples may income-split on their joint returns. That is, couples may total all income to either or both, and have each partner assessed on *half* the grand total. Income-splitting is not allowed when computing state income tax liability: each person is taxed on his or her earnings. The full-time homemaker is rated zero, since she earns no money.

This difference in federal and state laws creates particular problems and additional work for couples who operate businesses in Wisconsin, because preparing two different sets of tax forms and separating and attributing income to one partner or to the other is very burdensome.

Proposal: Marital Partnership Property

DIVORCE CHANGES

As at present, all assets held by husband or wife would be split fifty-fifty, but this division could be varied to make it more equitable after court consideration of a number of factors. All separate property would be treated in the same manner, however: inherited property would be treated in the same way as gifts or any other separate property brought to the marriage.

WHEN THE MARRIAGE
IS ENDED BY DEATH

Every married person will be able to dispose of his or her own separate property and his or her own half of the marital partnership property by will.

The survivor will continue to own outright his or her own separate property and one half of the marital partnership property. If there is no will, the estate of the one who has died will be distributed in accordance with Wisconsin's existing laws on the division of property not covered by a will.

TAX CHANGES

Wisconsin income taxes would be computed in the same fashion as federal income taxes: all of a couple's income may be combined and both partners, whether wage-earning or homemaking, would be treated by the Revenue Department as though each earned half.

Couples operating small businesses and farms will find making out state income tax returns to be greatly simplified.

DATE DUE

BRODART, INC

Cat. No. 23-221