Commission Meeting

of

THE COMMISSION TO STUDY THE LAW OF DIVORCE

"Testimony and Discussion Regarding
the Law of Divorce in New Jersey"

LOCATION: Council Chambers
Wayne Township
Municipal Building
Wayne, New Jersey

DATE: September 20, 1994
7:30 p.m.

MEMBERS OF COMMITTEE PRESENT:

Assemblyman Walter J. Kavanaugh, Chairman
Douglas K. Schoenberg, Esq., Vice-Chairman
Senator Robert J. Martin
Nancy Benz
Carol Bishop
Robert P. Broderick
Sara Flohr
Irene Von Seydewitz
Frank A. Louis, Esq.
Marianne Espinosa Murphy, Esq.

ALSO PRESENT:

New Jersey State Library

Patricia K. Nagle
Miriam Bavati
Rafaela Garcia
Office of Legislative Services
Aides, Commission To Study The Law Of Divorce

Hearing Recorded and Transcribed by
The Office of Legislative Services, Public Information Office,
Hearing Unit, State House Annex, CN 068, Trenton, New Jersey 08625

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MEETING NOTICE

TO: Members of the Commission to Study the Law of Divorce

FROM: Assemblyman Walter J. Kavanaugh

DATE: August 23, 1994

SUBJECT: MEETING DATE

A meeting of the Commission to Study the Law of Divorce will be held on Tuesday, September 20, 1994 at 7:30 p.m. in the Council Chambers in the Wayne Township Municipal Building located at 475 Valley Road, Wayne, New Jersey.

The chairman wishes to note that persons permitted to testify will be subject to time limitations for their oral presentation depending on the number of persons in attendance who wish to speak. Testimony will conclude promptly at 10:00 p.m.

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

WK:N/ef

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ASSEMBLYMAN WALTER J. KAVANAUGH (Chairman): Attention, we're waiting for the microphones so you can all hear. One of our people is now looking for the custodian so we can have the microphones on. I'd just like to, briefly-- I'm certainly sure you can hear me. After my many years in public office, I could always go to the back of the room, that's part of being Irish. (laughter) But I want to thank you all for coming this evening.

When the microphones are live, I will ask that the members of the Commission introduce themselves, so you will know who they are and the reason that they have been appointed to the Commission. We have a video camera here. One of the individuals has asked that it be taped. So that the respect that I have for them-- This is an open, public forum and I'm certainly sure that, as in the past, they have been very respectful, and will continue to be so.

During this hearing this evening, with the Divorce Commission-- I know that it's a very sensitive issue. It's an issue of concern to many of you, or you wouldn't be here. This is not something that we're looking for, as far as sensationalism. The divorce laws in New Jersey have not been reviewed since 1965. There are areas that are a major concern to many of you. It's not a male/female issue. This is something that spouses, children, grandparents, and all have been affected by -- the rules and regulations that have been put into effect by the statutes that are in effect now in the State of New Jersey.

I'm only asking that the members of my Commission-- I will not let any of you castigate them. We have had a situation where not everyone likes me, not everyone likes every member of the Commission, and I may not even like every member of the Commission, but we have to work together. This is something in the best interests of all of you in the State of New Jersey.

So that we'll move through this evening -- we have a number of people -- I'll ask that we limit when you come forward, if you have testimony, if you make that testimony as brief as possible. If you have written testimony, that you'll give it to our staff so that it will be available to all of us. I want you to know that this meeting this evening is being recorded, as all of our meetings have been. They'll be put together so that all the Commission members will have the opportunity to review.

We've met in South Jersey, North Jersey, in Trenton; we'll continue to have the meetings. This is an 18-month Commission. As the sponsor of the legislation, I am going to meet the deadline. We've had an opportunity to listen to the people of the State of New Jersey, which is so important. The frustrations that you have are something that we want to make sure that we can address. I want to let all of you know the comments that you make will be put on the record, will be reviewed by the members of the Commission, and we will look at them and make sure that we can do in your best interests in the changing of the statutes for the divorce legislation.

So if-- (Chairman taps microphone) I guess that's working, so I'm not-- Can you hear all right with this? (no response) All right, I believe the Commission members have a button by your desk. There's a button you can turn on if you care to speak.

At this time-- My name is Assemblyman Walt Kavanaugh. I represent Somerset and Morris Counties. I'm the Deputy Speaker of the General Assembly, Vice-Chairman of the Appropriations Committee, and the Chairman of the Divorce Commission. My Vice-Chairman, Doug Schoenberg. Doug, you can introduce yourself, and then if we'll go down this side (indicating) and we'll go over the other side. The appointments were made by the Legislature and by the Governor. They can introduce themselves.

Thank you very much.

MR. SCHOENBERG: I'm Doug Schoenberg. I'm President-Elect of the New Jersey Association of Professional Mediators. I am a professional mediator with my office in Summit. I also spent eight years as a divorce attorney.

JUDGE ESPINOSA MURPHY: I'm Marianne Espinosa Murphy.

MR. LOUIS: Frank Louis. I'm an attorney from Toms River.

MS. VON SEYDEWITZ: Irene Von Seydewitz.

ASSEMBLYMAN KAVANAUGH: Would you turn your mikes on by your desk, as you speak, please?

MS. FLOHR: I'm Sara Flohr. I work for Princeton University. I'm appointed to the Commission as the financial planner, and I'm the Chair of the Subcommittee on the Financial Aspects of Divorce, within the Commission.

MS. BISHOP: I'm Carol Bishop. I'm an Assistant Chief Probation Officer in Burlington County. I'm the Probation Officer on the Commission.

MR. BRODERICK: Robert Broderick. I'm the Chairman of the Subcommittee on Custody and Visitation.

MS. BENZ: I'm Nancy Benz. I'm the director of a youth and family counseling agency, and my position is to advocate for the rights of children.

ASSEMBLYMAN KAVANAUGH: Thank you very much, Commission members. The one absent member is Senator Bob Martin, from the Morris County area and also Essex; and Jeff Blitz, who is the prosecutor from Atlantic County.

So at this time, I'd like to open and say that we've met the Open Public Meetings Act, as far as the publication. All parties were notified, so that we're in compliance with the Open Public Meetings Act.

The first speaker that we have -- and I'll move in the case he has a possibility of surgery this evening that he has to perform -- so that Dr. Howard Floch from Washington Township, Doctor. I'd ask, once again, Doctor, that you limit your testimony to five minutes.

H O W A R D F. F L O C H, M.D.: I'll do my best, Chairman. Here are some handouts I've prepared for the Committee. My wife worked very hard on this. My apologies, my copying machine gave out. Some of the words are a little bit stretched.

ASSEMBLYMAN KAVANAUGH: I have a salesman who can sell you a pretty good one. (laughter)

DR. FLOCH: Thank you, Chairman.

In any event, if I may refer to these various things, they will help me to be brief. Gentleman and ladies, I would like to touch on two topics, even though I have been going through seven years of this wonderful--

ASSEMBLYMAN KAVANAUGH: You can be seated, Doctor. (witness complies)

DR. FLOCH: Thank you, sir. I would like to touch on two topics, even though I feel well-versed in all phases of it, as I have been going through it for approximately seven years. I am remarried and fortunately expecting a child.

In any event, I think one problem that you and the Legislature will face is the fact that you will basically be asking lawyers, to a very large extent, to refine this process. The unfortunate reality is -- and this is something that goes beyond a sexual division -- is the fact that Family Court in most counties has become a game preserve for divorce attorneys. In fact, the favorite activity in there is the so-called feeding frenzy.

I have a letter, in the back of my packet, addressed to a lawyer by the name of Hilton Stein. For those of you who don't know, Hilton Stein's entire practice is suing lawyers for malpractice. It details a relationship I had with a so-called divorce machine in the State of New Jersey, over the course of approximately three years. The name is not mentioned. If you feel it relevant, I will mention that name. In any event, it is Mr. Stein's opinion, as well as the opinion of several other people, that I have a major malpractice action, which I will

ultimately bring. Among the activities which this lawyer and his machine practiced, were hiding from me the fact that there was an agreement that was signed by the other side, as well as the other side's attorney, some one year into the divorce. This was carefully hidden from me.

It was told to me, by my last attorney, that Judge Sween had a practice; that he called the family bar in and he basically said he did not want to see everybody every two weeks for a new filing, particulary duplicate filings. He said, "Get your temporary support out of the way, do your discovery, and then let me see you when you're ready to get the case over and done with, either by trial or by settlement."

In any event, he said that he would dismiss cases, when in fact what was happening was filings every two weeks. This was, in fact, encouraged by the legal machine representing me, and ultimately, Judge Sween dismissed the case. I was also told by an attorney that Judge Sween had told the family bar that all you had to do to get the case going again was basically do all your discovery, get all ready for trial, come in and say, "Judge we're ready in five minutes to go to trial." They did not do this. They made a feeble attempt at a consent order having done absolutely nothing, going nowhere, doing no discovery, and basically that was dismissed and we had to go back again.

To put it in summary, this legal machine was basically trying to turn me and my divorce into an annuity for the firm. By the way, the lawyer who officially represented me received an award, which has only been given out four times in the State of New Jersey. I know Justice Pashman received the award, and this individual received the award also. In any event, that is that part of it.

The next thing-- As far as the lawyers are concerned, I'd like to say a word about the ethics committee. The Supreme Court of the State of New Jersey would have us believe that

there has been a tremendous change in the ethics procedure. Having been through this, I can tell you that the only thing that has really changed are the definitions. It has been said that you can find out whether or not a lawyer that you're interested in has had formal complaints lodged against him. Well, all that has happened is the definitions have been changed.

When you write a letter of complaint against a lawyer, it's actually not a letter of complaint; it's called a charge. It is up to the chairman of the committee to decide whether or not this should be converted to a formal charge. I happen to know that the attorney that I complained about had four or five other complaints about him, too. His slate is clean. I called the (609) number approximately three weeks ago, after the article appeared in our local letter. There is no listing of this at all.

Basically, all I can say is, when my complaint was heard, no members of the lay committee were there. An attorney, who was a member of the committee, who knew darn well that she could have had the same complaint made against her, participated in the discussions and, I believe, even voted. I don't think that's a very good way to conduct business. I'd like to know who Judge Michaels and the Supreme Court think they're kidding, in terms of the fact that we really do have an ethics committee; we really don't.

Now I'd like to say a few words about the judiciary, which really concerns the other three handouts that I have. I hope I'm moving at a reasonable rate. I underwent a trial in the fall of 1992, presided over by Judge John Conte. I was led to believe that this was, and in fact I found out later, his first divorce trial. It was very interesting to note that Judge Conte heard this trial with a conflict, I found out later. That conflict being that he, in fact, was related to an attorney who at one point, for a major portion of the proceedings, represented my ex-wife.

I detail my feelings about Judge Conte in this letter, which seems to be addressed to the Office of Judicial Conduct. I have never filed this, up until this point. It is my feeling that, basically, they will treat this in the same way that the ethics committee treats complaints about attorneys. It will be whitewashed. Let's just say that the Committee can read through this, and there's no need to go over every little detail of it. I find it very amusing that my lawyer was told, off to the side, what the reasons for the decision in my case were.

Reason number one, this is a quote from Judge Conte, "Andy, I didn't want any problems with any women's groups on this case." Okay. My favorite one is reason number two, "Christ Andy, he's a doctor." In number three, we see an amazing bit of judicial reasoning. That bit relates to his granting 100 percent of all of my ex-wife's legal fees to be my responsibility -- no, I'm sorry I'm getting ahead of myself.

My ex-wife put on an expert accountant, who basically gave testimony. Let's just say, for all practical purposes, that even the judge thought and made comments on the record that this testimony was a sham. He said to my ex-attorney, "Andy, what did you think of that guy?" Well, no reason to give his name, he's retired now. My lawyer said something to the effect, "Well, I think his veracity was somewhat in doubt," okay. Reply from the judge, "In doubt? I didn't believe a 'four-letter-word' word that he said. But I know she must have paid a lot of money for him. I had to give her some relief, and in order to do that, I had to give him some credibility in my judgment."

This judge went on to determine that all of her legal fees were my responsibility. He invited her lawyers to make application for me to pay their fees, and basically they did that. My attorney at the time asked how long we would have to reply, and, basically, he was told that he should call back the next day. He was going to call back the next day, but he had a

faxed order that I pay all her legal fees. No due process. I believe that's a little problem with the U.S. Constitution.

Judge Conte also very widely quoted the very famous Lepis v. Lepis case in my decision. Gentlemen, ladies -- ladies, gentlemen, I'm ashamed to admit to you that it took me about six years to read the Lepis decision. I have not found one thing that Judge Conte used to quote Lepis that had any relevance at all to the Lepis case.

In fact, approximately a year ago -- tomorrow is one year to the day I underwent a six-and-one-half-hour cancer operation myself. I was out of commission for four months. My attorney sought to get me some relief, because I, essentially, was making no money. This was heard by three judges, two of whom did not want to make a decision. One of whom, namely Judge Conte, decided that, in fact, Lepis said that I receive no relief. To this day, both my ex-attorney and myself are trying to find where exactly in Lepis it says that.

About 45 seconds more. Recently, while representing myself, I wrote a letter to another legal individual in Bergen County, by the name of Gerald Escala, having to do with taking care of some housekeeping details required by the Federal government, in terms of my pension. I sent a copy to the adversary, the adversary replied. Basically he did not have any objections to two of the major aspects of it, but somehow I wasn't getting the order done.

I went up to Judge Escala's office to have some conversation with his clerk, as I was calling his clerk, and his clerk would assure me he'd call me back within a day. He would never call me back. I'd call him three days later, and he wouldn't have the faintest idea of what I was talking about. So needing to get this done, I decided to go speak to the clerk. Judge Escala walked into the room. Essentially what developed -- not really at my urging at all, I was very

surprised -- the clerk essentially left the room and I had Judge Escala one-on-one. I believe that's illegal. That's called ex parte communication.

In fact, I wrote this personal and confidential letter to him reiterating this meeting, because as I begin by talking here, I felt that sending anybody any copies would be a little bit embarrassing to his position. He went on to tell me that he was not going to grant my order, because, although he knows that the adversary did not state any objections to it, he knew where the adversary was coming from, and he felt that he would philosophically be opposed to it. I asked him if he was, in fact, a member of the law firm of the adversary, because that's what it sounded like. I don't know what kind of system we are working under, but it's really not working. I don't think it would take that much to fix it, for the benefit of all concerned.

I thank you very much.

ASSEMBLYMAN KAVANAUGH: Thank you very much, Doctor. (applause) We don't have a scale up here, who's the winner on the applause, so that it only takes up a little time.

I'd like to note the presence of Professor Martin, Senator Martin, from the New Jersey State Senate, a member of the Commission.

Senator, welcome.

William Hess.

If we could hold it down to five minutes. I was going to mention it to the Doctor that if he had a patient in the ante room, he would have shortened it up.

W I L L I A M B. H E S S: Commissioners, these are very familiar surroundings to me. In my former life as a parent, I served four years on this township's board of education and on various other community boards. I sat right where you're sitting, actually, for many years.

ASSEMBLYMAN KAVANAUGH: It's a very uncomfortable seat. (laughter)

MR. HESS: It is. I noticed that when I was there, too. I'd like to think that my community service set a good example for my three sons, but it's hard to tell since I've seldom seen my three sons in the last four years that this divorce has been in progress.

There are few areas of current day life that are so cloaked from public view of reality as is divorce. We are constantly being fed a diet of false stereotypes and false conditions by those people who profit heavily from the misery and hurt of others. These falsehoods are spread further by the media, who also thrive on the conflict of others and who seldom look below the surface to discover the realities and the tragedies of the system.

I was married for almost 30 years and raised three sons, the youngest of whom is now 17. I'm ashamed to say that I had no idea of the pain and turmoil that my fellow citizens were experiencing under this system, until I experienced it for myself. That indeed is a major part of this problem. Divorce is a tragedy, like a disease that none of us want to know about if we are healthy. Yet it lurks there, fed by the greed of fellow humans waiting for all of us.

Now that I know its workings, I wonder if this is still America, or if I am somehow in Nazi Germany. We have our own holocaust going on here; it is a holocaust of disenfranchised parents and children. What we have is nothing less than institutionalized government kidnapping and robbery by the judicial/attorney fraternity. (applause)

There is no system less likely to be in the best interests of the child than the one that has been created by this fraternity. The difficulty arises from the fact that one branch of our government is completely dominated by a single profession. The ability of this profession to abuse the power of the State, for its own profit without accountability, has created a tragedy for our children and for our society. Before

anything can truly change, we must develop independent civilian review boards for judicial and attorney actions. We must elect a Legislature that is not mostly attorneys.

Consider some of the myths that have been created around divorce. Domestic violence and child abuse: These charges are more often false charges than they are true. They are recognized as a weapon and used widely to remove a spouse from the marital home and to remove his contact from his children, using the court as a tool. This occurs because the courts abuse the right of due process by acting as though the accused is guilty until proven innocent. Many lawyers have written articles in their own journals, but the abuse goes on fed by falsely prompted public hysteria.

In fact, New Jersey DYFS statistics show that mothers abuse children twice as often as fathers. They also show that sexual abuse of children is more often by a boyfriend or stepfather than by the natural father, and four times more often by another male than by the natural father. Why then does the media always depict the father as the sexual abuser of his children? More myth. It sells media.

Child support: There is no such thing as child support. Why? When the other parent receives money and has no accountability for its use, we, in the State, have no knowledge that the child will benefit, has benefitted, or any such thing. Would you buy a car, or would you operate your life based on such a premise as we are asked to operate our lives without any accountability, without any sense that what you are paying for is being delivered? I doubt it.

Child support guidelines are based on the child maintaining the same standard of living as in an intact family. Who then absorbs the increased cost of living if the parent who receives support isn't accountable for its use? The question should not be too difficult to answer.

Deadbeat dads: Who wouldn't qualify for that title if the child support order from the biased court was for 80 percent of their net income, as was the order that I received. Could any of you live on 20 percent of your net income? I frankly doubt it.

The system is the epitome of intentional infliction of emotional distress. Lawyers are supposed to know better, but the profit motive gets in their way. Why then are we surprised when people crack under the stress and act in extreme ways when they were perfectly reasonable people prior to their abuse by this governmental system?

What do we need? We need stated goals for the behavior of society and government. The quality is really the essence of this issue. We need to do everything possible to reduce hostility and to keep both parents equally involved in their children's lives. We need to create an approach such as in California, where the parent who seeks the maximum involvement of the other parent is rewarded, rather than the opposite, such as we have here.

In the present system, one parent gets rid of the other parent, keeps the children, and keeps his income flow, while the living costs double because of two domiciles. The other parent loses his children, the children lose a parent, and his related family, thus one parent's life is relatively unchanged while everyone else in the family pays for it in many, many ways.

ASSEMBLYMAN KAVANAUGH: Mr. Hess.

MR. HESS: Yes?

ASSEMBLYMAN KAVANAUGH: You are now going into seven minutes, so I'm going to ask that the rest of our testimony, if you would give it to our staff. It's in fairness to all the rest.

MR. HESS: Absolutely.

ASSEMBLYMAN KAVANAUGH: I certainly -- as I say I have compassion for what has transpired. Lawyers have been castigated by both speakers. I'd like to say that I'm a plumber. So you and I are on the same side.

MR. HESS: I understand. I had sent you a letter with some recommendations. I hope that the Commission can look at them, and I will be pleased to help in any way I can.

ASSEMBLYMAN KAVANAUGH: We certainly will.

MR. HESS: Thank you very much.

ASSEMBLYMAN KAVANAUGH: Thank you very much. (applause)

Myra Terry representing NOW.

M Y R A T E R R Y: (speaking from audience) I will not be testifying tonight.

ASSEMBLYMAN KAVANAUGH: Thank you.

Barbara--

B A R B A R A J. B O H I: Bohi.

ASSEMBLYMAN KAVANAUGH: Barbara Bohi.

SENATOR MARTIN: Mr. Chairman, just for the record, I don't mean to start a hail fire, but just one point, as long as we're talking about myths. Anybody who has looked at the Legislature in New Jersey over the last 20 or 30 years will know statistically that attorneys do not represent a majority of either the Assembly or the Senate. In fact, most legislators are like you, plumbers. They're small businesspeople, by and large.

UNIDENTIFIED SPEAKER FROM AUDIENCE: Why are there any attorneys in the Legislature?

ASSEMBLYMAN KAVANAUGH: Just a moment, just a moment.

SENATOR MARTIN: It's a democratic process, sir.

ASSEMBLYMAN KAVANAUGH: We're not going to have--

UNIDENTIFIED SPEAKER FROM AUDIENCE: They're members of the judiciary; it's a violation of the State Constitution.

ASSEMBLYMAN KAVANAUGH: If you continue -- you're on my list tonight, and you'll be off my list.

So thank you. Bob, as a member of the Commission, has the right to speak.

Yes, Barbara.

MS. BOHI: Thank you, Mr. Chairman and Members of the Committee. Can you hear me?

ASSEMBLYMAN KAVANAUGH: The big microphone is for the recording equipment, that microphone. (indicating) You shouldn't have to lean too far into it.

MS. BOHI: Is that better?

(affirmative response from audience)

MS. BOHI: Thank you for this opportunity to speak to you today on how the enforcement of postjudgment orders for support by the Probation Department--

ASSEMBLYMAN KAVANAUGH: Not to interrupt you, do you represent any particular group?

MS. BOHI: Yes, I do. I'm about to introduce myself. I'm going to speak to you this evening on how the orders for support can be streamlined. Enforcement of these orders can be streamlined and made more cost-efficient.

I am Barbara Bohi, Social Policy Advocate for the League of Women Voters, and I represent 66 local leagues throughout the State, in municipalities and counties. The League's position on the legal status of women, which was adopted in 1979 and reaffirmed at our State convention last year, specifically supports strengthening the methods for collecting court-ordered support payments.

This evening, I'd like to point out four methods in which we could streamline this entire process and improve collection results.

The first point is that we believe Probation's authority should be expanded to permit it to execute on liquid assests of an obligor, and by that I mean bank accounts, insurance payouts, and proceeds from lawsuits.

Now I want to back up and just give you a little bit of factual foundation for this position. Once a noncustodial parent is in arrears on a child support order, a judgment is automatically entered through ACSES, it's the Automated Child Support Enforcement System. This judgment is then a lien against the real and personal property of the obligor, under the court order.

The Probation Department will try to collect arrears on a judgment by arranging for income withholding of the obligor's salary and other methods, including offset against tax refunds, credit reporting, and they can also assist the custodial parent with obtaining an execution. But really, the problem with these means of collection is that if the debtor is self-employed or if the employer does not, in fact, withhold the income as directed, what happens is that Probation is forced to sometimes repeatedly return to the Civil Court, Family Division, for relief. This is really the most time consuming, expensive, and least effective method, wrought with numerous hurdles for the custodial parent.

What has been suggested to the League, and the League is in full concurrence with this, and this suggestion is by the Administrative Office of the Courts, the Probation Department, that it be permitted to pursue the liquid assets of the obligor to enforce a court order for support. Now this direct enforcement of support orders by execution, as I said, against bank accounts, lawsuit proceeds, and insurance payouts would alleviate the expensive, duplicative, and time consuming court proceedings. It would also ensure quicker payment of support and perhaps serve as a better incentive for an obligor to satisfy support arrearages.

It also, this method, respects the due process rights of the obligor by noticing him of the turnover application. That's a particular application made to the Superior Court by Probation. But at the same time, it streamlines and facilitates the collection of judgments.

Now, my written testimony goes into more detail on that point, but I would like, in order to comply with the five minute deadline, to move on to my second point; that is, spousal support should be subject to the administrative enforcement by Probation.

Currently, Probation cannot use the same administrative techniques to enforce a provision in a court order for spousal support -- the same techniques that it uses to enforce a provision for child support. This is so even if an order that a judge enters provides for both child support and spousal support; there's a bifurcated enforcement process. A custodial parent must, to collect spousal support, pursue a civil court action for garnishment or enforcement proceedings. Again, this is costly. It's duplicative, it's time consuming and it also results, often, in the -- sometimes -- in the incarceration of the obligor for noncompliance.

Our position is that all forms of court-ordered support should be payable through income withholding, State tax refund witholding, and be collectable through Probation's expanded collection capabilities, as I just outlined in my first point.

NJSA 54A:9-8.1 deals with tax refund withholding and is used for the collection of child support, debts to the State, and collection of student loan payments. It could be easily amended to include spousal support.

Similarly, the statute regarding income withholding to collect child support NJSA 2A:17-56.8 could easily be amended to also include spousal support.

My third point I'd like to make has to do with streamlining the process with the computers. This is called interfacing. It's so that data doesn't have to be reentered repeatedly. It's often voluminous, and it's very time consuming. What I'm talking about is that the data that is input in the Family Division should automatically be

transferred from the Family Court computer system to the ACSES system, which I just talked about. In addition, the ACSES computer system should be interfaced with the Superior Court Clerks' Automated Civil Judgment Order Docket. This means that you wouldn't-- How much time do I have left?

ASSEMBLYMAN KAVANAUGH: You've gone over your time.

MS. BOHI: Okay, well then I'll just move on to my last and final point, which is very short. That has to do with -- there is presently a bill, A-234, which would allow Probation to send a notice to an employer, directly, that a child be enrolled under the health insurance policy of the noncustodial parent. It bypasses, you know, all the compliance problems with the noncustodial parent not informing the insurer to put the child under the policy.

That's all I have. Thank you very much. (applause)

ASSEMBLYMAN KAVANAUGH: Thank you very much, Barbara.

MR. BRODERICK: Mr. Chairman, can I ask a very brief question?

ASSEMBLYMAN KAVANAUGH: Commission member Rob Broderick has a question.

MR. BRODERICK: Is this-- Ms. Bohi is it?

MS. BOHI: Yes.

MR. BRODERICK: Is this the extent of the League's position on this Commission, or will they be making more recommendations?

MS. BOHI: There could be additional recommendations, yes.

MR. BRODERICK: Has the League taken any position on the reverse of what you're talking about here? In other words, when a custodial parent repeatedly ignores court orders to share custodial time with the noncustodial parent, what the remedy should be?

MS. BOHI: I really can't speak to that at this time. (applause)

ASSEMBLYMAN KAVANAUGH: For all you happy people, I'd like to say that Rob works with NJEA.

Now the next one, Charles Lawlock. (phonetic spelling) Is Charles here? (no response) Pat Shiretta? (phonetic spelling) (no response) Richard Martin?

R I C H A R D C. M A R T I N: Thank you Assemblyman.

ASSEMBLYMAN KAVANAUGH: Thank you. Five minutes, Richard, thank you. I always get worried when I see those double spaced three pages.

MR. MARTIN: Well, I'm not going to read the whole thing. You can read most of it yourself. It's scintillating, to say the least.

I'd like to quickly respond to the last speaker. The solutions that the League of Women Voters have proposed are largely Band-Aid solutions that do not get to the root or causes of the problem, which is a problem, noncompliance with the child support part of a domestic relations order. In fact, just about every legislative proposal that I have seen recently falls in the same category, as a Band-Aid solution.

If you study the history of the enforcement of child support, you will find that previous to 1984, we collected about as much child support as we do now after the Family Support Act of 1984, the Family Support Act of 1988, and the Family Support Act of 1992. They haven't done a thing to improve the collection of child support.

Well, one thing that will improve the collection of child support, and this is borne out by the Bureau of Census statistics, that parents that are involved in the upbringing of their children comply with the child support part of their order. It's that simple. Ninety percent of the parents with joint custody-- By the way, the study was only done on fathers, unfortunately. They realized that it was a mistake, and they will correct it in their next report. Ninety percent of the fathers who have joint custody of their children pay

their child support. Another way of saying that is, 90 percent of all the child support owed by joint custody fathers is paid.

Eighty percent of the child support owed by fathers who have significant and enforceable visitation with their children is paid. The fathers that have no contact with their children, what do you think they pay? Forty-five percent, according to the Bureau of the Census.

It's pretty clear to me that if you want to improve compliance in child support payments, get it above the 58 percent which it is nationally -- or was, it may be slightly, a point or two different -- and has been there since 1980 -- 58 percent. If you want to increase that, it's very simple, you start enforcing all parts of the domestic relations order equally and fairly.

That's all I have to say. (applause)

ASSEMBLYMAN KAVANAUGH: Thank you very much.

Dr. Valerie Mancoff. (phonetic spelling) Is Dr. Mancoff here? (no response)

Deborah Burkhardt.

D E B O R A H L. B U R K H A R D T: I was involved in an abusive relationship for nearly four years. When I say abusive, I was emotionally, physically, and sexually abused at the hands of a man I was calling my husband. I was finally able to break free from the prison my husband called our home only to face endless days of harassment and threats on mine and my children's lives.

When I finally thought we were going to be free of his abuse, I was then faced with my two oldest children being victims of his abuse, victims of molestation by the same man I was calling my husband, and they were calling daddy. As any mother can tell you, I did what any of us would do, and that was to seek out, provide the best and most protection under the laws to prevent him from molesting my children again, and to protect my youngest daughter from becoming another victim.

You can teach your children everything in the book about protecting themselves from strangers, but what do you tell them to protect them against their own father? What does a mother say to a scared, screaming, and crying child that doesn't want to see their father? What do you say to the neighbors when they see and hear these children running, yelling, and screaming, while you're trying to get them to go on another forced visit with the abuser?

How much sleep do you think we have in our household when you have children that constantly wake you with hysteria, on yet another nightmare? Who helps me when I have to physically stop these children from pulling out their hair, biting their fingers, banging their heads on hard surfaces, or pulling on their flesh in an attempt to cause bloodshed?

How do I defend myself when they attack me and call me a liar and blame me for making them go on these visits, all because no one wants to hear them? No one wants to hear their pleas of fear, their pleas of being abused by this man that everyone is calling their father. If this man had a label of a neighbor, an uncle, or a grandfather, my children would have rights. But because this man has a label of father, his rights are above theirs. He comes first. He has the constitutional right to bond with his biological children, but when do the constitutional rights of the children take precedence over his rights when the bonding goes above and beyond the norm? When do their rights as American citizens begin?

At what age and at what degree of abuse do we begin protecting the innocent victims, the children? Just because these children are products of rape and are victims of incest does not mean they should suffer. They deserve to have a childhood; they deserve to be happy. They deserve to be protected under laws that would have protected them had they been victims under other circumstances. The protection that is offered to my children under this legal system now is not enough.

Protection that has indebted me $50,000, money that I don't have -- yet this father has neglected to pay $100 a week in child support for three children that is court ordered. The children are not the ones to be punished; they did nothing wrong. Yet the person who has done something so vile, so terribly wrong, is protected under laws that label him father. His label is pedophile, incest committer. Any man can become a father, but it takes more than siring a child to fulfill that role, the honor of being called daddy.

A child will benefit from therapy only after and not during the heinous actions being committed. This I learned from two of the four victims of this man. In one case, he pled guilty to charges brought on him by one niece, of molesting her for a number of years, starting when she was only four years old. It has been nearly ten years for them, and they are only beginning to heal, due to the constant contact with their abuser -- this man that they called uncle, this same man who was labeled father.

Supervised contact is not enough protection when the mind is also violated. I know firsthand. I spent three years in the court system and a solid 12 days of testimony on his request for visitation, testimony from experts that are in constant contact with these children and believe these children. Only to have this man and his family members tell my children that: "Mommy's lying. Mommy made it all up. Your father didn't do anything wrong to you. Your father didn't do anything bad to you." -- to have these children's fears and pleas downplayed to this just being a messy divorce. Someone has to hear and act on behalf of these children. Their fears are real, their pleas are genuine.

Thank you.

ASSEMBLYMAN KAVANAUGH: Thank you very much. (applause)

Rochelle Costellano.

Thank you very much for staying within the guidelines.

R O C H E L L E C O S T E L L A N O: My name is Rochelle Costellano. I'm just an advocate here. In the past two years, I have spoken to some 50 or 60 women who have been going through divorce. I have attended many divorce seminars at various colleges and other sites in New Jersey. It was my desire to set up a divorce seminar for the National Organization for Women, and it took place this past June.

There are many difficult issues as people start the process of divorce, but one core issue is that women who are not working out of the home and/or not in control of the family finances, even though there are substantial assests and income, are not accessing good legal representation. The attorneys that I have spoken to have shared the problem that often the women do not even have the minimum retainer fee. They have in the past put liens on the family home, and now this procedure is under attack as not the correct thing to do.

Recently, I came into contact with a woman with two very small children and is very troubled. Her husband has had three attorneys so far and requires of her and the children massive inquiries and psychological testing. He changes the health plans and the drugstores she can go to. He changes the shared custodial arrangements all through the attorneys. She lives now on the small support and even food stamps, which he has tried to stop, making her ineligible. They live in a very large English Tudor home. One would think they are very wealthy. He wants to make the divorce go to court with a trial.

This women is using an attorney now, who has not taken the normal $2500 retainer fee as a favor to me. In a country where an accused person is guaranteed legal counsel, it seems a serious problem that cash poor women and their innocent children seem to be cut out for lack of a retainer fee. Perhaps one solution could be that when one person obtains a

lawyer to represent him or her, a lawyer of equal stature and competency should also be obtained by the person who controls the assets of the family marriage.

Thank you.

ASSEMBLYMAN KAVANAUGH: Thank you very much, Rochelle. (applause)

Caryl Leightman, good evening.

C A R Y L W. L E I G H T M A N, ESQ.: Good evening. My name is Caryl Leightman. I practice matrimonial law throughout the State. I'm here to argue against allowing term alimony to be awarded by the courts. To see why this is unfair, we must look at the dynamics of marriage itself.

Marriage is a partnership with well-defined roles assigned to each partner. In most cases, the wife is the homemaker and the husband the wage earner. Studies in the mid '80s show that this remains true. Thirty-four percent of husbands and 24 percent of wives who were surveyed did not think both parties should work. Where there were small children, 64 percent of the husbands and 60 percent of the wives felt that the wife should not work. Consequently, both husband and wife work toward the development of the husband's career and income potential, since that benefits the entire family unit. Forty million married women were full-time homemakers in 1988. Statistics show that married men earn 62 percent more than single men. Thus, having a wife enhances a man's earnings. (laughter)

Women homemakers do not enter training programs. They rarely work outside the home, and even if they do, it is in low paying jobs so that the wife can be home for the children when they are sick and to be close to day care.

If the husband's job requires a move, the wife's job becomes subordinate. But even when women work, they suffer economically. Women are hired mostly for pink-collar jobs

including domestic servants, nursing, grade school teaching, library work, saleswomen, and clerical workers; with rampant unemployment among men, men now are even taking half of those jobs that were usually for the women.

In 1990, women in New Jersey averaged only 63.5 percent of the income that a man earned, doing many of the same jobs, and that was 10 percent below the national average. Women cannot bridge the wage-discrimination gap. The average income for a white women working full-time, if she had a college degree or higher, earned $2000 less than the average white male worker with only a high school education. A black women with a college degree earned less than a white man with an elementary education degree.

Sixty-five point two percent of all divorced women are between 30 years old and 54 years old. Government statistics show that divorced women between 25 and 54 earn 6 percent less than the married women who also worked, and 12 percent less than the divorced men who worked. Women who do not work, their earning potential atrophies. For each year a women with a high school education is not in the labor force, her long-time earning capacity later on is reduced by 1.5 percent per year. A women with a college education loses 4.3 percent of her income for every year that she doesn't work.

The wife loses the opportunity to develop her skills, be available for promotions, and develop seniority. This loss in earning capacity and pay scale can never be made up. For every number of years that she is married, she's that many years behind in earnings. The husband keeps his earning potential that he got during the marriage, even through retirement. Therefore, the husband must share by paying long-term alimony for the long-term benefit to his income which he acquired, and which he kept during the marriage, and which he keeps after the divorce.

Five studies have been done showing that divorced men have a higher share of the predivorce income after the divorce than women do and, therefore, they have a much better postdivorce standard of living.

In one, the man's income went up at least 73 percent, while the wife's declined 42 percent. Many husbands average 140 percent to 220 percent of the predivorce family income. This drastic lessening of income for women included cases where the women were also receiving child support, so the families were in feminization of poverty state.

Under the law as it now exists, court can only order permanent alimony, rehabilative alimony, or a combination of both. If we permit term alimony, that will only exacerbate the already disproportionate share of the predivorce income that's given to the women and the children.

Most divorce cases settle without a court deciding-- Even without term alimony as an alternative, women are already pressured to settle for less than permanent alimony. In appropriate cases, parties do themselves agree to term alimony in those appropriate circumstances, and there is no need for that in the statute.

A change in the statute allowing for term alimony would not be gender neutral. Instead, it would skew the negotiation process, tipping those negotiations in favor of term alimony rather than permanent alimony, and placing an unfair pressure on women to settle and accept term alimony even when it is not appropriate. At least now women in middle- and long-term marriages, who have raised families, who have been out of the job market, and who have few skills know that they do not have to cave in under the pressure to accept less than permanent alimony. If they go to trial, they would get permanent alimony. If the law were changed, I believe that permanent alimony would become virtually extinct, leaving most women in a state of poverty or perhaps even on the dole.

It is not in the public's interest to punish half of the population for investing in marriage and raising a family, a risk which now fails 50 percent of the time.

I thank you for allowing me to come talk to you. I did not bring a copy of my testimony, where I do have the statistics that I quoted are footnoted, and I would submit that. I will send it to the Committee.

ASSEMBLYMAN KAVANAUGH: Thank you very much. (applause)

Sandy Fell. (phonetic spelling) (no response) Tina Vaulty. (phonetic spelling) (no response) Gloria Robinson, good evening.

G L O R I A R O B I N S O N: I'm fortunate that during my divorce proceedings I worked with outstanding attorneys and wonderful judges. They read everything; they knew the law. However, without the empowerment of enforcement, their decisions and their orders were, and they are, meaningless.

It is useless for us to look at revamping divorce laws in New Jersey unless we are willing to respect the judicial system and enforce those laws. When I left my abusive, 20-year relationship, I called upon the courts to protect my child and myself. Instead, I have witnessed with amazement the system protect my spouse, give him rights that I didn't have, and hand slap his contempt of court. The system ignored his perjury, his blackmail, his extortion attempts, his willful nonsupport, and his abandonment of his child.

In four years there were 28 litigations in my divorce case. During these four years I did not -- and still do not receive -- court-ordered support payments. I faced homelessness. My child and I lost our home due to foreclosure and due to receiving no support. With mounting legal fees, we lost all our legal representation. I'm not an attorney, nor do I have any legal training, yet I had to defend myself and my daughter against an abusive husband and father, not only in civil court, but also in appellate court.

As you can tell, I'm very nervous talking in front of people, so it was very, very difficult for me to be forced into this situation of having my child's welfare defended by myself. We need to protect the representation of victims of divorce. We need to enforce laws, such as dismissing motions and appeals when the complainant fails to comply with court orders or when their only purpose is for harassment or to have you in court trying to defend yourself. The law is there; it needs to be enforced.

We also need to look at the legal aid system. I was denied any representation by them because I made $266 a year too much. Also, they did not look at all my assests that were frozen. My child's father did not pay a cent of his court-ordered support, but he was able to afford himself an attorney during all of these 28 litigations. In fact, seven days after he pleaded poverty in court, he went out and bought himself a brand-new, Harley-Davidson $7500 motorcycle with cash.

The civil court needs the protection of the criminal courts. Unless there is protection and it is enforced, we will continue to have the three-ring circus between husbands, wives, and children. The courts need to stop pacifying violations of litigants' rights and call it as it is, contempt of court.

A court system cannot demand respect if it does not respect itself. Our Constitution calls for equality of all people. It does not call for me to be a second-class citizen because I was, or am, married.

Not only does the system need to look at enforcing its laws, but it also needs to look at imposing proper sanctions. In my own case, even though my husband was a fugitive with three outstanding warrants, he has retained all his rights to legal representation and litigation. It was not a crime for him to cross state lines to avoid paying child support, to quit his employment, nor to abandon his child. Why not?

In most cases, in interstate cases, the fugitive becomes rewarded. I have to go to his state now and pay to represent myself and my child to get any enforcement. Why does a fugitive gain more rights than the children and victims he has abandoned? How much less crossing of state lines to avoid paying child support would we have if there could be no form shopping, if every state would respect the jurisdiction of the child's state, and there would be no modifications of any other state?

I call upon New Jersey to be the first to do that and respect the state that the child is in and their court-ordered payments. Until there is national recognition of the enforcement of those rights, with modifications done only in the child's state of residency, New Jersey needs to activate its 15-year-old willfull nonsupport law, actively pursuing these fugitives, holding them accountable for the welfare of their children.

We need to use extradition of our fugitives as an exemplification that we are serious about their responsibilities to their children and to their spouses. We need to stop letting the fugitives make a mockery of our court system by thinking they cannot be touched. We need to prove to these fugitives that New Jersey will prosecute and demand that its court orders and laws be adhered to.

The nonsupport law also needs to be changed to be reflective of the amount of support owed, instead of just being a fourth degree offense. We need to look at making it a second or a third degree offense, as you do in a theft situation, because it is really a theft from our children.

Children should not have to endure the crisis of divorce that divorce generates. They need to feel secure. Being forced into poverty burdened single-parent homes should not be their punishment. The circles of abuse will not be broken unless children are given appropriate role models. They

need to be given opportunities to succeed and counseling to deal with abuse, conflict resolution, or parental concerns if it is needed. In cases where the parent acts to hinder these opportunities by neglect or abuse, whether it be financially by lack of support, morally, physically, or mentally, we need to protect our children.

A parent's rights, regardless of whether they have custody, should be rights achieved by showing a responsibility to act in the best interests of the child. To me, this is the saddest part of my divorce. It is one I find the hardest to endure in my own child and in the children of divorce and/or abuse that I teach.

While I have witnessed greed and control overpowering love and caring, to have a child as the victim of this greed and control is simply inhumane. We need to actively stop children being used as hostages and pawns to those who do not know the true meaning of parenthood. Rights must be terminated. For the sake of our children, we need to put law and order, true love, and true caring back into the idealism of their future.

ASSEMBLYMAN KAVANAUGH: Thank you, Gloria.

What I'll do now is ask-- Would you ring the bell so they all know what happens after five minutes? (aide complies) When you hear that bell, you'll have about 15 seconds to finish up. I was hoping that we wouldn't have to use that, but we will go to five minute and we'll have the "Gong Show" here. Thank you.

Joyce. Is Joyce here? No, that's not Joyce. Dolores Jordan.

Also, that some in the audience may be in disagreement with the speakers, the sidebar conversations, I would hope that would be limited. If I pick up further sidebar conversations on individuals I know, don't expect to speak tonight.

Thank you.

D O L O R E S J O R D A N: Good evening.

ASSEMBLYMAN KAVANAUGH: Good evening.

MS. JORDAN: I promise to be as brief and to the point as possible. In January of 1993--

UNIDENTIFIED SPEAKER FROM AUDIENCE: Closer to the mike.

MS. JORDAN: In January of 1993, local police were summoned to my home. A municipal judge court ordered my husband out. He was arrested for assault. I appeared two days later in Morris County Family Court. At that time, I was given 30 days to relocate. I was four months pregnant and had a teenage child. No support was ordered, no medical benefits, no medical coverage. All savings had been turned over, dutifully, by me to my husband. Our home was newly built and had been purchased while we were engaged. My name had been-- My husband neglected, rather, to have my name on the deed. This was unbeknownst to me.

A restraining order was issued. That day, my husband violated the restraining order and did so each day. I miscarried a week later. My husband contacted my employer, my family, and every friend that I had in an attempt to reconcile. A reconciliation took place.

In March of '93, the police were again summoned to my home. A municipal court judge again ordered my husband out of the home. He was arrested for assault as evidenced by the blood on my face, in my home, and by my child.

Every restraining order that was issued in Morris County Family Court was violated by my husband. This pattern repeated again, because I believed that he was attending domestic violence training in Hackensack, as he had been court ordered to do. I did not know that my husband was not being monitored by anyone in Morris County. He chose to attend domestic violence counseling out of our county because he was afraid that someone would recognize him. My husband was an executive and didn't feel he should associate with those kinds of people.

During that time, I appeared before one judge in Morris County, who unfortunately, due to what I believe was dirty politics, is no longer on the bench. That judge told me that she would not amend the restraining order that would allow my husband back into the home when I requested such, because she felt, with his prior history, there should be restrictions placed upon this man.

At that time, I did not know that my husband had been-- I knew he had been married before, but I did not know he had a history of domestic violence. His divorce from his first wife evidenced the domestic violence and the fact that he had threatened her life on numerous occasions.

In December of 1993, I testified for three days before Family Court. At that time, 13 violations of the restraining order were lumped together and heard as one count in a deal made by my husband's attorney. At that time, I believe that the judge handled in an exemplary fashion, the hearing. My husband was sentenced to the minimum sentence of 30 days in the Morris County Jail for violations of the restraining order. My husband, while on the SLAP program in Morris County, which is the Sheriff's Labor Assistance Program, contacted me at work by phone. He threatened me and continued to harass me for months afterward.

When I heard a gentleman earlier make a claim which mentioned profit from the misery of others, I thought of my husband's attorney, who lied in her appeals to Trenton trying to overturn fines that were placed on my husband. I thought of my husband's attorney, who was permitted by a judge in the Family Court to testify from her seat without being under oath, which we all know is a violation of court rules. I thought of my husband's attorney, who has lied in all the paperwork and documentation that has been submitted to the courts.

Transcripts that I was forced to obtain on my own and pay for own my own, in order that I could prove that this was

perjury-- I also think of my husband's attorney, who was allowed to serve divorce papers at 12:15 in the middle of the night. She had the process server make sure that he alarmed both me and my child. None of this, because of the fact that my attorney quit in December of 1993, was I able to bring to light. My attorney quit in December of 1993 because the Family Court judge would not address legal fees.

My husband, I later found out, is a federally convicted criminal. My husband is on Federal probation until 1996 for a white-collar crime. When I asked that his history of domestic violence and that his history that he has been ordered by Federal probation to undergo psychiatric counseling be made known in courts, I was told that this is not permissible.

I'm asking that things such as a computer history be allowed, or a bank set up, whereby men who have histories of being abusers are somehow made known to the Family Court system, so that women do not have to go through what I have been through in the Family Court.

I also ask that you monitor and somehow train judges in Family Court so that women, like myself, do not have to have a judge make comments from the bench such as, "The abuse couldn't have been so bad, Mrs. Jordan. After all, you took him back." Or, "I'll bet, Mrs. Jordan, you could provoke anyone to violence." I was also banned from the church that I went to. In order to escape going to church and meeting my husband at the church that we had belonged together as husband and wife, I was banned by a Family Court judge from attending that church.

These are the kinds of things that I bring to you tonight in a desperate attempt to have you look into. I have called, written, and visited every politician or official that I could think of in an attempt to bring some of these issues to light.

I thank you very much, and I hope I didn't go on too long. (applause)

ASSEMBLYMAN KAVANAUGH: Thank you, Mrs. Jordan. That was very difficult to testify in public -- very personal things. We want to thank you for being here this evening.

Diane Terhune.

B A R R Y W E I N S T E I N: (speaking from audience) Mr. Chairman, will everybody who signed up be heard tonight?

ASSEMBLYMAN KAVANAUGH: Well, we hope.

MR. WEINSTEIN: You hope?

ASSEMBLYMAN KAVANAUGH: If everyone is considerate of one another. You're Barry Weinstein.

MR. WEINSTEIN: That is correct, thank you.

ASSEMBLYMAN KAVANAUGH: Good evening.

D I A N E D. T E R H U N E: Good evening, ladies and gentlemen. I'm not used to testifying. It's very, very difficult. I left my husband in 1988, literally, to save my life. I was married to a foreign doctor, from Iran, a Shiite Muslim. I had two children in this marriage. I left him for severe abuse. He gave me a shot, an injection with air, in front of my two children. I knew I had to leave. He was mean and abusive to my children. He hit me many times. He tried to force Valiums upon me, rather than rectify his nasty, abusive treatment.

My daughter used to have to come between my husband and I many, many times to stop him from beating me. He used to-- He told me that unless I cooperated with him -- he'd lock the door behind the children -- that he would rape me unless I cooperated with him. I literally left to save my life, and my children to have a future.

I have given my whole life to my children, trying to work to support us through constant years of a deadbeat dad. I filed for divorce in 1988, after a 22-year marriage. I have been in court for seven years, three judges. I have been into court numerous times. One time for support-- Three times in a row, when I was in for support, in desperate need for money --

cut offs of electricity, heat, and my two minor children in the house. I had my court appeals for support cancelled three times in a row.

Finally, one time when I did get into court on my support hearing, there were two other men that were ahead of me. One was a black man that was brought in by a police guard, shackled. The judge told him that he had to borrow his support -- back support -- for his family, or he was going back to jail. Another man was a blue-collar man, that was told that if he did not come up with his support within two weeks that he could report back to jail with his toothbrush; that he could get a job doing anything to support his family, pump gas, etc.

At that point, I turned around to my attorney and said, "What is the difference between these two men and the doctor that's not supporting their children?" And my attorney said, "There is no difference." I said, "Then why can't I be supported? Why am I not granted a bench arrest? Why am I not getting what I need to support my children?" I was awarded custody of my children by Dr. Judith Grief's (phonetic spelling) testimony as a psychologist, as being the only competent parent.

The father cannot complain about not seeing the children. He was allowed to see the children during day hours, light hours, and limited time periods only. He did break the rules on time, and that's not an issue. I had no choice of being the only custodial parent of my children. It is a privilege for me to do this, but I had no choice to do it.

Many, many times I have been into court over the years for court orders. Court orders in my case have never been enforced. We have been allowed medical, dental bills, and insurance to be paid. I have, in seven years, not been reimbursed one medical bill. I am back now to appeals court. I am back to Appellate Court for financial discoveries. My husband was told to bring in IRS forms numerous times. He

failed to, or provided incomplete, without schedule "Cs". He was told one day by the judge, in court, "Do you have it in your car?" He said, "Yes, maybe." He said, "Go out to your car -- we'll recess for 15 minutes -- go find it and bring it up. You're under court order to do it." He went down to the car, and, of course, came up without the papers, being court ordered. I cannot process this case without court orders being enforced by the court. I cannot go through financial discoveries--

In April, I was to the court again, and he was ordered to bring in all support papers regarding the finances of our marriage. He never did. Continually, I am not getting help from the court. My husband has been at one time two years behind, $171,000 in support. This is not the first time. This has been on continually. He is a wealthy man. He has funds and he does not want to. We haven't known where this man has been. He's been out of State, unlocatable. I had to hire a private detective to find him perjuring himself and working one time. It cost me $6000. I was not reimbursed this by the court even. I need help from the court. I came to the court to get myself out of a wretched life-saving problem. I feel that the courts in New Jersey have let me down.

ASSEMBLYMAN KAVANAUGH: Thank you very much, Diane. (applause) Mary Ann Falconier. F-A-L-C-O-N-I-E-R.

M A R Y A N N F A L C O N I E R I: I-E-R-I.

ASSEMBLYMAN KAVANAUGH: I-E-R-I. Missed the I. Mary Ann.

MS. FALCONIERI: Mary Ann.

ASSEMBLYMAN KAVANAUGH: Good evening.

MS. FALCONIERI: Good evening. Thank you.

My name is Mary Ann Falconieri. I was married to Bruce Eden. We were divorced four years later. Bruce is now, and has been for the past several years, involved in an organization called The New Jersey Council for Children's

Rights. He is the Chairman of the Board. What is so hard for me to understand is that he himself, a deadbeat parent, is part of the problem that the court system seems to ignore.

You have to excuse me, I'm very nervous.

When I was divorced and went to court with an attorney, Mr. Eden was to pay child support and also to pay three quarters of any and all medical bills for my twin daughters, who are now twelve. He was always behind in his payments and never once paid any of the medical bills.

So I went back to court again. And again with an attorney and again in front of a judge, and the judge told him he must pay his court-ordered support or sanctions would be brought against him. In fact, one of the judges that Mr. Eden and I were in front of for two years, all of the sudden has recused himself from our case. I have been put into a pool by several judges in the Passaic County Court System. No one, and I reiterate, no one will hear our case. That was ten years ago, and the back support owed to my daughters is $10,000, and the medical bills that are owed to my daughters are also $10,000, for a total of $20,000.

Where do we turn when the court systems work for the wrong people and we have reached our financial limits in hiring attorneys, only to go back to court every year to try and get the original order enforced?

Some of these fathers get so far behind that when the Sheriff's Department rounds them up, it is virtually impossible to ever get them to pay.

My other concern with these fathers groups, like the one my ex-husband is a member of, is that they profess to be for the children's rights, when, in fact, the only thing that they concentrate on is how to get out of their financial obligation to their children. I know this firsthand. I believe that this group has the wrong name, one more suitable would be, "Fathers Looking for a Way Out."

My own experience in the court systems is horrifying. I am still trying to get what my two daughters deserve. If Mr. Eden is right and his organization stands for -- I believe the insignia is a child with two helping hands -- then he needs to start fulfilling his end. That means financially. I believe no child support, no visitation. Maybe it would make people like Mr. Eden think twice before ignoring a court order that I have been trying to get enforced for a long time.

I know, as long as there are deadbeat dads, only our children will suffer. I request the Commission to seriously take a long, hard look at the men representing The New Jersey Council for Children's Rights, and then maybe you will see what so many of us do; it really isn't a pretty sight.

I have been remarried for the last five years, and my husband, who wanted to be here tonight but has taken our daughters to back to school night, he thought that was his priority. He has taken care of what should have been half of Bruce Eden's responsibility, but my husband does it because he loves our daughters. He shows them what a two-parent household really is like. Mr. Eden hasn't seen his children for two and a half months, and that was the choice of my daughters. He has also made no attempt to contact them. These are the daughters he wants us to believe he loves and cares for. I don't think so.

Thank you for letting me come and speak tonight on matters that are important to all of us. I hope I can learn something by being here, and I hope you can learn something too.

Thank you. (negative and positive audience reaction)

B R U C E E D E N: (speaking from audience) That's perjury, Mary Ann.

MS. FALCONIERI: Yes, sir.

UNIDENTIFIED SPEAKER FROM AUDIENCE: Give those kids to their father.

ASSEMBLYMAN KAVANAUGH: I tell you what, if I recognize you and I have you on my list, you won't speak tonight.

Kathy C-O-C-C-I-O-L-A.

UNIDENTIFIED SPEAKER FROM AUDIENCE: Mr. Chairman, Mr. Chairman. You have had seven women in a row. How about (indiscernible).

ASSEMBLYMAN KAVANAUGH: Good evening.

K A T H L E E N L. C A C C H I O L A: Hi. I was just ready to address you as your honor. I'm so used to being in court. I don't want to talk about my miserable life, but I'm here to speak on behalf of my four little children and my mother, who has ultimately become a victim because of the courts.

I have four small children and each day -- because of the courts that don't have any enforcement -- a little bit of their dignity is being taken away from them because of the court system. I have an ex-husband, in three years, that is over $30,000 in arrears. Ultimately the court took away the bench warrant stipulation, where we have no chance to get that money. My case is before the appeals. My children have lost their dignity. They have so much potential and nobody is giving them that chance.

My mother, who is 63 years old-- On behalf of all the grandmas and granddads out there-- They have ultimately had to take on the responsibility. Everything that they have saved for, they're losing. It breaks up the family home. Something has to be done. It's not the judge's children that they hear crying because of hunger, like I've heard. It's not the judge's children that are shivering with fear, afraid that they are going to be homeless. It's not the judge's children that have to wear rag clothes, hand-me-downs from other privileged children's trash.

Someone has to put a stop to it. I would just like to make a suggestion that, if there are new laws passed, that possibly, maybe, the lower courts can run like the Appellate Courts do, where one judge hears a case but it has to go before three judges when there are children involved, to stop the bias, the favoritism, and the prejudice between lawyers, judges, and everyone else. I think it would help. That's all I have to say. (applause)

ASSEMBLYMAN KAVANAUGH: Thank you very much, Kathy.

Gene Rosner.

E U G E N E R O S N E R, ESQ.: Thank you, Mr. Chairman.

Mr. Chairman, I'm here wearing two hats. One is a practicing attorney in the family law area for the last 15 years. The other hat is as President of the New Jersey Association of Professional Mediators, most of whose members, including myself, practice in the area of divorce mediation. Divorce mediation is an area that is, for the most part, misunderstood. I hope, through my testimony, that I can bring some enlightenment to the Commission on what divorce mediation is, and how I see it as a benefit in the divorce process.

The mediator is a neutral, trained professional who helps participants to clearly define the issues that they face, to facilitate the communication process, which would allow rational discussion to take place, and to reach satisfactory agreements on the issues in dispute. The mediator does not -- and I emphasize does not -- make decisions for the family. It helps the divorcing couple make decisions for themselves that they believe to be in their own best interest. Rather than giving up control to the uncertainties of the adversary system, couples in mediation maintain control and negotiate a settlement agreement that best serves that family.

In the usual divorce proceeding, many choices involving the restructuring of the family unit into two new units, how children are going to be cared for, and how finances

are going to be arranged are decisions that must be faced and resolved. Generally, in the adversary system, these issued are resolved by two attorneys who attempt to negotiate a settlement of behalf of their clients.

If the negotiation process fails, the case is litigated. A judge, who is obviously a stranger to the case, makes decisions for the couple. In this traditional approach, the divorcing couple often assume passive decision-making roles. The family is divided into hostile competition. Battles over property, support, and parenting responsibilities can be devastating.

This process fosters destructive communication patterns, constant recrimination, and prolonged bitterness. It is costly, time-consuming, and emotionally and economically draining on the family. It often leaves the family with emotional scars that often delay or even prevent the development of healthy new family patterns.

I would suggest that tonight you have heard many examples of how the traditional adversary system has affected families who have gone through the divorce process. Mediation helps the family resolve issues much more quickly than the traditional adversary system. It is more efficient and certainly far less costly. On average, a mediation process would involve perhaps six to ten hours to resolve the issues.

How does divorce mediation work? A specially trained professional helps the couple work together to reach an agreement. The couple deals with both the long-term and short-term needs of the family. They help set goals for the future. The process involves a thorough review of the couples economic needs and the resources available to meet those needs. In the adversary system that process is called discovery. In mediation that discovery process takes much less time and can therefore lead to solutions much more quickly.

The mediator helps to clarify both the emotional and practical issues that help identify all possible options for creative problem solving, options that are not generally available in the adversary system. The parties actively participate in negotiations which lead to reasonable solutions and mutually satisfactory agreements.

What is the role of the attorney in the mediation process? In mediation, the role of the attorney changes from one of an advocate to that of an adviser. It is the attorney's responsibility -- and I should add that couples in mediation are encouraged to consult with attorneys to receive advice on what their legal rights and obligations are in the divorce process. But that role changes to one of adviser rather than one of advocate.

When the parties have reached -- hopefully, have reached -- a satisfactory agreement in mediation, the mediator prepares a Memorandum of Understanding, which is then reviewed by the attorneys and placed into final form, which we know as a support and property settlement agreement that ultimately becomes a part of the Judgment of Divorce.

There are two issues that are generally addressed as concerns with mediation. One of those concerns is the worry that in mediation, one party has an imbalance of power, and generally, that is viewed as the women being somewhat less empowered than the man in the process. (timer rings)

I will tell you, from practical experience, that simply does not happen. The trained mediator knows how to deal with an imbalance, and I would suggest to you that mediation becomes an empowering process rather than the reverse.

Let me quickly, because I know my time is up, just add one word on domestic violence issues. In most cases, I would suggest that those involved with domestic violence are not appropriate candidates for mediation, but there are exceptions to that rule.

Let me conclude by saying, Mr. Chairman, that the statistics are overwhelming; well over 90 percent of divorce complaints, divorce proceedings are settled rather than litigated. It is the quality of that settlement that becomes important. It is a mediated settlement where the parties have invested themselves in that agreement that will resolve issues on a longer term basis and avoid the multiplicity of postjudgment applications that we see.

We, certainly, can't eliminate the pain, the aggravation, the turmoil of the divorce process. We can certainly hope to minimize that pain and turmoil. I would suggest to you that mediation is one way of doing it. There is a whole other area in mediation that we should talk about, and that is, whether it should be a mandatory part of the divorce process in the court system. That would involve a whole other night, and I won't take up time now.

I thank you for your time.

ASSEMBLYMAN KAVANAUGH: Thank you very much. (applause) The Senator has a question.

SENATOR MARTIN: If I could just ask you two questions. Maybe one you tried to address, but I think it's important. Assuming mediation--

ASSEMBLYMAN KAVANAUGH: You can stay there, Mr. Rosner.

SENATOR MARTIN: Assuming mediation is preferable to litigation and the traditional court process, does it require the voluntary willingness of both parties, or is that part of your question about the mandatory court aspect?

MR. ROSNER: (speaking from audience) Yes, that is part of the issues. One of the issues, clearly, that would be raised is whether it is important to be a mandatory part of the process. Let me say, generally, it would be better if mediation were not mandated and people were voluntarily--

HEARING REPORTER: Mr. Chairman, I'm not picking him up. (indicating recorder)

ASSEMBLYMAN KAVANAUGH: Mr. Rosen, I'm sorry, you'll have to come down. We're not getting you on the tape.

SENATOR MARTIN: I appreciate it would be better if both parties volunteered. My question is, in your opinion, with your background, does it require that both parties to be willing parties to mediation?

MR. ROSNER: Absolutely. Mediation does presume a good-faith effort on both parties to resolve the issues in dispute. I would suggest, though, that with mediation, parties are more apt to proceed in good faith with each other than when they are faced in an adversary position where they have intermediaries between them.

SENATOR MARTIN: I understand. A quick question. Do you find with mediation, in your experience -- is there any way you can deal with enforcement? I know you're going to tell me that it's more likely that the parties are willing to abide by the agreement, but assuming that one party doesn't abide by the agreement, is there any mechanism through mediation or your experience that would somehow be able to trigger enforcement? We keep hearing, over and over again, one of the big problems with the current system is persons just simply ignore the orders.

MR. ROSNER: Well, one of the things that is traditionally written into an agreement structured through mediation is, that if a dispute arises in the future, the parties would attempt mediation first to resolve that dispute. There is no mechanism through mediation that can deal with the support obligations that are imposed, whether it's imposed by agreement or by court order. But I would suggest to you, and the experience supports this, that mediated agreements are more likely to be followed than imposed agreements. So that, ultimately, I think is the answer to your question, sir.

ASSEMBLYMAN KAVANAUGH: Thank you very much. We're going to also have mediators in at one of our executive sessions, Senator, so you'll have that opportunity.

Thank you.

SENATOR MARTIN: Mediate our own discussions?

MR. SCHOENBERG: I'll be happy to do that, Senator.

ASSEMBLYMAN KAVANAUGH: Dr. Bernie Lauredan.

Good evening, Doctor.

B E R N I E R L A U R E D A N, M.D.: Good evening. Thank you, Mr. Chairman.

Honorable Chairperson, distinguished members of the Commission, elected officials, and participants at large: I am delighted to have the opportunity to address this Commission on the sensitive issues surrounding the most defenseless members of our society, our children.

On behalf of all children, please allow me to congratulate the State of New Jersey and the Legislature in general, the National Council for Children's Rights, the New Jersey Council for Children's Rights, and all the other organizations for accepting the challenge to deal with the emotional, political, and legal aspects of the issue of divorce and the rights of children.

As a pediatrician in the inner city of Newark, I constantly deal with the well-known phenomenon of "babies having babies," the counseling of children of divorced mothers, and, on occasion, the unpleasant task of attending the funeral of a teenager killed by another lost teenager.

There is increasing evidence that poverty, racial prejudice, and the lack of education lead to more crime, more drug abuse, and more violence. However, an even bigger factor is the illegal takeover of parental rights by the government, whether it is DYFS, or whether it is the judicial system giving out the children, an example of the separation of children from their families such as in the case of divorce, where sole custody of a child is awarded to one parent.

The following damaging statistics are from households of single parents or sole custody homes: 85 percent of the youth incarceration, 90 percent of the homeless and runaways, 85 percent of the chemical dependence and abuse, 71 percent of the high school dropouts, 71 percent of the teenage pregnancies -- which we have in Newark -- 63 percent of the teenage suicides, which I see everyday.

These are disturbing statistics to any man or woman of good conscience. Dr. Louis Sullivan, a former Secretary of Health and Education, set the stage when he stated, and I quote, "What I consider to be one of the most pressing issues facing our nation is a perilous rise in the fatherless families."

This crisis results, mainly, from the failure of the system to support a coordinated and rational effort to diffuse the disintegration of families. To stop the discriminatory process of the courts in which one parent, usually the mother, is declared the sole custodian and the other parent, usually the father, the open-wallet visitor, the father doesn't belong to the visiting role.

Honorable Chairman, and Members of the Commission, the Family Division of the courts should be renamed the "failing children division." This is perhaps the most visible part of the court, where someone, usually a man, is considered guilty without a hearing. Where the most malicious lawyer, with the blessing of the court, hemorrhages the party's assests at the expense of the children. Unfortunately, we are still asking why so many children are living in poverty? Why we have so much crime? Why do we have so much violence? Why teenagers are stealing cars? Shouldn't everyone be considered innocent until proven guilty?

According to most recent knowledge of the two chromosomes which are united to form a baby, one comes from a man and the other from a woman. One can then deduce that a

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child belongs to two parents with equal rights to nurture, equal rights to love, equal rights to support emotionally and economically to the best of their abilities. Yes, everyone should pay child support. We should not even call it child support. We should call it obligation for their sake. Therefore, misnomers such as sole custody, residential custody, full custody should be erased from the book unless one parent is declared unfit. (timer rings)

For the sake of our children, Mr. Chairman, the future of the nation, the archaic and adversarial process of divorce established under nonscientific grounds must be scrapped and replaced by a more modern mediation system headed by well-seasoned and independent teams of psychiatrists and psychologists dedicated to the service of the best interests of the children and not everyone else.

Thank you. (applause)

ASSEMBLYMAN KAVANAUGH: Thank you.

Peter Staats.

C H A R L E S "P E T E R" S T A A T S: Good evening, Assemblyman, Senator, members of this panel.

My name is Peter Staats. I was married for 17 years and have two children whom I love beyond words. One is 14 years old and one is 15 years old. One lives with me; one lives with their mother. This is by their choice.

I have been a police officer for 20 years. I deal constantly with domestic violence and family matters of all kinds, just to give you a little background.

First of all, I applaud you for your efforts. I have sat in the audience on past occasions and have observed and heard the testimony you have endured. Some of it emotional, some of it dramatic; however, all of it, I am sure is sincere. My problems are nil compared to some of the testimony I have heard.

I ask you, how many on your panel have experienced divorce? Have any of you gone through this? It cannot be understood completely without experiencing it. So, if you think that some of us are out in left field, try to understand that some of our emotions have been strained to the limit. Some of us barely hold on to what is left emotionally, some recover, and some never go on.

The issues: I am sure you will find all have a similar ring. The system is not in step with reality. The system created by lawyers, administered by lawyers, is self-perpetuating. Few are really interested in what is right and wrong. You have a chance to change this. Sometimes we get wrapped up, when we are in a panel like this and studying too much theory. We listen to too many so-called experts who have the book knowledge down pat. They have it all on their resumes and all their college certificates, but they have no practical experience in the matter. We all know, that what in theory should be, is not what the reality is. This reform needs to be kept in lay terms without the complicated legal jargon. A commonsense approach is needed. Be careful of statistics depending on who is giving them to you, they can be interpreted in many different ways.

A few things that I feel need to be reviewed, and I'll try to keep this short. It has already been mentioned, child support figures. They are not in step with reality today. The current guidelines reflect a time when, for the most part, one spouse worked and one stayed home to raise the family. In a situation such as this, there is a definite need to provide money, either as child support or as alimony. In the marriage where two career people are making close to equal incomes, the figures are out of line.

There needs to be an examination of the realistic cost in raising a child. I often wonder how, while married, I was able to provide for my children with no problems at a fraction

of what the guidelines claim it costs. Since the court has decided for me that I have to pay a certain amount of money, which I don't think is outrageous, they went ahead and garnished my wages. When I was paying, I was a month ahead of what the support deadline was, but they have now come up with a rule that says I don't have a choice; they will garnish my wages. I don't know how so many fathers get so far behind if this is the case across the State. There shouldn't be a problem. That isn't the case. You go from one county to the next county, everything is different, so there needs to be some uniformity.

Accountability for the money: It is much easier for me to accept the fact of my money going towards my child, is being used for my child. Most fathers I have spoken to expressed the same concern. We give the money, but there is no accountability how it's spent. It's frustrating to be strapped financially, only to see that the custodial parent is taking the money and driving around in a new sports car. When asking the child about the new clothes that this person is supposed to buy for them, you're told, "Mom says four pairs of jeans are enough. You can do the wash in the middle of the week."

Divorce should not be a profit making situation for either parties to the divorce. Lawyers need to be concerned more with the lives they are affecting than the lining of their pockets. It's frightening to hear attorneys refer to other attorneys as matrimonial lawyers belonging to matrimonial clubs. I had more than one attorney that I was involved with use that reference several times. They see how much money you have, on a case information summary that you provide, and I wonder if that is even seen by the judge. I believe that it's actually used by an attorney to see, "How far can I take this case?"

UNIDENTIFIED MEMBER OF AUDIENCE: Right, absolutely. (applause)

MR. STAATS: I hired a reputable attorney from a firm specializing in divorce, a rather large firm located in Lawrenceville. After spending $7000 to $8000 in divorce, it was finally over. I thought I was at peace. I was subsequently taken back to court. I contacted my attorney. I expressed my concern of confidence in him. I was told by this attorney (timer rings) that he doesn't dot every "i" and cross every "t," and sometimes he doesn't prepare enough in advance. What do we get for $225 an hour? Where is the accountability?

I'm not going to go into every detail. I've given you basically what I have to say. Assemblyman Kavanaugh, I've written you a letter in the past, and that's attached to this statement.

Just in closing, some of the issues that you do need to address are judges, and that the judges should be not the junior judges, but judges trained and experienced, because they are the ones that are affecting the most important issues in society right now, divorce. (applause)

Thank you for your time.

ASSEMBLYMAN KAVANAUGH: Thank you very much, Peter. Thank you, Peter, for attending.

Karen Delfulente. (phonetic spelling) Is Karen here? (no response)

Lisa Marie Vogel. Lisa Marie, I think you were late in coming -- not late in coming -- but you weren't here in the beginning? Or were you?

L I S A M A R I A V O G E L: I was here.

ASSEMBLYMAN KAVANAUGH: Okay, I just wanted to remind you about the timer and the five minutes and all. Everybody is doing very well.

Welcome.

MS. VOGEL: Thank you.

A lot of people here have had a lot of viable emotional issues that they have addressed as a result from

divorce. Each person has given their own personal view of divorce and how it has affected them, but the one thing that is the most important of all are the rights of our children. One gentleman complains about child support and states it does not support children; another talks about having a private audience with a judge over personal finances. No one is really talking about what's important, and that is the children.

The difficulty with divorce in the State of New Jersey is that it has become an enormous legal drain on everyone's expenses. It is a financial drain on the court system. It is being paid by the State. It is a drain on the people divorcing, and it is a severe emotional drain on the children.

In many ways I am like everyone here. I took my children to Little League; I was a coach for baseball and soccer. I was in a parent-teacher organization; I went to every parent-teacher conference. But in some ways I am not like any here at all. I lost my home and I lost the custody of my children. I lost them because I could not afford to fight the legal battle. I did not have enough money. I went to three different attorneys, and they told me that I needed $10,000. I didn't have it.

When I went to court, I was told by the judge that I didn't have a home. My house had been foreclosed upon because my ex-husband had violated the divorce agreement, left the State, and did not pay the mortgage as he was ordered to do. He stopped paying the child support. He engaged the services of a very expensive attorney at $300 an hour and saw to it that whatever I attempted to do couldn't be done.

There's a sign that says it takes an entire town to raise a child. We can't put a number on child support. Barbara Bohi, from the women's voters, offered a suggestion of a lien against property. I have a lien against the property through the Probation Department of $18,000. When I went to court to try and get the back child support of $18,000, his

$300 an hour attorney filed for custody. We were so busy discussing custody that nobody sat down and thought about the fact -- what was happening -- that I had this Probation lien. He wasn't paying child support. We were so busy talking about custody, nobody sat and thought about the fact that here is a fellow who is not paying child support, who wants custody of the children.

He found a psychologist who -- we got a psychologist. The psychologist came, and the psychologist said whatever he was paid to say. I mean, you've got to understand that when a psychologist is engaged for an enormous amount of money -- $3000 or $10,000 -- he is to a certain extent an advocate. That's what he is, an advocate, and any attorney is an advocate. You have to sit down and think about why we are here. I mean, I see people all over, and it's a male/female thing, and we have to get past the bitterness of man versus woman and see that there is major reform that has to be done. (applause)

As I stated, I could not afford an attorney. I went to Legal Aid. I wasn't qualified to go to Legal Aid, because unless you make over $10,000, you cannot go to Legal Aid (sic). So somewhere in that middle point of being a middle-class person, I could not meet the requirements that I had to meet. I could not get the comparable attorney because it gets to the point where you want to find-- If you have a heavyweight, you have to get another heavyweight brought in. (timer rings)

I don't want to go into my personal situation anymore, I want to make some recommendations: I want to recommend that people who have to be evaluated by a court appointed psychologist have it paid for by the State, instead of having a person pay it, because that court appointed psychologist is going to want to show some debt to the people who are paying the bill. It should be done by the State, because, in that case, we have the opportunity to show some impartiality.

We also have to say that if a person isn't going to pay child support, they shouldn't have the option of having custody.

We also have to consider the children's recommendations. They're very important. We have to say what do the children want? Because if you don't take the children's recommendations, you're not listening to what the child needs.

We have to show some kind of sensitivity to domestic violence. We have to require two experts, like a second opinion when we go to the doctor and we think we have cancer. We have to offer that. Finally we have to place our children first.

Thank you very much.

ASSEMBLYMAN KAVANAUGH: Thank you very much. (applause) Vivian Kerr.

V I V I A N K E R R: Ladies and gentlemen, as a single parent since 1980, who has raised three kids almost solely by herself, working two and three jobs from seven in the morning to eleven at night and on Friday and Saturdays to support my children, I feel that the State of New Jersey needs some changes in their divorce laws. My ex-husband has unlimited visitations, yet he chooses not to visit with his children.

He most recently has signed an agreement with me relieving him of all of his child support obligations if he will leave me and my children alone and allow us to be free from this State. My children cannot see their grandparents because we have to live in New Jersey. Yet this man has chosen to cross the State line, deny all court orders, and is very much behind in child support. I feel that the laws confining custodial parents to remain in the State until the child reaches an emancipation age are not realalistic. We don't see or hear any laws that are reciprocal for all the states.

I would like to see something become a Federal law that every state is reciprocal; that a husband can't move

across a state line, not even ten miles away and get away with not paying anything or fulfilling any of his obligations. He has not provided any of the court-ordered obligations, as far as medical, dental, or child support. He has neither supported my children in their activities in school, nor been a father in any sense of the word.

What kind of a father would threaten to kill us in a court of law in another state, rather than pay any form of child support? I don't feel this is justice. My ex-husband has only been ordered to pay $60 a week. My children are now 24, 16, and 15. This summer they found out that it's very easy to earn $60 a week and cannot understand why their father cannot earn this money. They don't want me to put him in jail. We do have an agreement. The judge denied our agreement. I will relieve this man of $6000 worth of debt to be able to leave this State before my children reach emancipation age. Yet a judge says, "No I can't leave, this father has rights."

What about my children's rights? Haven't they been violated since 1980? I can't afford an attorney. I also have to cross state lines and represent myself. I don't know the laws in another state, and I'm not that familiar with the laws in my State. I have been divorced three times and I feel that the attorneys are out there just to take your money, not to help you. The child support system has failed me and my children. In Hunterdon County, when my ex-husband moved to Pennsylvania, and I happened to move to Somerset County, my case was transferred. The Somerset County Probation Department closed my child support case without my knowledge, because I had a reciprocal order that the State of Pennsylvania would enforce collection of my child support. It has been a year and a half now, and six days of my loss of income to go to court in Pennsylvania, to no avail.

When will the courts stand up for the children and when will they do what is right for them? I'm tired of fighting the system and I have, yes, given up. That's why I asked for this agreement. I don't want to go to court; I don't want to fight over child support. He has never been denied anything, but I feel that I have financially been denied everything.

Thank you for your time.

ASSEMBLYMAN KAVANAUGH: Thank you, Vivian. (applause)

Mr. and Mrs. J. Keith Abrams. (phonetic spelling) (no response) Karen Smith. (phonetic spelling) (no response) Esther.

E S T H E R B A U M A N: My name is Esther Bauman. I am the ex-wife of a member of one of these children's right's groups. I do not plan on wasting the time of this Commission to venture into a "he says, she says" diatribe. That's not what we are here for. I would like to share with the members of this Commission some background on my life since my divorce six and a half years ago.

Thank God that I have a professional education and was able to successfully reenter the job market. If I were not fortunate enough to have this advantage, my son and I would probably be among the homeless. I would have become a statistic for the new class of welfare mother. There were years when I had to balance two full-time jobs and two part-time jobs to keep a roof over our heads, food on the table, and my son in college.

Yes, I am the custodial parent. I did, I do now, and I will continue to feel an ongoing love for my child, as well as an accountability and a responsibility for his welfare. I wonder about the feelings of noncustodial parents who wish to become emancipated from their court ordered obligation of child support toward their own children. Where are their feelings of concern and responsibility?

The punishment of the children in retaliation of the former spouse is instead demonstrated -- the use and manipulation of the children as tools and weapons against the former spouse. If there were a level of concern or caring for the well-being of their children, these noncustodial parents would demonstrate it in positive constructive manners. Instead, what is clearly demonstrated is an abuse of our judicial system in an effort to escape their responsibility.

Divorce is the dissolution of the marriage between a man and a woman, not between a parent and a child. Mistakes are made, children should not be the ones to suffer for them. My ex-husband was quoted in the paper as stating that he stopped working so that he would not have to pay child support.

The legislators of the State of New Jersey have been leaders in the area of holding parents accountable and responsible for the continued support of their children. Hopefully the legislators of this State will continue to be in the vanguard of ensuring complete protection of the children and the spouses.

At what point does a parent's responsibility to the child stop? Does it ever stop? Should it ever stop? Shouldn't children have the security of knowing that they have the unconditional and continued love of both parents? Statistics very clearly demonstrate the answers to the above questions. The rate of suicide and mental illness among children of divorce is much higher than that of the general population. No one wants to stop contact between a parent and child. I fully respect and acknowledge the rights of the noncustodial parents to maintain a positive relationship with their children. However, when that contact becomes either physically and/or emotionally threatening, then the custodial parent must intervene and turn to the law to protect their children. None of us want our children harmed.

The philosophy of the noncustodial parent group, as stated in the papers following the recent murders of two innocent children in Teaneck was, "The only way to get attention for our group was for someone to die for the cause." In this Commission's deliberation, the welfare and well-being of each and every child must be paramount.

My own child was harassed at college and experienced extreme stress and plummeting of his grades. I was powerless to bring this harassment to a halt. Once contact with his father was discontinued, my son was able to achieve academic excellence, graduating magna cum laude. My unsuccessful efforts to stop the emotional battering of us acerbated the menacing behavior toward us. Yes, I have an order of protection, but I know full well that it does not ensure my safety. All it does is to provide informational materials for local authorities. For some other women, it provides a false sense of security.

The courts have got to divert attention away from the two warring parents and focus on the true casualties, the unempowered children. They are the victims. The court should not allow itself to be used and manipulated by the rantings and ravings of some members of the noncustodial parents' groups. The court should not allow itself to be the platform from which the noncustodial parent can spew their venom. Instead, the court must become the advocate for the child.

I urge the people of this panel to continue to encourage the lawmakers of our State (timer rings) to pass laws that will ensure each child's right to emotional, physical, and economic freedom. The spouse and children in these situations are powerless. You must provide them with the resources to empower themselves. Their lives are in the hands of lawmakers and the judicial system, which interprets the laws. Please do not forget the children, they are the real victims.

Thank you. (applause)

MR. SCHOENBERG: Thank you.

The next witness is Chris Milad? Is there a Chris Milad here, M-I-L-A-D? (no response) Dr. Alan Tassaw? (phonetic spelling) Dr. Tassaw? (no response) Tom Wisniewski.

T H O M A S W I S N I E W S K I: I have copies of my testimony, do I hand them to the aide?

MR. SCHOENBERG: Yes, please. (witness complies)

MR. WISNIEWSKI: I'm here to take you through the divorce process as I've gone through it. My testimony will cover facts from my own situation. I don't really like to do this, but I know them the best, and they're very representative of the type of stuff that is going on. My testimony will cover child support, college education, retirement, extra expenses that are added on, and no-fault divorce.

First, child support: I was divorced in Monmouth County under Judge Lehrer. On the day of my settlement, I was brought before an early settlement panel, which is like a joke. The early settlement panel recommended that at $48,000 a year, my child support should have been $175 a week. That's what became law. That's what became law by Judge Lehrer. As a matter of fact, Judge Lehrer told me, and it was one of those cases where he walked out into the courtroom where I was sitting there by myself because both attorneys and the judge went to the chamber-- It went late into the day. It was close to 6 p.m. and the judge came out and said to me: "If you don't take this child support now, you will not come back to court for another six months, and you will have to pay $50 a week more at that time." Now, I am not an attorney, but that is duress. Then he came back and he told me: "Well I'm going to give you a benefit, because at $175 a week child support, that'll make your ex-wife very attractive for remarriage." Well, he was right, she has been remarried and divorced twice already, but I'm still paying over the child support guidelines. (laughter)

Just to add on a little something else, it cost me $5000 to get rid of alimony, because I had to do a buyout even though she was remarried; I can't figure that one out either.

About one year after that, I returned to court again. I've attached the segments of the transcripts in there where the judge actually said my child support obligation should have been between $130 and $144 -- well, $175 a week,that's still higher. It's seven and a half years later, and I am still over the published guidlines. Now the published guidelines that we have now are based on a percentage of income.

I would like to point out that about 75 percent of the people who are divorced get remarried, and many of them have second families. (infant crying in audience) And you can hear one calling me over in the back.

I'm over here Alex, fighting for us.

When I married my ex-wife, she was already divorced once before, so that's four counts on her, in case you're not counting. She was receiving child support. Let me tell you through experience, that's a bonus. That's a bonus check that comes to the family. That's a bonus check that comes to the second husband. Because that money does not, and I can clearly tell you, that money does not go to the children; it goes to the parents. (applause) It is a bonus; I've lived it; I've experienced it.

Now, let me tell you something. I'm paying over this child support published guidelines and I have a family and it hurts. It hurts a lot. It's very difficult. Now my child, you might see him back there, he looks very well-dressed. That's early garage sale. Looks pretty good for a garage sale, that's embarrassing.

I am not here to complain about my situation; I'm here to suggest some improvements: First, let's establish child support guidelines that are not fair -- I mean that are fair. (laughter) Pardon my slip of the tongue. It's awfully

frustrating to see published guidelines, and you're well over it and can do nothing about it. If I have to comply with the guidelines, why doesn't the court?

Second, provide for second families. Since I said most people get remarried, and it's both cases, my suggestion is allow the noncustodial parent, if he has second children, to exclude a percentage of his income to take care of the basic needs of his second child.

Third, retirement. There is nothing in child support guidelines for consideration of retirement. Now, where I went through divorce, I have to give up half of my 401(k) plan, which wasn't that much, but I still had to give it up. I haven't been able to establish one since, and I can't afford one. Now, the government Social Security program, we know, is already stretched. When we, the baby boomers, turn into senior citizens -- and all of us on the panel are going to be in the same situation -- there's going to be no Social Security, so it's going to be what we have to save. I'm recommending that we allow noncustodial, child-support paying parents to at least exclude 5 percent of their income per child towards retirement.

Fourth, allow modifications to be downward. History says that modifications are never made downward. About three or four weeks ago, I received a letter in the mail from the Probation Department saying that anyone can now, automatically, based purely on income, can file for child support modification. We know it's not going to be made downward, it's only going to be made upward.

Now for college education, that's a real kicker, because in my divorce hearing -- and it's included in my handouts there-- I got the actual transcripts where Judge Lehrer actually said, at the dispute of both attorneys -- both attorneys disputed Judge Lehrer violently, like some judges do -- ordered, "This will go in the order. I want it in there."

Now what right does the judge have to tell me what to do? I want the same rights as an intact family. My son over there, the judge can't make me pay for him.

One quick point, extra charges: For the past two summers I have been ordered to send my daughter to a residential singing school, or go to jail. That's above and beyond the call of duty. Now that's paying $25 per day in child support, plus $1500 in residential singing school for seven weeks during the summer, during which I was not even allowed to see her. The judge ordered that. I mean, what the heck is going on here? Communism is dead; they knocked the wall down.

No-fault divorce is protecting the guilty. My ex-wife ran away with the carpenter who put the deck on our house. I ended up supporting them in the marital residence for eight months in order to comply with the marriage order. That left me $47 a month to live on. I would like to see a Family Court judge live on $47 a month, excuse me.

Conclusion: I have taken you through some problems. The last time I was here in front of this Commission it was in July. The Commission asked me to obtain a study by Pollock and Stroup. I have done that. I sent it in about a week after that; it is part of the record and you will see it. I also found a another study on "Child Support Guidelines: The Next Generation" which was put out by the Department of Health. I do recommend that all panel members get a copy of this. It's easy to obtain. Just call the Department of Health in Washington, D.C. If you need the number, let me know. I'll provide it to the Commission.

Second, please, please make divorce laws fair. That's all I can ask for, and if there's anything I can do to help you, I will volunteer my time wholeheartedly. I know my current wife and my son will come and help me along. Please, it's ridiculous.

Thank you. (applause)

ASSEMBLYMAN KAVANAUGH: Thank you very much.

We have still a great number of people who have signed up to testify before the Commission. I wonder -- if we have here of those who have signed up that have not been heard -- if there's anyone who cannot make the next meeting? I don't want to continue on--

UNIDENTIFIED SPEAKER FROM AUDIENCE: Where is it?

ASSEMBLYMAN KAVANAUGH: It will be in Trenton. So that if we have people that are here that would like to testify, I want to be fair to all. (negative response from members of the audience)

SENATOR MARTIN: You don't even know when it is.

J O H N B E N N E T T: I had sent you letters and documents--

ASSEMBLYMAN KAVANAUGH: Your name, sir?

MR. BENNETT: John Bennett. Over a year, I never got any answers. If I submit this, will I get answers?

ASSEMBLYMAN KAVANAUGH: You certainly will, Mr. Bennett. We are not responding individually to letters. You're from Orange, New Jersey? Is that correct?

MR. BENNETT: No, that's just the PACT address.

ASSEMBLYMAN KAVANAUGH: John Bennett?

MR. BENNETT: That's right, John Bennett.

ASSEMBLYMAN KAVANAUGH: Alden St., Orange?

MR. BENNETT: No, I'm not from Orange. I just put the PACT address.

R O D N E Y J. K E R R I G E: When is the next scheduled hearing? November 2? I'm Rod Kerrige, could I be put on the agenda to speak in Trenton?

ASSEMBLYMAN KAVANAUGH: You certainly can.

MR. KERRIGE: Thank you very much.

J O A N G R Z E N D A: I would like to be able to speak tonight. I'm from Bergen County, and I'm paying a very expensive baby-sitter tonight.

ASSEMBLYMAN KAVANAUGH: Your name?

MS. GRZENDA: Joan Grzenda.

ASSEMBLYMAN KAVANAUGH: Well, Joan, would you come forward.

MS. GRZENDA: I'd like to start by saying that--

ASSEMBLYMAN KAVANAUGH: Joan, I would just like to say that, we do have a limit here with the town, as far as making the space available. We certainly appreciate that. They have gone to an expense to have their people working. So, if there are other individuals, we could extend a few minutes. But I would hope that anyone-- Pat Nagle, she would be happy to have-- Since you're here, and if there's anyone else, we would care to hear--

Joan.

MS. GRZENDA: Yes, I'll try to read fast. First, I would like to say that I'm in my current position 11 years, and I work with women. So after hearing the testimonies of Rochelle Castellano, Caryl Leightman, and Gloria Robinson, these are echoes of things that I have heard over and over hundreds of times.

My name is Joan Grzenda. I am speaking tonight as both a representative of Women's Rights Information Center, a nonprofit, community-based counseling and information center in Englewood, New Jersey, and for myself, a custodial parent. I have no particular expertise in divorce law, only my own experience, and that, as related to me by clients, associates, and friends, is what I'm going on.

I think New Jersey has made great strides by instituting laws that serve the best interest of our children, both in 1986, when the New Jersey Supreme Court instituted uniform child support guidelines and in 1990, when income withholding and other forms of collection became available to custodial parents. I am here tonight to reinforce to the Commission just how necessary these laws are to the well-being of our children.

Prior to my filing for child support in April of 1994, the father of my child was convinced that financial support of our daughter amounted to not much more than the cost of diapers, a quart of milk, and a box of Cheerios. There was a period of time when I had to show him grocery receipts to obtain any payments. He considered our moving from a one bedroom to a two bedroom home a frill, and paying for child care so that I could work was considered my responsibility by him.

If he was displeased by something I did, he would withhold any child support for up to four weeks. Holding me hostage by withholding money gave him control over me.

I now receive child support through income withholding, and he protests, saying it is "humiliating." Humiliating, however, is being a custodial parent receiving inadequate or no child support at all, at the mercy and whim of a noncustodial parent who may claim the same rights and privileges to the child.

My experience is not unusual. I have heard my story and much, much, much worse here tonight repeated in the voices of people I have never met, personally, but who share one huge problem. Yet some of us will not even file for child support, even though we remain at the mercy and whim of an obligor with the means to contribute a fair share.

Some custodial parents believe they are better off not aggravating a situation, if they are at least getting something. They are not confident enough in the system's mechanisms to collect child support once the order is in effect.

Those fears are not without basis. Recipients of court-ordered child support, paid through Probation Departments, soon learn that our right to support changes when enforcement is necessary. Literally, hours can be spent calling a Probation Department before a phone is not busy, a

phone is answered, and you finally speak with someone who knows the case. The staff can mishandle information, ignore it, or satisfy an inquiry by promising a call back or action and not following through.

In my case, the most serious arrearages -- which, believe me, are not serious at all in comparison to those I've heard tonight -- occurred because of delays in processing within the department itself. My court order was sent from Bergen County to Essex County on May 5th. I received the first payment on July 28th. Payroll deduction was not initiated until August 5. There were no irregularities, it was a very simple routine thing. During this 13-week period, arrearages went from $232 to $1060 simply because no one in the Probation Department asked the obligor parent for money during that time. The Probation Department is now requiring that the obligor parent pay only an additional $5 a week to satisfy arrearages. It will take four years to repay the money that would have been collected on time if the Probation Department had the wherewithal to act more efficiently. I made dozens of phone calls during this time to expedite these payments. I believe it would have taken much, much longer had I not.

It has been reported to me by custodial parents who deal with interstate agencies or URESA that the delays are much longer, sometimes years, and enforcement is also plagued by hostility and noncooperation and -- I didn't write this down -- but competition, actually, between agencies for who is right.

Enforcement agencies must: devote more staff to larger caseloads; train and supervise their staff; be accountable; and not have policies that reinforce the feeling of victimization among recipients.

Without enforcement, the overwhelming financial burden of supporting our children falls on the custodial parent or on the State in AFDC payments. I work full time to support myself and my child, who happens to be running a fever today. I left her with a baby-sitter to come to this meeting.

I am here at an emotional and financial expense, but I believe there are many custodial parents who want to be here and cannot, because they are doing the most all consuming job of both providing and caring for their sons and daughters. It is because the demands on our time are so pressured that we are underrepresented at public hearings like this one.

Those who may oppose the New Jersey child support guidelines and stronger enforcement criteria, or who resist obligation altogether, are, in fact, the same people who have the freedom from responsibility and spare time to organize and attend these meetings and whose voices are heard.

I am proud and sometimes in awe of the wonderful gift that is my daughter. I have and will continue to advocate for her right to live and grow in a safe, secure environment. This commitment must be the same for both parents.

I'm almost done.

I want the Commission to know that law enforcement is needed to make this happen.

Thank you.

ASSEMBLYMAN KAVANAUGH: Thank you, Joan. (applause)

Ann Ackley.

A N N M. A C K L E Y: I've been before the Commission in Trenton, and I have a baby-sitter.

These are pictures of my children, and the only way I could get them is through my mother, who had to sneak them in a ten-minute visitation; that is, she has seen them once or twice in three years. I don't believe that money should equal justice. I've been the victim of domestic violence for four years, and even though my husband has admitted to the domestic violence and I was granted a restraining order, and yet, he still violated it. He was slapped with a $50 fine and told to leave me alone. Now he has custody of my children, and I have custody of my nephew by court order.

I feel that the system only protects the abuser, and it does not protect the victim. As I have been harassed at my house, been photographed, videotaped, audiotaped, and threatened that the next time that he came and saw me that I would be killed. I live in fear of my life from this man, and I've taken steps so that, hopefully, he will not find me.

I have problems with visitation because of judicial orders. The judge is not held accountable, despite the fact that he has been asked to review his order and straighten it out. He has sent it back to municipal court, where I have been charged with criminal harassment of my husband for trying to speak to my children.

I have been forced to represent myself in Family Court, and not because I wanted to; it's because my lawyer refused to represent me because I couldn't pay her anymore. Legal Aid has turned me down six times. I've been declared indigent by Judge Harper to get transcripts free of charge, and yet I still have no legal representation because I fall in the cracks of the system. Because I'm so poor, I can't afford legal representation on my own, and yet Legal Aid or no other entity will help me except for the Children's Rights Council. There are some people that do not like them. There are some people that don't like NOW.

I have called 31 attorneys in the counties of Passaic and Morris, and no one has helped me. Any lawyer that had spoke to me said, "Well, give me ten grand and I'll get the order straightened out." My only income right now is AFDC. I have lost my house. I have everybody under the sun suing me for the joint marital debt, which the judge ordered him to be responsible for half of.

My children have no rights because they can't see me. They can't call me, and he does not allow them. I ask for help because the New Jersey courts have let me down; they have let the most important people down, our children, which are the

future of our country. My particular situation is not going to get any better. I have been told this by several well-known attorneys. My husband has enough money to have an AV represented attorney represent him, while I'm forced to represent myself.

I don't see any easy answers, but there should be some help for people in my situation. (timer rings) I am here just to make a general call for help. If anybody would like to know anything further about my case or help me in representing myself, I would appreciate all the help that I can get.

ASSEMBLYMAN KAVANAUGH: Thank you, Ann.

MS. ACKLEY: Thank you. (applause)

ASSEMBLYMAN KAVANAUGH: Barry Weinstein.

Is there anyone else here who cannot hold their testimony?

J O A N O'L. P E T I T E: I cannot. My remarks are very important.

ASSEMBLYMAN KAVANAUGH: Okay if you would come and you can come and you can join Mr. Weinstein at the table.

M A R T I N R O D E T S K Y: (speaking from audience) Assemblyman Kavanaugh, I have a problem. There are several of us here who have sat and watched other people attack us, and we have not been given the opportunity to defend ourselves. I find that for the exact opposite problem of what's gone on in the judiciaries for more than six years. The idea is, we have not had our day in court, unlike some people that I could name, which I will not, who have had their day in court again and again and again. We are constantly denied the opportunity to defend ourselves. The issue is that this court is going to muzzle us again.

ASSEMBLYMAN KAVANAUGH: Marty, you know that we have been very fair. In fact, I had mentioned that at the testimony you could come and testify at the various ones. I think knowing you as a very compassionate individual, that you

realize that these other people are here. You do have the opportunity to -- you've been before us three times, and I'm sure that you'll be back in Trenton. So that we'll have you--

MR. RODETSKY: I have a real problem with that. The issue is, this is the first time that I was personally attacked. I will respond to that, if for no other reason. I have my own talk, which I can put off, but I must respond to the direct attack that was done to me. Because failure to object is fatal.

UNIDENTIFIED SPEAKER FROM AUDIENCE: There are other people who are--

ASSEMBLYMAN KAVANAUGH: Thank you.

Let's not get into a dialogue.

MR. BRODERICK: Exactly, let's get it going.

ASSEMBLYMAN KAVANAUGH: Mr. Weinstein.

MR. WEINSTEIN: Thank you, my name is Barry Weinstein. I am a music composer, writer, author, poet, and performer. In fact, I just played at Woodstock, the original Woodstock site. I spoke to 50,000 people there.

The issues are similar to the previous common law uprising, as I refer to it, in the '60s, where everybody was concerned that the judiciary was not doing their job in upholding the equal rights for everybody. It caused the people to rise up in a movement against the government, and that's what your facing here in the State of New Jersey.

From what I understand, every single court in the State is under assault by papers. Every single Family Court judge is being accused of violating civil rights, and there is a commission, the Loftus Commission, investigating deprivation of rights of men within the State of New Jersey. There is a publication of gender bias out of the State of Pennsylvania. It's being recognized by the attorneys. The attorneys are being sued by everybody and they are, if we refer to them as the dogs of the courts -- are turning and starting to bite the judges, their masters.

This room is filled with people who are accusing each other of taking away their rights: there are women's rights groups, and there are men's rights groups. The women demand that they have their rights, and the men demand that they have their rights. But I don't understand one thing, and that thing is something that you should consider: There is only one set of rights. They should be applied equally to everybody. If it's not being applied equally to everybody, then it's the judges' fault for not applying it equally to everybody.

There has to be a remedy of law for us, the people, to go back after the judges who have obviously violated the civil rights of the people that come to them for equal treatment and have nothing happen to them. In fact, I challenge anybody in this room right now, on this panel, to name one judge who was prosecuted for civil rights violations in the '60s. Anybody have a name of a judge? (no response) Any lawyers? (no response) Mr. Assemblyman? No, okay.

Well the thing is, there was no prosecution of any judge in the south in the '60s, and we all know that those were civil rights violations. So what we have here is a class of immunity, of royalty, of people that are not responsible for anything that they may do to you. The interesting thing that you don't realize is, tomorrow they will be doing it to your own descendants, your children, your grandchildren, your nieces, nephews, and uncles when you're no longer here to protect them. Because that's what you do; you do apparently have this ability to protect your own families. We object to that, we will not allow it to occur.

I'm a member of the entertainment community. We are going to be putting out concerts, music, antigovernment protest music. We are going to have demonstrations. We will shut you down. The easiest way for this to stop -- with the least amount of pain so that nobody has to be killed as they were at the Kent State situation is -- stop what's going on now. You have it in your hands to do that.

Another issue and one of the means that, I believe, you have remedy for the situation, is to allow the press to come into Family Courts, not to report on the names of the people that are before the courts, but to observe the judges; how they deal with the law and how they interact with the people before them.

A friend of mine, a fully credentialed member of the press in the State of New Jersey, who accompanied myself when a common law grand jury sat and indited two judges in the State-- We tried to serve it on the sheriff in Mercer County. He accompanied us to the sheriff's office and was told that if he left the lobby -- while he wanted to cover a breaking news story -- if he left the lobby, he would be arrested. They looked at his credentials; they got his name. Two days later he received death threats over the telephone. He has since left the State. This cannot go on.

The Constitution says, "Nor shall Congress pass any laws that shall abridge the freedom of the press." Now on what basis is it that you pass rules that abridge the freedom of the press? If there is a cavern of evil going on, and we cannot get it exposed to the people, then we have a great problem at hand. Furthermore, the press gets their credentials from the State Police, and if they do want to cover a story, they get their credentials pulled. That's not freedom of the press, that's propaganda. That has to be stopped. One of the methods for dealing with it is to open up the court doors.

Prescribe some kind of preventive measure against the press for disclosing the names. If you say the purpose for not having the press easy access to Family Courts, the basis is to protect the child, the innocent, or the parties don't want to have their names disclosed-- If a name is disclosed, five years in jail, $5 million dollar fine for the newspaper, period. That stops that, okay. Don't blame us for their problems. We want -- there are people begging to have

newspapers come in and cover how judges are treating people and we're not getting it. (timer rings) That's an object that you have to deal with.

ASSEMBLYMAN KAVANAUGH: Thank you very much, and we'll listen to your music.

Your name please?

MS. PETITE: Joan Petite, I'm the job placement counselor for the Women's Center at the County College of Morris in Randolph, New Jersey.

Our program serves displaced homemakers, most of whom are displaced due to separation or divorce, and assists them in finding employment. We serve close to 300 women each year at four different sites in both Morris and Passaic Counties. In addition to employment-related counseling, we provide free legal clinics where women can obtain information in areas relating to family law. The legal clinics are made possible through a grant from the IOLTA Fund of the New Jersey Bar Association.

The women we serve report many problems relating to the legal system. The most significant and most commonly reported problems involve accessibility and education. Most women simply do not have the financial resources to access the system and to obtain good legal representation:

* A woman contacting an attorney to represent her in divorce proceedings is generally asked for several thousand dollars as a retainer. For many women, this cost is prohibitive.

* A woman who has not received court-ordered alimony payments must have financial resources in order to have the order enforced.

* The inability to pay for extended legal services often forces women to settle for less than an equitable judgment.

* Pro bono attorneys, when available, may not provide comprehensive representation.

Lack of information also contributes to the difficulty many women have with the legal system:

* For many women, divorce represents their first encounter with the legal system. They are overwhelmed by its complexity.

* Few understand the options available to them and the significant impact this legal encounter will have on the quality of their lives and on the lives of their families.

* If dissatisfied with the quality of their representation, they do not understand their avenues of redress.

We would respectfully submit that this Committee consider various ways to open up the system so that more women and their families will find justice in the divorce process.

Thank you.

ASSEMBLYMAN KAVANAUGH: Thank you very much, Joan. (applause)

Could I have a show of hands of people who absolutely-- (audience complies) One, two, three-- If you could just make a brief statement, because we have to be out of here within, like, ten minutes. Police officers are just doing this, and this pro bono only goes so far. So, if you come up two at a time and sit and please be very brief, we're going to shut down. We've got ten minutes to go.

In the future what I'm going to do, in fairness, and I know the concerns that you have, I think that what we'll have to do is limit testimony to 30 people. You can sign up the first 30 and then if we can go additional to that in Trenton-- But we just hope -- and understand that there are some of you that have testified before. I'd ask that if you've testified before and you're one of the five or six that raised your hands, if you could hold it to Trenton.

Your name, sir?

W I L L I A M G. F R E N C H, JR.: I'm Bill French. My experience began in August 1992, when my divorce case was assigned to Superior Court Judge Kenith D. Bloom sitting in

Family Court in Essex County. Throughout my trial, Judge Bloom's behavior toward me and my attorney can only be described as arrogant, offensive, spiteful, abusive, and unprofessional. While matrimonial cases are difficult enough for the parties involved, Judge Bloom's conduct, or rather misconduct, exacerbated what was already a difficult situation.

I would like to relate a number of incidents, which taken together, serve to illustrate Judge Bloom's arrogant, abusive, and offensive courtroom demeanor, his lack of sensitivity, and proper judicial temperment:

* August 1992, at the pendente lite hearing, Judge Bloom asked, "Why do you have a pad and pen, Mr. French?" I responded, "To take notes." Judge Bloom replied, "You have a bad attitude."

* During my testimony at a May 1994 hearing, Judge Bloom constantly ate while on the bench. After reading my certification, dated August 25, 1994 in support of a motion asking his recusal, Judge Bloom stated in court and on the record, "I wasn't eating chips and Fritos, I was eating cookies."

* Judge Bloom refused to accept my employers' presentations as to my income and even refused to accept my pay stubs. He yelled, "There is no one qualified to testify or state Mr. French's income."

* When it was mentioned that I had previously been involved in a cycle accident, Judge Bloom opted that it might have been a motorcycle accident because I resembled a Hell's Angel due to the fact that I wore a mustache. Yet, he complimented my wife saying, "I love your hairdo."

* My case was adjourned many times by Judge Bloom, sometimes without even the courtesy of informing my attorney of the postponement, causing us to waste countless hours, not to mention money. On another occasion, the plaintiff's attorney was granted an adjournment while the trial was in progress so he could attend a paddle tennis tournament.

* When Judge Bloom learned that I had two Giants season tickets, he quipped that he would give one ticket to each party so that we would have to "attend the games together and enjoy ourselves." He then laughed.

* On the record, before the case was heard, Judge Bloom remarked, "We're talking lifetime alimony." On August 26, 1994, he so ruled, even though in her submittals my wife had asked for only ten years of alimony.

* Despite pleadings and affidavits that clearly showed my wife had left our home almost 26 months before and despite testimony to that effect, Judge Bloom stated at the final hearing, "We are going to have to end this intolerable condition of these two people in the same house."

* Despite protests from my attorney, Ralph Faasse, my wife's lawyer, in open court, repeatedly referred to him as Ralphie. Judge Bloom did nothing.

* In the presence of my attorney and Judge Bloom, my wife's attorney constantly referred to me as "that bastard." Judge Bloom chuckled.

* Throughout the trial, he ridiculed me and my attorney, treating us in a rude and abusive manner, often derisively yelling and screaming at us.

* I'm not alone in being treated so abusively in Judge Bloom's courtroom. (timer rings)

Let me go into conclusion: Even though the vast majority of our judges perform their duties in an exemplary manner, it seems to me that something is amiss when even one Kenith Bloom can slip through the judicial screening process. Based on his demeanor, conduct, and actions within the courtroom, it would appear doubtful to me that anyone could receive a fair hearing from Judge Bloom.

The judicial screening process must delve more deeply and openly into a candidate's demeanor and temperament, sensitivity, and fairness if we are to continue to protect the

constitutional rights of all New Jerseyans. With your combined experience and intelligence, I hope that this Committee will arrive at a solution that will ensure that all our judges not only meet our high expectation of exemplary judicial conduct and demeanor, but also one that will prevent future Kenith Blooms from sitting in cruel judgment of your children and mine. Thank you for the opportunity.

ASSEMBLYMAN KAVANAUGH: Thank you, Mr. French. (applause)

Irwin Eisenstein

I R W I N R. E I S E N S T E I N: Okay, I'll keep it--

ASSEMBLYMAN KAVANAUGH: Very concise.

MR. EISENSTEIN: Fine. What I'll submit to the court--

ASSEMBLYMAN KAVANAUGH: Could we have the next person who wants to testify take Mr. French's seat.

MR. EISENSTEIN: Fine. What I'll submit to the court is an order sanctioning me, from Judge Zampino. The issue of custodial funds that an attorney tried to have the judge sign, basically to release. After a year, she's still saying I hadn't produced it. I sent a copy of the letter to the Governor. I sent a copy to the judge. He still sanctioned me. He didn't let her go.

Now, let me talk about one other issue. The issue of, the parties shall be entitled to have their attorneys and their experts present during any examination by a court-appointed expert. I requested to tape -- recordings of court-appointed shrinks. I call them shrinks. Let me read something that I have and then a comment, because I wasn't allowed to do it twice. He said I was hostile.

Let me-- This was sent to this Committee on July 23rd. "I met with my daughter, Carla, on 8/3. Her stomach was upset and she was a little distant. She's a lovely, caring child, and I love her dearly. Carla is not well. The relationship that I had with her would have changed, but it

would have changed differently. I would never have prevented her mother from seeing her if I had custody or if there was joint custody. Your court system is a disgrace and must be reformed. It brings tears to my eyes when I realize how you, Judge Zampino, have allowed a lawyer and this system to build walls between a father and his children. I believe that your actions have impacted Carla's health. Ms. Eisenstein and her attorney have acted vindictively and not in the best interest of the child."

Now let me respond to what Dr. Syracuse, who said I was hostile, said: (timer rings) "Mr. Eisenstein was surprised at my description of his daughter's fragility and conceded that he would not push for much of an arrangement for weekend until she was ready for it." This was done in August. I sent that in July. Here's his description of me. He has lied in this certification. I never could have taped it because a judge, Judge Zampino, did not allow me to tape the first thing with him where he called me obsessive/compulsive, and the judge did not allow me to change access to my daughter for a year. The court system is a disgrace. Hang the crooked judges. This is a copy of it. (witness places statement on witness table)

MR. EDEN: I am the Chairman of the Board of Directors, New Jersey Council for Children's Rights. You have my testimony in writing. I was going to talk more about it tonight, but it seemed that somebody showed up that I didn't expect. I was surprised to see my ex-wife here, testifying against me, Mary Ann Falconieri.

I've never spoken about my case to anybody on this panel. I usually try to keep quiet about my case because I've heard a thousand others. But I have to state that I have to respond and rebut what she said. I spent ten years fighting in the courts. I've been divorced for ten years. I have not gotten a judge to give me visitation enforcement when I needed it. It cost me $70,000 in legal fees, which is not much

compared to some of the other stories I've heard. I've paid $72,000 in child support. My ex-wife claims that I'm $10,000 in arrears and I'm a deadbeat dad.

What she left out in her story is that I've been declared permanently, totally disabled by the Worker's Compensation carrier for my employer. I have Worker's Compensation and Social Security judgments against me to pay for that support that's in arrears and the medical bills that are in arrears that she alleges. She didn't state the fact of the visitation interferences that she has done over the years, in order to destroy the relationship I've had with my daughters. She has effectively done that. As of this summer, I've been arrested twice during my court-ordered vacation times. Courts don't do anything about it.

I've had one judge out of eleven -- Judge Passero of Passaic County, he threatened to take custody away from her if she continued the visitation interference. It's the only time in two years that I've had peace because she was ordered into counseling. There were six orders for counseling, denied. Everytime she refused to go. I've got her on audio tape stating, "You can take your court orders and shove them up your ass." Well if that's the way the court orders in New Jersey are -- toliet paper -- then nobody in this room, or in the rest of the State should abide by them, because they are a joke.

I have documentation that my ex filed forged doctors' notes with the police department in West Milford to block my visitation. When I showed them it was forged, the police told her, "Turn the kids over or go to jail." I have documentation that she told the police here in Wayne, where I live, that the only reason she was doing what she was doing was to interfere with visitation. These are on the police records. (timer rings)

My point is, and I know I only have a few seconds left, that I've been assaulted by her three times. Domestic

violence charges have been filed against her. She shouldn't even be in this room tonight, because of six pending criminal contempt charges against her for domestic violence. The courts won't do anything about it. I've been assaulted. I've been assaulted with a knife. I'm disabled. I have no way to defend myself. (audience murmurs) Okay. Yeah, I can hear it in the back. I filed for custody reversal six times, denied. They knew she was the problem, but they refused it.

I will get quickly to the recommendations that I did make. There are four recommendations. I'm not going to get into them. I'm just going to point out the titles:

The first thing we have to do is appoint a Federal Special Prosecutor to investigate the bias and gender bias in the State of New Jersey Family Court System. We need a Federal investigator. We need a Federal investigation totally.

The other point I'm going to make here-- Judges who violate the law and violate the rights of the citizens -- even though the law is specifically on the books and they don't use it -- they must be sanctioned and penalized either criminally or civilly. Any recommendation to change the laws at that point, if the judges are not sanctioned for violations, is meaningless at this point in time.

We should have mandatory mediation. We've discussed that at length here. It's in my testimony.

The last thing, if the courts are going to refuse to order visitation for fathers in the State of New Jersey, then terminate the visitation completely and terminate the child support obligation completely. Because according to this, In the Matter of Baby M, "Any denial of visitation or custody, even for a short period, is an automatic termination of parental rights." If you're not a parent, why are you obligated?

ASSEMBLYMAN KAVANAUGH: Thank you, Bruce. (applause) Bob.

R O B E R T K O W A L: My name is Robert Kowal. You should have a copy of my brief on your table. I'm not a lawyer. I'm a pharmacist. I want to say we have a good law that guarantees children access to both parents after the divorce, and that the parents will share the responsibilities in raising that child. Unfortunately, judges don't care about this law. To read the end of it, I have an article on joint custody, "Now That You Have It What Does It Mean?" from "New Jersey Family Lawyer." It basically says your rights are gone, joint custody means nothing.

I also have given you a copy of Texas law. They have a minimum parenting bill that gives more visitation than any judge would give in New Jersey. If you think that children are getting to see their fathers, it took me five years and over $100,000 to get Father's Day, to have a judge write Father's Day. I was tortured with Father's Day for over five years. This has to stop. If you take a look at this -- you should read it and something should done about this.

ASSEMBLYMAN KAVANAUGH: Thank you, Bob.

MR. KOWAL: Okay.

ASSEMBLYMAN KAVANAUGH: I know that-- (timer rings) You're batting clean up.

M A T T H E W A. M A T T E R O: Excuse me?

ASSEMBLYMAN KAVANAUGH: You're batting clean up. (applause)

MR. MATTERO: I need two minutes. I'll keep it as brief as I can. My name is Matt Mattero. I'm just speaking on my own behalf tonight. I just want to say, for the record, that the reason I feel that there are so many divorces, this country has fallen away from God and the Founding Fathers. They have taken prayer and the Bible out of schools. I think that's one of the biggest reasons that we have such dilemmas we do have.

I just wanted to say that I have been falsely accused, and as a result, I haven't seen my daughter in one year. She will be twelve years old. I haven't even seen her for her last birthday, and another birthday is coming up.

I would like to make a few recommendations:

First of all, my support has been paid up to date. I have paid for all the medical expenses that were expected of me, all bills, and I have still been denied visitation. I feel that child support should be taxed as income for the custodial recipient of the child support. The father has to pay it, and the mother gets it as a gift, tax free, at that. We certainly could take the proceeds from this and work on paying off the national debt with those moneys.

There should be a mandatory penalty for judges, lawyers, and litigants for false allegations and false child and sexual abuse charges. Jail time and fines should be imposed for allegations brought forth that were not proven by hard, cold, facts and evidence. This would deter restraining orders being filed just for the sake of keeping the other party out of the home.

The Child Support Enforcement Unit should also enforce visitation. They should enforce litigants' rights without having to go to trial or a hearing. Warrants should be issued for noncompliant parents for child support and visitation agreements that are not kept. Jail time is an effective deterrent that will remind parents when they will be jailed if they do not comply with child support payments, even if it is a violation of the New Jersey Constitution under Article 1, Paragraph 12 which says that a person shall not be imprisoned for debt in any action.

I also believe that limits should be set as to how long therapists' visits -- that you're court-ordered to see -- should continue and how frequent they should be, in accordance with the means and ability of both parties to pay, with equal

weight given to both sides and supported by both people submitting Case Information Statements and most recent pay stubs and tax forms.

In Pascale v. Pascale Assembly 872-92T5(sic), June 1994, the Appellate Court (timer rings) rules that the time by the noncustodial parent and money spent for clothing, food, and medical treatment was considered as paying twice for those expenses. Also support should be reduced based on the fact that a parent who has not had them in full custody still pays the money for his children while he has them in custody.

ASSEMBLYMAN KAVANAUGH: Matt, what we're going to have to do is put the rest of that in the record, if you'll give it to Pat.

MR. MATTERO: I certainly appreciate your time, and I hope that something will be done. I really appreciate everybody's time.

ASSEMBLYMAN KAVANAUGH: Thank you.

MR. MATTERO: Thank you, Assemblyman Kavanaugh. (applause)

M I C H A E L S Y L V I A: I would like just two minutes. My name is Michael Sylvia. I am currently going through a divorce in Sussex County under Judge Lorriane Parker.

Currently, in 1993, I had paid in child support to my ex-wife more than $80,000, while I was left to live on $40,000, excluding $15,000 in business expenses. I had a charge against me for back child support of $10,000. I voluntarily went to court, where I was arrested in the court. The judge's sheriffs attacked me from behind, pinned me to the table, cuffed me, and took me out of court. While I was in jail for seven days, I had to turn over my house to my wife with $50,000 equity, give her a $5000 tax return and $1200 cash to get out of jail, which was everything that I owned.

While I was in jail, in order for me to see my attorney, I had to strip naked, bend over, and open up my

buttocks so that the sheriff's deputy could check me for contraband. This is absolutely a disgusting way to treat a person who-- Before my wife took me to court, I was voluntarily paying $400 a week in child support, which the judge never even considered when she arrested me for back child support payments. (timer rings)

ASSEMBLYMAN KAVANAUGH: Mike--

MR. SYLVIA: I left my brief up there.

ASSEMBLYMAN KAVANAUGH: Thank you very much.

M A R G O T: My name is Margot. I'm a product of the Essex County Court System. I also work in the court system. I think that the Family Court should be treated like Criminal Court. You start a trial, you finish a trial, you don't go from judge to judge. I can't speak in two minutes on what happened to me in 15 years, but after 15 years a judge said, "You are owed money, but we won't make him pay."

ASSEMBLYMAN KAVANAUGH: If you have testimony that you can give to us we'd appreciate it.

MARGOT: I'll have to rewrite it after all I've heard tonight, but I do want to make my name known because I really want you to read it. My judge -- who I work for -- can't believe what has happened to me in the Family Court system.

J O E P E R R E T T A: My name is Joe Perretta. I'm a member of FACE, and basically, I've heard all the horror stories here and probably heard them all over. We all know that absolute power corrupts absolutely; therefore, I'd like to make a few recommendations:

That judges should follow the law that's instituted. If they don't, they should be sanctioned. The type of sanction to ensure that they will follow the law is that they should be allowed to be sued in Civil Court.

The second thing is that the experts that they have in the court system-- My dealings with them are pretty much that

I knew more than the experts did. I was in front of a judge and they were going over real estate transactions, and I had to define to them what points were.

The legal system: We get involved with the judges in the legal system. I think that, you know, you made reference that you were a plumber, and as a plumber, you have to go in and tell people what it is going to cost them -- the final bill.

ASSEMBLYMAN KAVANAUGH: Make more money than a judge.

MR. PERRETTA: A lawyer never gives you a final bill; however, once the assets run out, he will be sitting right in front of the judge asking the judge to let them off the case so they can go out an get another fish. I guess that pretty much takes care of what I had to say.

Thank you. (applause)

ASSEMBLYMAN KAVANAUGH: Okay. Thank you very much. At this time I'd like to thank the Vice-Chairman, Doug Schoenberg and my three Committee Chairs; Sara Flohr, Frank Louis, and Rob Broderick. Rob is Chairman of the Subcommittee on Custody, he wants-- Rob.

MR. RODETSKY: Assemblyman Kavanaugh, can I have one minute?

MR. BRODERICK: Mr. Chairman, since I was not around before the meeting, I was not aware that you had requested that we not ask questions. So I wanted to apologize to you for that. I also would like it on the record that I apologized to Ms. Bohi outside.

ASSEMBLYMAN KAVANAUGH: Thank you very much. I'd also like to say that Mr. Broderick, as far as with NJEA and doing an excellent job, that was that tenor of that debate.

Mr. Rodetsky, you have to be fast or you'll think you're in Congress talking to television, with nobody in the room.

MR. RODETSKY: Real fast. Three things. Number one, my wife brought up the issue of a life threat. As I explained

to Judge Murphy over two years ago, if this ever became a practical matter, I have much better targets.

The issue is that my ex-wife stole over $80,000 from my mother and made her destitute. She stole over a half a million dollars from the family. The issue is that her conversation here tonight had no bearing whatsoever on the issues before this hearing.

My position is, the papers that I have submitted here tonight are part of the ongoing testimony that I have for you. My point is that I really resent the idea that I have -- I have never, including the conversations with her-- This woman has been protected again and again and again. That's exactly what we are trying to avoid, which is a violation of our rights.

ASSEMBLYMAN KAVANAUGH: Thank you very much.

Also, thank you to the staff, to OLS, and to the police officers, and to the staff here in Wayne. (applause) We'll have another meeting--

C L E M L I O S: Mr. Kavanaugh, I'm personally doing an investigation on Judge Lorraine C. Parker in Sussex County. If anybody here knows people who have been harmed by her and her decisions I would like them to contact me, 361-3495.

Thank you.

ASSEMBLYMAN KAVANAUGH: All right, Clem.

Good night. Thank you. Drive carefully.

(HEARING CONCLUDED)

APPENDIX

HOWARD F. FLOCH, M.D., P.A., F.A.C.S.
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Telephone: (201) 342-0440

October 5, 1993

Office of Judicial Conducts, AOC
Hughes Justice Complex
CN 037
Trenton, NJ 08625

Gentlemen:

I wish to take this opportunity to lodge a formal complaint against Judge John A. Conte of Bergen County family court. I appeared on trial before Judge Conte beginning September 14, 1992 in a trial that lasted twelve days until approximately October 20, 1992. The docket number was FM-3136-92. This had been previously referred to as docket number FM-24800-88. It was administratively dismissed by Judge Birger Sween in April of 1991 because of failure of the attorneys at that point at diligently completing discovery. It was re-instituted on the new docket number in August of 1991.

My current attorney who represented me during the trial in question is Antranig Aslanian, Jr.

The trial took place on twelve days between the above dates. On any one date, we were only able to get in within three to four hours of testimony at maximum because of Judge Conte's spending numerous hours at other matters. A large amount of expense was incurred on my behalf as well as on behalf of my ex-wife as our attorneys, as well as expert witnesses, were kept waiting for hours in the hall outside of Judge Conte's courtroom. The length of the trial does not represent the complexities of the issues involved as the issues were really very simple. Rather, the length represented Judge Conte's inability to conduct a streamlined efficient proceeding.

At various points in the trial, which amounted to large periods of time, Judge Conte was noted by various people in the courtroom to be sitting on the bench with his eyes closed. It was my hope as well as the hope of my attorney that he was nevertheless paying attention, but this did not prove to be the case. My ex-wife's attorney was permitted a great deal of latitude in that large amounts of time both on and off the

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record were spent sorting and stapling documents which he certainly should have gone through before the trial. Each document presented during my case, most of which were factual bank and brokerage statements, was reviewed by the other attorney at great length even though he had received them on two separate occasions in discovery. He had rather unreasonable objections to many of these statements, although a moments examination, which the judge did not attempt, would have shown that these statements were in fact authentic. Crucial portions of our case, including testimony by witnesses to indicate that my ex-wife had in fact moved a paramour into the house who was being supported on her support money, was completely suppressed by the judge. He made it perfectly clear to my attorney that he did not wish these witnesses to be presented. He became very angry in open court during the examination of this paramour who actually admitted to frequent overnight stays. In addition to this, we attempted to present evidence of the availability of jobs in my ex-wife's field of training. This again was completely suppressed by Judge Conte.

At various times during the proceedings, both on and off the record, Judge Conte made various comments regarding the credibility of witnesses and ways in which he would treat contested amounts. Two witnesses who were received rather poorly by Judge Conte were William Schulman, the accountant hired by my ex-wife for her case, and a Wendy Moss, who was presented as a real estate expert but who on direct testimony by my ex-wife's attorney indicated that she did not in fact charge my ex-wife for her evaluation and was in fact a friend of hers. She also added that she had not seen the house in question in over two years. The judge stated both in open court and in chambers to the attorneys that he really did not put much stock in the testimony of either of these two witnesses and in fact stated that if our side had no objection he would stipulate a value of $290,000 for the marital premises. This was a value which was later disregarded although it was supported by the court appointed real estate expert in a conference phone call to both attorneys. After apprising us of his decision, Judge Conte indicated to my attorney that he did not put any stock in Mr. Schulman's testimony, but he knows that the plaintiff must have paid a lot of money for his services. He felt compelled to grant her some relief and consequently had to grant him credibility in his decision, although he did not actually put much credibility in his testimony.

To my extreme shock and amazement, the final verdict proved to be what was described by some other attorneys as one of the most one sided, obviously prejudicial verdicts in the history of Bergen County Family Court. On the subject of custody, a subject on which not a word of testimony was made,

Judge Conte gave sole custody of my two children to my ex-wife. The visitation schedule which he mandated was both extremely rigid and provided approximately 50-65% of the visitation which I have now. On the subject of "equitable" distribution, I have been told that the amount of assets given to each party approximates 50% in most cases with some variation. Including the fact that I must absorb all tax consequences from the sale of stock and the apparent need for the liquidation of my pension plan, an equitable distribution amount of approximately 130-150% was given to my ex wife with a total of approximately minus 30-50% given to me. I am told that in most cases assets such as stock are distributed in kind. Judge Conte apparently is unfamiliar with this practice. On the subject of support, Judge Conte awarded approximately 70% of my net available income to my ex-wife and children. This is especially interesting considering his suppression of the evidence related to her live-in paramour as well as his comment at one point during the trial that it was perfectly obvious to him that her lifestyle had improved a great deal since our separation, i.e. she took more vacations now than previously.

On making some inquiries in various ways, my attorney found out that among the judge's considerations in this case were that he not receive any flak at all from any "women's groups". In addition to this, the judge apparently stated something to the effect that despite what my tax returns and what the analysis by George Allen, the court appointed accountant showed, he felt that as a physician I was automatically able to make "at least $100,000 more per year than I do now". He felt this apparently despite the fact that he was told on several occasions that my average work week runs in the area of 80-85 hours during various periods.

Papers were submitted to Judge Conte asking that he reconsider some of his arithmetic as well as several mistakes which we felt he had made in that he had counted in his calculations bank accounts for which voided passbooks had been shown as these funds had been transferred to other accounts which were also counted for distribution. In evaluating the accounts, he plainly used the figures of my ex-wife's accountant whom he had at several points said that he did not feel was a credible witness. My lawyer also found out that apparently although Judge Conte allegedly did not believe this witness he knew that my ex-wife had paid a great deal of money for his services and consequently felt that he needed to make me pay something towards his bill despite the fact that he ordered me to pay for complete services of all of the court appointed witnesses. He apparently felt that in order to do this, he needed to give some credibility to the testimony which he previously said he did not believe.

Regarding the papers which had been filed asking for reconsideration of these glaring errors, Judge Conte declined

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to have oral arguments and instead after giving a deadline for an answer by the other side which was surpassed by several weeks, declined to consider his errors.

Judge Conte, in his decision, decided that I should be responsible for all of my legal fees as well as the expenses incurred for court appointed witnesses. He invited my ex-wife's attorney and former attorneys to make application for me to pay their fees also. In addition, he stated that I should pay one half of the expense of William Schulman, her "expert" accountant. The final order prepared by Mr. Abramson which Judge Conte signed placed the burden of the entire fee for Mr. Schulman's services on me. In addition, my ex-wife's present attorney as well as her immediate former attorney made application for me to pay their fees. This was done by way of certification and not by an itemized bill. In the final analysis, it did not matter anyway because my attorney called Judge Conte's chambers to find out how much time we had to reply to these applications for fees. He was told to call back the next day to receive this deadline date, but instead, an order was faxed to him indicating that I was responsible for the entire fee of her present attorney as well as her immediate former attorney. Thus, I was given no opportunity at all to argue against having to pay any of these fees. My previous schooling in civics as well as the opinion of several attorneys lead me to believe that this is a complete violation of my civil rights to due process as guaranteed in the U.S. constitution.

It is my belief as well as the belief of many with whom I have discussed this case, including my attorney and other attorneys, that at positive least Judge Conte has exhibited an extreme ignorance of family law, family case law, and judicial procedures in family court. In addition to this it is my feeling that my civil rights have been violated in his decision on custody and also in his decision on payment of legal fees as at no point in the proceeding were we given the opportunity to provide any argument or evidence against what his decision proved to be. We were led to believe during the trial that in the absence of testimony on either side that custody would be made joint. Judge Conte's callous disregard for our time during the trial resulted in a vast escalation of expenses for me, both in direct fees to my attorney and in the fact that I was forced to pay the fees incurred by my ex-wife for the services of her attorney. Since the judge left me approximately minus 30-50% of my assets, I wonder how he expects me to pay any of these fees.

This case is most certainly going to the appelate division in the hope of obtaining a new trial with a competent judge. Nevertheless, I feel that I am out of pocket some very

significant expenses due to my having had the misfortune of having my trial before Judge Conte. I am also troubled by a fear that perhaps Judge Conte's motivation in this case was far darker than his own personal ignorance.

My attorney and I would request your investigation into this case, its trial, and its conduct by Judge Conte. I have also taken the liberty of sending copies of this letter to the New Jersey Bar Association and U.S. Attorneys office for their consideration.

I thank you for your consideration and look forward to the opportunity to meet with a member or members of your staff to give you further details. As our appeal unfolds and is filed, we will certainly send you a copy of it.

Respectfully Yours,

Howard F. Floch, M.D.

HFF/mp
Copy: U.S. Attorney
N.J. State Bar Ass'n.
Committee of Ethics

SX

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November 10, 1993

Antranig Aslanian, Esq.
1041 Anderson Ave.
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Dear Andy,

I have had occasion to read the order issued by Judge Conte on November 4, 1993 which you were ordered down to the court house to see while it was apparently made known to your adversary well before this. There are several rather obvious comments which need to made.

Judge Conte states that the plaintiff filed a cross motion requesting that relief requested by the defendant be denied. As far as I know from the papers which I have read, Mr. Abramson's only argument was that this matter should be heard by the appellate division rather than by the trial judge. In describing my disablity, Judge Conte decided to leave out any consideration of the fact that I was hospitalized with high fevers and severe dehydration in July of 1993 due to mononucleosis and severe hepatitis. It was this condition, as you know, which led to the diagnosis of my renal cell cancer and which served to totally incapacitate me until my operation. As you also know, my surgeon would not operate on me until the chemical tests regarding my liver were completely normal. The earliest possible time that that was a possibility was September 22nd. Evidence was certainly provided about the diminution of my earnings in terms of showing proof of my disability payments as well as showing pages from my corporate books to indicate what my corporation was taking in during my absence. Once again, Judge Conte has adhered to his very firm practice of not being swayed by evidence. His reliance on Lepis vs. Lepis case is ludicrous as per our discussion. This did not in any shape, manner or form involve disability on the part of the individual seeking a reduction in support payments.

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As we had discussed, this ruling is absolutely no surprise. It is perfectly ludicrous to think that in the month of July when my total disability payments amounted to $281 per week from the state of New Jersey that I would be able to make payments in the amount of $1800. All in all, this is not at all a surprise and I find it perfectly ludicrous that in light of his openly prejudicial remarks made in the hearing of October 22, 1993, that we can not get Judge Conte recused from this case. As per our discussion, you have advised me that the only way that this could happen would be to file a motion that would be heard by Judge Conte personally and he has indicated to you that he has every intention of remaining on this case for its duration.

I look forward to discussing our approach to this problem further, but as I mentioned I have appointments to talk with several officials in state government about this as it appears as if there is absolutely no relief forthcoming through the Bergen County Court system.

Very Truly Yours,

Howard F. Floch, M.D.

HFF/mp

7X

HOWARD F. FLOCH, M.D., P.A., F.A.C.S.
Suite 6
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Hackensack, New Jersey 07601

Telephone: (201) 342-0440

August 18, 1994

PERSONAL AND CONFIDENTIAL

Gerald Escala, JSC
Bergen County Court House
Hackensack, NJ 07601

Dear Judge Escala,

I am writing to you under a personal and confidential heading with no copies as I believe some of the factors below are potentially compromising to your office.

As you may recall, I came to your office on Wednesday August 10, 1994 to converse with your clerk, Grant Waterson, about an order which I had submitted to you on your suggestion. I did not ask to see you personally, but you entered the room and what followed was an ex parte conversation, which again, was not solicited by me. Upon reflection about this conversation and discussion with a member of the legal profession, my recollection tells me that, although Mr. Abramson did not enclose anything in his letter at all to disagree with the first and third parts of my order, you ultimately told me that you would not sign this order as you "knew where Mr. Abramson was coming from" and felt that he would be opposed to all parts of this order despite the fact that he did not state this in his letter. In fact, it is interesting to note and it in fact was noted by your clerk, that Mr. Abramson did, in fact, agree to the conversion of my pension plan to a profit sharing plan in his letter. I was told by a lawyer with whom I consulted, that under the five day rule, my form of order either had to be signed, signed with modification, denied, or deferred pending a hearing. This order has been in your possession for several weeks and no action has been taken, causing further risk to me regarding my failure to comply with new governmental pension rules. This all comes on the heels of having a previous motion before you for which you required two appearances by the lawyers only to decide that you had no authority to change the order of a previously involved judge who had been recused from the case. It would seem as if this decision would have been obvious prior to the two meetings with the attorneys. I find this all very baffling and am currently wondering if, in fact, the only

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way to follow this up is through the office of judicical ethics.

Incidentally, since you said your office "would not do my work for me", I believe that it is N.J.S.A. 2A:16-3 that gives you the authority to order Mr. Abramson to subordinate his lien on my home.

I would very much appreciate being corrected if I am in error in any of the above.

Respectfully Yours,

Howard F. Floch, M.D.

HFF/mp

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April 25, 1994

Hilton Stein, Esq.
339 Main Road
Montville, NJ 07045

Dear Mr. Stein,

At the suggestion of your secretary/receptionist, I am writing this letter as I have been told by several people that I have a malpractice case against one of the better known divorce attorneys in the state.

My divorce commenced in April of 1988 and finally wound up with a trial in September through October of 1993. For most of this time I was represented by this individual as well as his junior associates. I had signed a retainer which stated that this individual would make all court appearances and in fact he made none. My current attorney feels that had he appeared at any of the calendar calls, this would have indicated to Judge Sween that he in fact had some interest in the case and was working toward bringing it to trial. His always sending a junior associate probably told Judge Sween quite the contrary. In addition to this, my retainer said absolutely nothing about adding interest to outstanding charges. In fact, the retainer did state that there could be no additions or subtractions from it unless both parties signed an agreement to this. Nevertheless, this individual had a merry time adding hundreds of dollars each month to my outstanding bill. The above represents the more minor aspects of my complaint against this attorney.

Probably the most grievous situation that exists is the fact that in July of 1990, we had a four way meeting at my ex-wife's attorney's office. Out of this came an agreement which this lawyer led me to believe was in the negotiation stage. Essentially there was really very little wrong with the written agreement, in my opinion, and this lawyer led me to believe that negotiations were still going on. My current lawyer discovered that this agreement had in fact been signed by both my ex-wife and her attorney at that time. I certainly

was not aware of this. My trial ultimately resulted in approximately twice the support award that the agreement would have provided and five times the equitable distribution award. In addition to this the custody orders are much less advantageous than I would have enjoyed by signing the agreement, which I definitely would have signed had I known my ex-wife and her attorney had already signed it. Ultimately, my ex-wife hired an attorney who still represents her, who has made absolutely no pretense to hiding the fact that he believes that each case should be exploited as much as possible for fees. He has in fact stated this to my current attorney. His philosophy was that as many filings as possible should be performed as frequently as possible in order to run up fees and cause maximal harassment. Most of his filings were duplicates and were turned down as rapidly as they were filed. Ultimately Judge Sween, during one appearance in April of 1991, informed the attorneys that he felt that discovery was not being pursued at an appropriate speed and he dismissed the case. I have been told by my current attorney that Judge Sween has told the matrimonial bar that he would do this in order to avoid filings every two weeks and that if the attorneys wished to replace the case on the docket they should complete the discovery and come to him ready to go to trial or early settlement panel. My attorney was obviously well aware of this as he apparently is felt to be one of the more illustrious divorce lawyers in Bergen County and I know has had frequent meetings with Judge Sween about the family court calendar in general. Nevertheless, the attorneys drew up a document in which they requested that Judge Sween merely resume the case so that papers could again be filed every two weeks. Naturally Judge Sween refused.

An examination of my outstanding bill will show that this individual was very good at running up fees. I requested a meeting on February 25, 1992 at his office at which I wanted to complain about the fact that my case was not being moved rapidly enough. I remember this date as this was one of the many postponed court dates which we received. Present at this meeting was my attorney, his junior associate, and his paralegal. The meeting lasted approximately 45 minutes and I wound up being charged for approximately an hour and a half of time for all three of them. The purpose of this meeting, again, was to discuss my frustration at the case not being moved along and to find out what to do to in fact move it along. The

attorney gave instructions to his junior associate about how the case could be prepared for the next court date which was May 25th and it turned out that this was all obviously just for show as none of these instructions were ever carried out. In July of 1992, this individual had me paged and essentially informed that he was dropping my case as he felt that I was taking too active an interest in medical problems related to members of his family who were treated at my major hospital affiliate. I then was forced to find another attorney who, unbelievable as it might sound, had the case on trial within six weeks.

Regarding one of his associates, I made several declarations that I would like to have my case discussed at an early settlement panel. He went through the motions several times but always failed to send the correct documents to the panel so that a meeting could be held. One of the other associates was guilty of a breach in attorney-client confidence when, in some papers which were filed in January of 1991, my ex-wife's attorney spoke about my position as being so untenable that my lawyer was going to request that I seek other council without my knowing that there was a problem. When I queried my attorney about this he informed me that the problem was that my outstanding bill was getting too large and some payments quickly quelled this problem.

Please advise me if this case would be of any interest to you. Thank you in advance for your consideration.

Very Truly Yours,

Howard F. Floch, M.D.

HFF/mp

THE LEAGUE
OF WOMEN VOTERS
OF NEW JERSEY

TESTIMONY BEFORE THE COMMISSION TO STUDY THE LAW OF DIVORCE

By Barbara J. Bohi
League of Women Voters of New Jersey
September 20, 1994

Thank you for this opportunity to speak to you today on how the enforcement of post-judgment orders for support by the probation department can be streamlined and made more cost efficient.

I am Barbara Bohi, Social Policy Advocate for the League of Women Voters of New Jersey. I represent 66 local Leagues in municipalities and counties throughout the state. Before taking a position on a legislative issue, the League determines the viewpoint of its members through an intensive study process which is called "reaching consensus".

The League's position on the legal status of women which was adopted in 1979 and reaffirmed at the League's State Convention in 1993, specifically supports strengthening the methods for collecting court ordered support payments. The League's stated goals include, better locating procedures, third pary enforcement, and better provisions for collection of judgments. See League's Study & Action State Program Guide, 1993-1995, at page 37.

There are several important ways in which enforcement of court orders for support through probation can be improved.

A. <u>Probation's authority should be expanded to permit it to execute on liquid assets of an obligor, such as, bank accounts, insurance payouts and proceeds from lawsuits.</u>

Once a non-custodial parent is in arrears on a child support order, a judgment is automatically entered through ACSES, the automated child support enforcement system. This judgment is a lien against any real or personal property of the obligor.

Probation will try to collect arrears on a judgment by arranging for an income withholding of the obligor's salary, an offset against his tax refund, credit reporting and by assisting the obligee(custodial parent) with obtaining an execution against the assets of the obligor.

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The problem with these means of collection, however, is that if the debtor is self-employed or the employer does not withhold income as directed, probation is forced to proceed, sometimes repeatedly, in the civil court, family division, for relief. This is the most time consuming, expensive and least effective method of enforcement, wrought with numerous hurdles for the custodial parent.

In a matrimonial case, by the time an order for support is entered, often protracted discovery of the parties' assets and perhaps a trial in the civil court has taken place. A judge's findings in his order are based upon all of the pertinent facts regarding the parties' income and expenses. The burden should not fall on the custodial parent to have to return to court for an order enforcing her rights, pursue a collection action and finally resolve the execution process with the sheriff's department. Instead, if the obligor is in default under the terms for payment in the order, he should have the burden to appear in an action by Probation directly to the Superior Court for a turnover of funds. This method respects the due process rights of the obligor, by noticing him of the turnover application, but, at the same time, streamlines facilitates the collection of judgments.

What has already been suggested by the Administrative Office of the Courts, Probation Division, is that it be permitted to pursue the liquid assets of the obligor to enforce a court order for support. Direct enforcement of support orders by execution against bank accounts, lawsuit proceeds or insurance payouts, would alleviate expensive, duplicative and time consuming court proceedings. It would also ensure quicker payment of support, and perhaps serve as a better incentive for an obligor to satisfy support arrearages. In addition, this method of enforcement is currently used by the IRS and the Special Civil Part of the Superior Court with success. However, it would neccessitate on line access to DMV and subpoena power so that probation could more easily locate a debtor's whereabouts and assets. A bill which is now pending before the Senior Citizen and Social Services Committee, A-228, would increase probation's access to certain information so that collection of judgments can be facilitated.

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B. Spousal Support Should Be Subject To Administrative Enforcement.

Currently, probation can not use the same administrative techniques to enforce a provision in a court order for spousal support as it uses to enforce a provision for child support, even if an order provides for both child and spousal support. A custodial parent must instead pursue a civil court action for garnishment or enforcement proceedings. This is costly, duplicative and time consuming, and sometimes results in the incarceration of the obligor for noncompliance. All forms of court-ordered support should be payable through income withholding, state tax refund withholding and be collectable through probation's expanded collection capabilities as outlined above. N.J.S.A. 54A: 9-8.1, which deals with tax refund withholding is used for the collection of child support, debts to the state and collection of student loan payments; it could easily be amended to include spousal support. Similarly, the statute regarding income withholding to collect child support, N.J.S.A. 2A: 17-56.8, could easily be amended to also include spousal support.

C. Computers Should Be Interfaced So That Data Does Not Have To Be Re-entered At Each Stage Of the Collection Process.

Presently there is a delay between the time an order is entered and when it is registered at probation. This delay means that some support accounts are already in arrears by the time an employer receives notice of an income withholding. This delay can be avoided by having an automatic computer transfer of data from the family court computer system to ACSES. In addition, interfacing ACSES with the Superior Court Clerk's automated civil judgment and order docket would streamline the judgment search process and return administrative control of judgments to the Clerk of the Superior Court.

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D. The Employer Of the Non-custodial Parent Should Be Notified Directly by Probation When an Order Has Been Entered Which Provides for Health Insurance for the Child.

Assembly bill A-234 would allow probation to send a notice to an employer directing that a child be enrolled under the health insurance policy of the non-custodial parent. This would obviate the need to constantly monitor and enforce court orders which require the non-custodial parent to cooperate in insurance matters and ensure medical coverage for children where an insurance policy is available for their benefit.

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NEW JERSEY COUNCIL FOR CHILDREN'S RIGHTS

September 20, 1994

TO: THE NJ COMMISSION TO STUDY THE LAWS OF DIVORCE

Commissioners:

The New Jersey Council for Children's Rights (NJCCR) seeks to educate the public concerning the incredible harm we are inflicting on children of divided families -- families divided by divorce, separation, and families in which the parents never married. We also help those who have seen at first hand just how uncaring and unreasonable the "system" is -- from the "family" courts to state agencies who are supposed to act in the public welfare or the "best interests" of children. We consist of fathers, mothers, stepparents and grandparents who have seen multiple cases where the "system" harms children. We seek by any and all means to end the repressive and economically draining "family" court system, which all too often (and just once is enough when children are involved) is unjust, unfair and inequitable.

NJCCR us a non-profit, tax-exempt, 501(c)(3), United Way Donor option, corporation that seeks to help children and parents of divided families. We are affiliated with the Children's Rights Council (CRC - Washington, D.C.), which now has 31 chapters in 24 states, of which NJCCR is only one. Through CRC, NJCCR is also affiliated with other national organizations: Mothers Without Custody, The Stepfamily Association of America, Grandparent United for Children's Rights, and *Kids Express*, a magazine for children of divorce.

There is now extensive evidence that the greatest problems facing New Jersey and all of America are: increasing poverty, crime, and declining education. The burgeoning of births to unwed mothers and the rising rate of divorce, coupled with the discriminatory practices of "family courts" in awarding custody of these children to "mothers" -- who are often ill-equipped to raise children on their own, and awarding to fathers limited visitation and a child support payment almost no one can afford, has directly contributed to the current crises: persistent and increasing poverty, rising crime, and declining education.

Let me echo the sentiments of Louis Sullivan, past Secretary of Health and Human Services, who said **"... what I consider to be one of the most pressing issues facing our nation [is] a perilous rise in fatherless families.**

- **90% of all homeless and runaway children come from single parent households.** (Source: Rainbows for all God's Children)

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- **85% of all youths incarcerated in our juvenile jails are from single parent or sole custody homes.** (Source: an average of two studies: one on Fulton County, Georgia; one issued by the Texas Department of Corrections) 75% of New Jersey's state criminals were raised in single parent homes. (Source: Dr. Kay Herud, Director of Psychological Services, East New Jersey State Prison)
- **75% of adolescent patients in chemical abuse centers are from single parent or sole custody households.** (Source: Rainbows for all God's Children)
- **71% of all high school dropouts are from single parent or sole custody homes.** (Source: National Principals Association annual report)
- **71% of teenage pregnancies are to single-parent children.** (Source: U.S. Department of Health and Human Services study)
- **63% of youth suicides are to single-parent children.** (Source: Bureau of the Census study)
- only 20-25% of all children are raised in single parent or sole custody homes (16 million according to the last census)

Mr. Sullivan was all too aware of these dismal statistics. Combine them with this one: according to the Bureau of the Census, 85% of single parents are mothers, and only 15% are fathers (in New Jersey 95% are women and 5% are men). Would single-parent fathers do a better job of raising their kids? No study has been done to date, but fathers, on the whole, might do a better job; in general, fathers are better disciplinarians.

But we need not engage is idle speculation: everybody knows that children are best taken care of by TWO PARENTS. Although there are some studies out there that denigrate joint custody, the OVERWHELMING evidence shows that TWO PARENTS ARE BEST FOR KIDS! Sole custody is in the long run a termination of the other parent's parental rights, as "visitation" is simply not adequate for most non-custodial parents and their children. In New Jersey a parent's rights can be terminated only on a clear and convincing standard of evidence -- the same standard should apply to sole custody.

To date government "band-aid" solutions to deal with the rise of divided families and the resulting societal havoc, has almost exclusively been through the enforcement of child support payments. The Census Bureau has also shown that fathers with joint custody pay 90% of their child support; fathers with parenting time pay 80% of their child support; but, father with no contact with their children pay only 45% of their child support. You do not need repressive measures to ensure the payment of child support -- you need child support obligors who are actively involved in raising their children.

The latest Department of Health and Human Services Office of Child Support Enforcement Report to Congress states that a mere 10% of welfare payments are repaid through enforcement of child support compliance. For over two decades it was felt that enforcement of child support would reduce welfare costs and dependency -- and this policy has clearly failed!

It could not be clearer: repressive and unwieldy child support enforcement is not saving us a dime; in fact these bureaucracies are costing us money. Since the federal Family Support Acts of 1984 and 1988 have gone into effect, the overall percentage of child support collected has been flat; it HAS NOT INCREASED AT ALL. One study in Indiana shows that the "tougher" child support enforcement program, far from increasing support payments, is actually driving fathers out of the

state, making it even more expensive to locate them elsewhere, and the majority of these fleeing fathers leave behind children that end up on welfare.

NJCCR is also deeply troubled that: state agencies charged with the "welfare" of children are failing parents and children. The Division of Youth and Family Services and the Departments of Welfare and Probation are staffed with college graduates who need considerably more education/ experience to deal with domestic relations problems effectively. We know of multiple cases of abuses by these agencies and victims of these abuses have no effective recourse -- beyond costly litigation, which the average citizen cannot afford -- which makes these agencies effectively a law unto themselves.

At the "root" all three of our most pressing problems -- increasing poverty, crime, and declining education -- is the disintegration of the nuclear family -- in most cases (80 - 95%) this means to the children of these families the "loss" of a father. All too often we attempt to solve problems by "throwing money" at them; NJCCR does not feel that monetary child support is the "solution." To be sure, child support dollars are needed by children, but they need much more if they are to avoid poverty and crime -- they need an education, they need good role models, and they need TWO PARENTS who care.

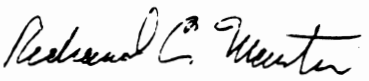
Do you want to save our children from suicides, teen pregnancies, crime, drug and alcohol abuse, mental health problems, academic achievement problems? Encourage **family formation** and **family preservation**, and when there is a separation, divorce, or no marriage, require **joint custody**. Let's establish programs to ensure:

- Mandatory high school classes on marriage, parenting and divorce -- as a past assistant principal of a private school in Atlantic City, I will be glad to help you with the curriculum for such a course. Mandatory classes on the same for all persons who apply for a marriage license. Mandatory classes for all persons who are going to have children, whether married or not. Mandatory classes for all parents filing in "family" court.
- The use of "family" courts only as a last resort -- people who are in a crisis, (and <u>every</u> domestic relations problem IS a crisis to those involved, especially the children), and probably behaving very badly because they are in crisis -- DO NOT NEED and SHOULD NOT BE ALLOWED to litigate. Every other available option should be employed first: counseling, mediation, arbitration, conciliation courts, and any other technique that aims at solving problems -- "family" courts do NOT solve problems, they exacerbate them.
- A ban on sole custody, unless one or both parents can be shown to be unfit on clear and convincing evidence. Establishment of standards for parenting in cases of separation and divorce that ensure that every parent is given the opportunity to and is encouraged to actively parent the children. Any person who is opposed to this is either ignorant of or chooses to ignore the vast evidence supporting joint custody in the majority of cases, whether the parents are "cooperating" or not.
- Limitation as far as possible the of "discretion" of the courts. Judges are just lawyers in robes and do not have the education necessary to make decisions that are best for children -- in fact I cannot think of many professions less suited to determining what is best for children. Most judges rely on their own perception of the "conventional wisdom," which is more often than not wrong. Prospective Family Court judges need special education, especially if they have never been in Family Court as a lawyer; while they are sitting in

Family Court, they should be required to participate in ongoing, continuing education classes that will (hopefully) bring them up to speed on the vast quantity of research done in the last 25 years.

- Removal of all references in the statutes to the "best interests of children" and replacement with specific, meaningful and scientifically demonstrable standards.
- Recognition that separated couples are always angry, hurt, bitter and vengeful -- I have yet to meet the saint who is an exception to this rule. Any and all allegations of violence and/or child abuse and neglect that arises after or just prior to a separation is very likely to be false. Our current "system" encourages its own misuse and abuse. A vengeful person is well aware that a parent's most precious treasure are the children.
- Put a stop to parental alienation syndrome through education and counseling, and if that fails, termination of the brainwashing parent's parental rights. Today, we transfer custody of children away from parent's that kidnap their children -- kidnapping a child's mind deserves no less.
- Establishment of a "watchdog" committee, charged with ensuring the welfare of children, positions to be filled by parents from all walks of life to oversee and control the Division of Youth and Family Services, the Department of Welfare and the Probation Department.
- A requirement of continuing education for state workers in the above agencies and any other agency charged in any way with furthering the "welfare" of children.

If the State does not take a proactive stance -- by encouraging BOTH parents to get beyond their petty differences and to stay involved with their children -- poverty and crime will continue to increase, and education will continue to decline; if this trend is continued unchecked, the State will have to bear the cost and burden of raising the children who will likely lead dysfunctional lives themselves! I am a child of a divided family myself, and if there ever was a reason for me to be sorry that I fathered a daughter, it would be this: after I am dead and gone, my daughter is going to have to live in a world WE created, and I, for one, would not want to live in that world myself.



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Superior Court of New Jersey
Appelate Division

Barry Weinstein Plaintiff ✓ Gail Weinstein Defendant	Civil Action Action in Lieu of a Prerogative Writ in the Nature of a Writ of Prohibition Emergent Matter

Comes now Plaintiff Barry Weinstein by way of these Papers to Move This Court to Order by way of a Writ of Prohibition Compliance with State and Federal Statutes and respective Constitutions!

1- On Sept 13 1994 Judge Clarkson S Fisher did issue an Order Denying Plaintiff enforcement of an Appellate Court Affirmation of a Dual Judgement of Divorce.

Judge Fisher Denied an order to Show Cause for visitation with Plaintiff Son age 6 3/4 on the Jewish Holiday of Yomkippur. The refusal ~~Was~~ to enforce the Dual Judgement of Divorce and its ~~Appelate~~ Affirmation was an administrative Act of Enforcement By Judge Fisher of a July 27 1993 Order of Judge John Damico "defining Jurisdiction over this matter and determining that all issues as to custody and visitation - - - - - Should occur in Pennsylvania

2- Since June of 1993 Plaintiff has seen his ~~Son~~ 1(one) Time Due To a Pennsylvania Judge Modifying The New Jersey Dual Judgement ~~of~~ of Divorce While it was on Appeal in The Appelate Court of New Jersey. This was Done Ex-Parte without Notice to Plaintiff.

3- Plaintiff filed an order to Show Cause which brought ~~him~~ before Damico J.S.C. When Plaintiff Tried to Ask Damico JSC where The Venue Was if Jurisdiction was Tranfered to Pennsylvania in violation of the UCCJA laws Judge Damico

advised plaintiff he would be found in contempt if he said one more word Thus casting the matter into double Jeopardy, Violating the UCCJA, Uniform Child Custody ~~Act~~ JURISDI Tion Act, Statutes, NJ State A. 2A:34- Public Policy - See Attached Certification of Pending Motion being reviewed for a Sept 30 hearing. Further, This Entire Matter is Under Appeal to the N.J. Supreme Court.

3- The New Jersey Supreme Court In Beck v Beck 432 A. 2d 63 (N.J. 1981) made Specific reference to N.J. Policy That Gives Both Parents equal rights to Custody and Seeks to Provide Maximum visitation to the non-custodial Parent in Sole Custody Cases as Provided by N.J.S.A. Sec. 9:2-4 - This Continued Harm to a Child in violation Of State law and Common Law must be brought to an End and it is not Honorable SPORT.

4- Since, the 1, 9, 14th Amendments to the U.S. Constitution, The Equal Protection Clause is Obviously being

violated as well and 6 of the 11 Federal Circuits have agreed that Federal Statutes are to be upheld against States (It is Therefore settled Law) in Title IV-A-, IV-D, IV-E Matters This Must Issue a Writ on Behalf of Plaintiff. see Albiston v. Main Commissioner of Human Services 7 F 3d 258, 263 (1 Cir 1993), [redacted] Chan v City of New York 1 F.3d 96 104 (2nd Cir.) cert denied 114 S Ct. 472 (199

5- While the First Amendment Has violated again in the past few Days by the denial of the Plaintiff right to be with his Son and celebrate their Freedom of religion Together with the paternal family it is not to late to late to prevent further irreparable harm in that a second religious holiday is coming up Shortly.

While the Supreme court has not attempted to establish a precise definition of the constitutional aspect of liberty, in its frequently quoted description in Meyer v. Nebraska, 262 U.S. 390, 399 (1923), quoted in Board of Regents v. Roth, 408 U.S. at 572, the Court stated that "[w]ithout doubt [liberty] denotes not merely freedom from bodily restraint but also the right of the individual to engage in any common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges, long recognized . . . as essential to the orderly pursuit of happiness by free men [and presumably also women]." My right to bring up my son, David is being violated.

Wherefore, the Plaintiff-Petitioner herein Prays This Honorable Appelate Court Enter a Writ of Prohibition or Mondamus (or its equivalent.) on His behalf, and such other Further relief as this Court deems Just.

under Common Law,

Barry Wenstein

Sui Juris

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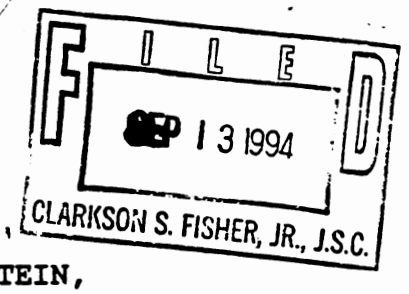

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION/FAMILY PART
MONMOUTH COUNTY
DOCKET NO. FM-05042-90

BARRY WEINSTEIN, :

Plaintiff, :

v. :

GAIL WEINSTEIN, :

Defendant. :

Civil Action

ORDER

This matter having been brought before the Court by Barry Weinstein, pro se, for the execution of an Order to Show Cause why, among other things, defendant should not be required to show cause why plaintiff should not obtain visitation of the child of the marriage for Yom Kippur, and the Court having considered the fact that on July 27, 1993 an Order was entered by the Honorable John D'Amico, J.S.C., declining jurisdiction over this matter and determining that all issues as to custody and visitation of the child of the marriage should occur in the Commonwealth of Pennsylvania, and for good cause shown,

It is on this 13th day of September, 1994, ORDERED that the application for an Order to Show Cause be and hereby is denied.

CLARKSON S. FISHER, JR., J.S.C.

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upheld on appeal in the Superior Court of New Jersey, Appellate Division at Docket No. A-860-92T2, on March 28, 1994 (See Exhibit D), and the New Jersey Supreme Court is currently being petitioned for Certification, Docket No. 38,482.

12. On June 17, 1993, defendant filed a certified copy of the September 8, 1992 Dual Judgment of Divorce Decree with the Prothonotary of Northhampton County, contemporaneously with the filing of a Petition for Contempt and Enforcement of Foreign Judgment (See Exhibit E). Although the Court rules require that I receive three days advance notice before a hearing can be held, on June 17, 1993, an ex parte hearing was held and Judge Panella issued an Order denying me visitation, without due process. On July 9, 1993, again, in an ex parte hearing, the Honorable Richard D. Griffo entered an Order that "sole custody of the child, David, be in and remain with Mother, in accordance with the provisions of the New Jersey Order." The Order further provides that Father's future "compliance with the New Jersey Order and future visitation rights to be considered upon Father's further application to this court" (See Exhibit F).

13. Under the Uniform Child Custody Jurisdiction Act ("UCCJA") adopted in Pennsylvania and New Jersey, the courts of Pennsylvania must recognize and enforce an initial or modification decree of the court of another state which had assumed jurisdiction under statutory provisions substantially in accordance with the

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UCCJA. 23 Pa. C.S.A. Sec. 5354, N.J.S.A. 2A:34-41.

14. Although the UCCJA grants jurisdiction to enforce foreign decrees, the UCCJA expressly prohibits a court of Pennsylvania from exercising jurisdiction when a simultaneous proceeding concerning the custody of a child is pending in another State. Section 5347 of the Pennsylvania UCCJA provides as follows:

> A court of this Commonwealth shall not exercise its jurisdiction under this subchapter if, at the time of the filing of the petition, a proceeding concerning the custody of the child was pending in a court of another state exercising jurisdiction substantially in conformity with this subchapter. Unless the proceeding is stayed by the Court of the other state because this Commonwealth is a more appropriate forum or for other reasons. Pa. C.S.A. Sec. 5347 (emphasis supplied).

15. Under the UCCJA's prohibition against simultaneous jurisdiction, the courts of Pennsylvania are without jurisdiction to take any action with respect to our New Jersey custody decree, other than enforcement.

16. On its face, the July 9, 1993 Order appears to be an enforcement of the September 8, 1992 New Jersey decree, as it provides that "sole custody" of the child, David, be in and remain with Mother, which is similar to the language contained in the New Jersey Order. The effect of the July 9, 1993 Order, however, has been to deny me literally all visitation with my minor child, David. I am suffering immediate and irreparable harm every day that passes where I cannot visit with my son and have some input into the decisions effecting his life. Almost a year has gone by

since I have had regular visitation and I am truly worried that my son needs a father figure on a regular basis and is being deprived. Everyone in America has access to my son except for me.

17. Under New Jersey law, sole custody is defined as "primary physical custody of the child with the custodial parent and liberal visitation with the non-custodial parent." N.J.S.A. Sec. 9:2-4. Further, the New Jersey legislative findings and declaration of policy provides as follows:

> The legislature finds and declares that it is in the public policy of this state to assure minor children a frequent and continuing contact with both parents after the parents have separated or dissolved their marriage and that it is in the public interest to encourage parents to share the rights and responsibilities of child rearing in order to effect this policy. N.J.S.A. Sec. 9:2-4 (emphasis added).

18. The New Jersey Supreme Court, in Beck v. Beck, 432 A.2d 63 (N.J. 1981), made specific reference to New Jersey's policy that gives both parents equal rights to custody and seeks to provide maximum visitation to the non-custodial parent in sole custody cases as provided in N.J.S.A. Sec. 9:2-4. Furthermore, the Court noted that sole custody decrees invariably grant visitation rights to the non-custodial parent and the Courts have imposed a duty on the custodial parent to be active in aiding and encouraging the sincere efforts of the non-custodial parent "to enhance the mutual love, affection and respect between himself and his child."

19. The Notes of Testimony from the August 17, 1992 Oral Argument and Decision before the Honorable Alexander D. Lehrer in

the New Jersey Superior Court, Chancery Division reveals Judge Lehrer's intention with respect to the conditional custody decree and indicates that in the event my drug tests were to return with a positive reading, then sole custody was to be in Mother, subject to reasonable and liberal time sharing with Father. (A true and correct copy of the relevant sections of the Notes of Testimony are attached hereto as Exhibit G).

20. Inasmuch as the September 8, 1992 Order by Judge Lehrer did not intend to deprive me of visitation even in the event of a positive alcohol or drug test result, it is inconceivable that the Order was intended to deny me my right to visit with my child if the test was not conducted at all and yet that is precisely what has occurred.

21. Indeed, Judge Lehrer made the following comment in the transcript of August 17, 1992:

> Now, [the Order] is conditioned upon the father having submitted to the drug and alcohol and neuropsychological evaluation as was agreed upon by the record and ordered by the Court. When that report being furnished to the parties and counsel within a six month period. If the report is not furnished to counsel and parties within a six month period, then custody shall revert to sole custody in Mrs. Weinstein. Mr. Weinstein shall have liberal and reasonable time sharing as agreed. (emphasis added). (See Exhibit G)

22. Thus, in order to enforce the sole custody provision of the New Jersey Order consistent with New Jersey law, and the intentions of the rendering judge, simply the defendant to have

primary physical custody and me to have reasonable visitation rights. There is absolutely nothing in the September 8, 1992 Order which would require or allow any Court to deny me access to my child.

23. In entering an Order, the practical application of which terminates my visitation rights, Pennsylvania has modified the New Jersey decree. Under the UCCJA, however, as the custody matter is still pending on appeal to the Supreme Court of New Jersey, the Northhampton County Court of Common Pleas was without jurisdiction to modify the New Jersey decree. Accordingly, the July 9, 1992 Order must be vacated for lack of subject matter jurisdiction and an Order entered enforcing my visitation rights under the New Jersey decree.

24. If this court rejects my argument that enforcement of the New Jersey decree does not require my visitation with my child to be terminated, then the July 9, 1993 Order must be vacated as it is against the underlying policy of the UCCJA for a sister state to enforce another state's punitive custody decree.

25. The comment to the official UCCJA provides that although the Act mandates enforcement of out-of-state decrees by states which have adopted the UCCJA, problems arise if the out-of-state decree is a punitive or a disciplinary measure. 9 Uniform Laws Annot. p.277. In effect, an exception was created to prevent enforcement of custody decrees ordered solely to punish one parent.

The official UCCJA recommends that, under such circumstances, the sister state decline jurisdiction and send the parties to the rendering state for enforcement. This should have been done but was not.

26. It has been my position that I completed the required psychological evaluation in May of 1991 when I was examined by Dr. Ronald J. Esteve, Ph.D., Clinical Psychologist. (See copy of Evaluation dated May 21, 1991 attached as Exhibit H). This evaluation was completed before the divorce proceedings and I argued to Judge Lehrer during the divorce trial that I was in compliance with the Court's Order but the final divorce decree ordered me to supply the Court with a "drug, alcohol and/or psychological evaluation, within six (6) months of the date hereof, indicating . . . no substance abuse problems."

27. In any event, I took a drug screening test on June 29, 1994 and the results indicate a negative screening for the various drugs tested. I have been drug free for many years, including the period of the divorce litigation and these results should allow the Court to re-establish join legal custody of my minor son, David, as well as the regular visitation as set forth in September 8, 1992 Dual Judgment of Divorce. (See Drug Screening Report dated July 1, 1994 attached as Exhibit I). Additionally, I have recently met with Monty N. Weinstein, Psy.D. M.P.A., in order that I be evaluated in my capacity to be a responsible parent and assess any

substance abuse (A Copy of Dr. Weinstein's evaluation is attached, as Exhibit J). It is Dr. Weinstein's professional opinion that I am healthy, normal and would make a model father for my son, David.

28. While I have tried to comply with the divorce decree to the best of my ability, defendant has been in violation of same by failing to raise our son in the Jewish religion, by failing to allow our son David, to celebrate Jewish holidays with my family, and also by failing to give me the required notice when defendant takes our son away on vacation.

29. While the Supreme court has not attempted to establish a precise definition of the constitutional aspect of liberty, in its frequently quoted description in Meyer v. Nebraska, 262 U.S. 390, 399 (1923), quoted in Board of Regents v. Roth, 408 U.S. at 572, the Court stated that "[w]ithout doubt [liberty] denotes not merely freedom from bodily restraint but also the right of the individual to engage in any common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges, long recognized . . . as essential to the orderly pursuit of happiness by free men [and presumably also women]." My right to bring up my son, David is being violated.

30. I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by

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NEW JERSEY COUNCIL FOR CHILDREN'S RIGHTS
A CHILD DESERVES TWO HELPING HANDS

Testimony Re:

THE COMMISSION TO STUDY THE LAWS OF DIVORCE

September 20, 1994 Hearing

To The Commission:

RECOMMENDATIONS TO CHANGE DIVORCE LAWS

1. APPOINTMENT OF A FEDERAL SPECIAL PROSECUTOR AND INITIATION OF FEDERAL INVESTIGATION IN THE NEW JERSEY FAMILY COURT SYSTEM

Reasons set forth:

(a) Blatant and inherent gender bias against fathers in the family courts.

1. Fathers routinely denied custody based on gender in 95-97% of all cases in violation of their and their childrens' 1st, 5th, 9th and 14th Amendment rights.
2. Fathers denied the same enforcement of their court orders for visitation/parenting time as mothers are with respect to child support and other financial orders in violation of fathers and children's rights as protected by the 1st, 4th, 5th, 6th, 8th, 9th, 10th, 13th and 14th Amendment rights.
3. Use and abuse of Domestic Violence laws falsely against men for purposes of winning custody and financial awards in violation of fathers and their childrens' protected rights in violation of the 1st, 4th, 5th, 6th, 8th, 9th, 10th, 13th and 14th Amendment rights.

4. Unlawful Redistribution of wealth from the father to the mother and the lawyers in violation of the U.S. Constitution--5th Amendment Takings Clause and in violation of the 10th Amendment's prohibition against discrimination with regard to federal mandates and funding to the states.
5. Unlawful incarcerations of fathers for inability to comply with financial orders and inability to defend themselves against false allegations of domestic violence and false allegations of domestic violence in violation of their 1st, 4th, 5th, 6th, 8th, 9th, 10th, 13th and 14th Amendment rights and in violation of the prohibition against Imprisonment for Debt in violation of the N.J. Constitution, Article I, Paragraph 13.

2. IF COURTS REFUSE TO ENFORCE TERMS OF FATHERS' AND CHILDRENS' VISITATION ORDERS, TERMINATE VISITATION TO ALL FATHERS IN THE STATE OF NEW JERSEY AND AT THE SAME TIME TERMINATE ALL CHILD SUPPORT OBLIGATIONS.

Reasons set forth:

1. Fathers and/or other non-custodial parents in the state of New Jersey are blatantly and inherently discriminated against by the New Jersey Family Court System on the basis of their gender at the rate of 95-97% of all custody awards going to the mother who may or may not be the suitable parent.
2. The legal industry uses this gender war to perpetuate increased legal fees which fills their pockets with money in a system of racketeering activity involving the redistribution of wealth from innocent and desperate human beings, to the pockets of these privileged few.
3. The New Jersey Court System by and through its judges allows this propensity for this money making franchise to continue to violate constitutional rights of the people they are supposed to serve.
4. Any denial of visitation or custody, even for a short period of time is an automatic termination of parental rights. (See In the Matter of Baby M, 109 N.J. 451 [1988]). These denials are rampant throughout the system because they are based on incompetent or uncaring, biased courts refusing to enforce court-ordered and specified visitation/parenting rights and allow false allegations of domestic violence and child abuse to sever the parent/child relationship.
5. The unjustified termination of parental rights is also a termination of any support obligation because

the parent whose rights have been terminated either unjustifiably or without substantiation by the courts or by the vindictiveness of the custodial spouse is no longer a parent and is thereby not obligated as such.

6. Non-custodial parents should be denied parental rights because the present biased, prejudiced court system makes innocent human beings grovel for what is already their natural God-given rights.
7. The courts already have usurped their power over families in the state of New Jersey and can no longer be allowed to continue to create misery through interference with our lives. The U.S. Supreme Court in Kent v. United States, 86 S.Ct. 1045 at 1054 (1973) put severe limitations on the states' Parens Patriae power but the states have once again usurped their power.

3. JUDGES WHO VIOLATE THE LAW AND VIOLATE THE RIGHTS OF OUR CITIZENS MUST BE SANCTIONED AND PENALIZED OR ANY RECOMMENDATION TO CHANGE THE LAWS IS MEANINGLESS

Reasons set forth:

1. New Jersey Constitution, Article 4, Section 7, Paragraph 9, Part 8 states:

> "The Legislature shall not pass any private, special or local laws:
> (8) Granting to any corporation, association or individual any exclusive privilege, immunity or franchise whatsoever."

2. Because of this no state judge has immunity from prosecution or civil liability whatsoever.
3. When a judge violates the rights of the state citizens/human beings on the basis of gender, where he has taken an Oath to uphold and defend the Constitution of the U.S. and N.J., the judge is liable for criminal and civil prosecution and damages.
4. Any judge who violates the laws written for the equal protection of its citizens, i.e.--both parents have an equal right to custody in New Jersey--and has misrepresented the law and the fact, or both, said judicial officer is guilty of a felony. Upon conviction, such punishment shall be not less than five (5) years imprisonment for the first offense, $100,000 fine, and forfeiture of all retirement benefits and real property.
5. The judicial committee of the legislature shall appoint a special prosecutor to prosecute his crime;
6. The special prosecutor shall move the Grand Jury for an indictment, or may proceed on an information;
7. The judicial committee of the legislature shall

prepare and order the printing of special complaint forms, within 60 days after the enactment of this law, for use by any citizen or resident alien, living within the jurisdiction of any state of the Union and/or territory, to initiate this criminal action against any judicial officer of the judicial branch of the government of the State of New Jersey;

8. The aforesaid citizen or resident alien shall file the complaint with:
   (a) Chairman of the Judicial committee, and
   (b) Secretary of State;
9. Said chairman shall make the complaint a priority matter and move the committee to appoint a special prosecutor within 30 days of receipt of the complaint;
10. The Secretary of State shall cause, within 10 days of the receipt of the complaint, for it to be published in:

    (a) official journal(s) of the State,
    (b) the largest daily newspapers in circulation within the State;
11. The special prosecutor shall within 10 days of appointment start his prosecutorial activities, and notify complaining citizen(s) or resident alien(s) of said appointment.

4. MANDATORY MEDIATION--Remove divorce from the adversarial process of the Courts. Eliminate Court-sponsored divorces. Divorce doesn't belong in the Courts. Mandatory Mediation for all issues including but not limited to the following:

   (a) Custody/Visitation
   (b) Reasonable and fair child support amounts
   (c) Property Distribution
   (d) Mediation of both parties to seek employment

5. QUALIFICATIONS OF MEDIATOR--Must have all of the following qualifications.

   (a) License to practice psychology in this state or a master's degree in counselling, social work or marriage and family counselling.
   (b) Not less than five (5) years experience in marriage and family counselling.
   (c) Membership in the Bar of the State of New Jersey with not less than two years of experience in the practice of law.
   (d) Completion of an extensive mediation program approved or conducted by the American Arbitration Association or a like organization with not less than one year of mediation experience.
   (e) Knowledge of the court systems of the State of New

Jersey and the procedures used in domestic relations matters.

(f) Knowledge of other resources in the community to which the parties to a domestic relations matter can be referred for assistance.

(g) To remain qualified, a mediator must participate in a program of continuing education or training in mediation approved by the American Arbitration Association or the American Psychological Association.

(h) Confidentiality of records, case files and written or oral communications shall be confidential and not subject to disclosure in a judicial or administrative proceeding involving the parties.

(i) Reporting--The court shall not require the mediator to report the substance of mediation discussions. The mediator shall inform the court as to the progress of mediation and as to the participation of the parties.

(j) Review by the attorney--The mediator shall advise the parties of their right to have any written statement of agreement reviewed by an attorney prior to submission to the court.

STANDARDS THAT MEDIATORS MUST FOLLOW:

1. Always remain impartial throughout the process. A mediator shall disqualify himself if a social or professional relationship exists with either party or if other circumstances exist which would give the appearance of partiality or impropriety. Mediators would be liable for damages in a civil suit for any partiality that can be substantiated that negatively affects one or the other parties because of gender or any other issue.
2. Provide a preliminary description of the mediation process to the parties in an understandable context.
3. Obtain all relevant information to define issues and develop agreements, from both parties.
4. Report to the court a failure by a party to disclose relevant information.
5. Maintain confidentiality.
6. Assist parties to obtain independent expert information or advice to resolve issues in conjunction with reaching an agreement.
7. All issues must be properly mediated before the parties shall finalize the mediation agreement before the court.
8. Review procedures will be conducted and monitored by the Administrative Office of the Courts, independent of the Supreme Court. The A.O.C. shall promulgate the necessary rules and develop procedures to enable it to evaluate the effectiveness of the program.

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Stop forcing parents away

OPPOSING VIEW **Kids need more than money; respect for both parents' rights will get money and more.**

By David L. Levy

Everyone knows America needs welfare reform; what is not so well known is that we also need financial child-support reform for the same reason: The government must stop breaking up families.

Welfare breaks up families because it pays people to not work and not marry. The financial child-support system also breaks up families. It assumes children need only financial support, not full parental support. This pushes divorced parents away from their own children. Such ludicrous treatment of parents as no more than cash cows doesn't work any more than the welfare system works.

Instead of continuing to concentrate on the money-only approach that pushes parent-deprived kids into crime, drugs and suicide, the government should embrace proven, low-cost, pro-family approaches that will help children.

Consider: The Census Bureau says the 8% of divorced fathers with joint custody/shared parenting pay 90.2% of their support, the 55% with access/visitation pay 79.1% of their support, and the 37% with neither shared parenting nor access pay only 44.5% of their support.

The answer? More access — and for the 2 million mothers without custody, too!

Stop forcing parents and grandparents away from their children and grandchildren. Stop making custody and access battles lucrative for my fellow lawyers. Substitute mediation for the adversarial process and start taking denial of access seriously.

Fathers will be more receptive to signing paternity forms at hospitals if the forms lay the groundwork for a custody or parenting-time arrangement. Vermont is working on this; the White House has the forms.

Sixty-six percent of mothers with child-support orders say they don't try to collect because the fathers are poor, according to a General Accounting Office report. But the Parents Fair Share Program achieved 90% support compliance in nine states by providing education, job training and parenting skills for parents whose children are on welfare. The cost: $1,400 per participant.

Meanwhile, bear in mind, government data used in the child-support debate are clearly unreliable, even counting deceased fathers as deadbeats, with a $260 million error in a 1994 report to Congress.

President Clinton has said that if you get the values wrong, you get the policies wrong. For all parents and all children, let's get the values right.

David L. Levy is a Washington lawyer and president of the Children's Rights Council.

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THE CONSTITUTION OF THE UNITED STATES OF AMERICA

ARTICLE XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Due process of law; obligation of contracts; taking of private property; prohibited discriminations; jury trial in civil cases.

That no person shall be deprived of his life, liberty, or property without due process of law; that the General Assembly shall not pass any law impairing the obligation of contracts, nor any law whereby private property shall be taken or damaged for public uses, without just compensation, the term "public uses" to be defined by the General Assembly; and that the right to be free from any governmental discrimination upon the basis of religious conviction, race, color, sex, or national origin shall not be abridged, except that the mere separation of the sexes shall not be considered discrimination.

That controversies respecting property, and in suits between man and man, trial by jury is preferable to any other, and ought to be held sacred. The General Assembly may limit the number of jurors for civil cases in courts of record to not less than five.

Section 12. Freedom of speech and of the press; right peaceably to assemble, and to petition.

That the freedoms of speech and of the press are among the great bulwarks of liberty, and can never be restrained except by despotic governments; that any citizen may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that right; that the General Assembly shall not pass any law abridging the freedom of speech or of the press, nor the right of the people peaceably to assemble, and to petition the government for the redress of grievances.



In all that is decent . . . in all that is just, the framers of our Constitution could never have intended that the "enjoyment of life" meant that if divorce came, it was to be attended by throwing the two unfortunates and their children into a judicial arena, with lawyers as their seconds, and have them tear and verbally slash at each other in a trial by emotional conflict that may go on in perpetuity. We have been humane enough to outlaw cockfights, dogfights and bullfights; and yet, we do nothing about the barbarism of divorce fighting, and trying to find ways to end it. We concern ourselves with cruelty to animals, and rightfully so, but we are unconcerned about the forced and intentionally perpetrated cruelty inflicted upon the emotionally distressed involved in divorce. We abhor police beating confessions out of alleged criminals, and yet we cheer and encourage lawyers to emotionally beat up and abuse two innocent people and their children, because their marriage has floundered. Somewhere along the line, our sense of values, decency, humanism and justice went off the track.

From a Petition for a Writ of Certiorari submitted to the Supreme Court of the United States of America by Cleveland, Ohio, attorney Sanford J. Berger on behalf of a divorced client's request for protection from cruel and unusual punishment (associated with penalties suffered in divorce litigation) as guaranteed by the Eighth Amendment of the United States Constitution.

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PERSPECTIVES ON DOMESTIC VIOLENCE

Women Are Responsible, Too



It's not an either or situation. Both men and women are 'bound in their dances of mutual destructiveness.'

By JUDITH SHERVEN and JAMES SNIECHOWSKI

Once again, the myth of the evil, brutal male perpetrator and the perfect, innocent female victim is being broadcast and written about as gospel. The discussion is national. The rage and sorrow, palpable. Only when we come to terms with the fact that domestic violence is the responsibility of both men and women, however, can we put a stop to this horrible nightmare.

Domestic violence is not an either-or-phenomenon. It is not either the man's fault or the woman's. It is a both-and problem. Both the male and the female are bound in their dance of mutual destructiveness. their incapacity for intimacy and appreciation of differences. They need each other to perpetuate personal and collective dramas of victimization and lovelessness, and so, regrettably, neither can leave.

This is a very untidy idea for people who have grown up with movies in which the "good guy" triumphs over the "bad guy" and rescues the damsel from distress. But to tackle the plague of domestic violence, we must alter our perspective. Facts:

- Half of spousal murders are committed by wives, a statistic that has been stable over time.
- The 1985 National Family Violence Survey. funded by the National Institute of Mental Health and supported by many other surveys, revealed that women and men were physically abusing one another in roughly equal numbers. Wives reported that they were more often the aggressors. Using weapons to make up for physical disadvantage, they were not just fighting back.
- While 1.8 million women annually suffered one or more assaults from a husband or boyfriend, 2 million men were assaulted by a wife or girlfriend, according to a 1986 study on U.S. family violence published in the Journal of Marriage and Family. That study also found that 54% of all violence termed "severe" was by women.
- The Journal for the National Assn. of Social Workers found in 1986 that among teenagers who date, girls were violent more frequently than boys.
- Mothers abuse their children at a rate approaching twice that of fathers, according to state child-protective service agencies surveyed by the Children's Rights Coalition.
- Because men have been taught to "take it like a man" and are ridiculed when they reveal they have been battered by women, women are nine times more likely to report their abusers to the authorities.

In 1988, R.L. McNeeley, a professor at the School of Social Welfare of the University of Wisconsin, published "The Truth About Domestic Violence: A Falsely Framed issue," again revealing the level of violence against men by women. Such facts. though, are "politically incorrect." Even 10 years earlier, Susan Steinmetz, director of the Family Research Institute at Indiana University-Purdue University received threats of harm to her children from radical women's groups after she published "The Battered Husband Syndrome."

Why are we so surprised and appalled that men tit and abuse women who are physically smaller when women regularly hit and abuse small children? Why are we as a culture, loath to expose the responsibility of women in domestic abuse? Why do we cling to the pure and virginal image of the "sweet young thing" and the "damsel in distress?" If we are sincere about change, we must acknowledge the truth: Women are part and parcel of domestic violence.

Why does our culture refuse to hold women as well as men accountable for their participation in domestic violence? All of such women's behavior. whether perpetrator or victim, is understood and passed off as the byproduct of socialization or poor economic status. On the other hand, men are held fully accountable for all of their behavior-despite the tough-guy stereotype all boys are encouraged to embody and the abuse many bear as a "normal and loving" part of their upbringing.

Some will argue that women fall into "spousal abuse syndrome," in which female passivity is explained as the result of the male brainwashing the female into believing that she is the cause of his violence. Consequently, she is powerless to alter the situation. But the truth is that all females receive some form of the following lessons: "You must cater to a man's ego," "You're nothing without a man" and "It's just as easy to love a rich man."

Girls often acquire this garbage from insecure mothers who believe that they are doing what is best for their daughters. If women are not expected to think and act for themselves, if their self-esteem is in shambles and their dependency is characterized as "feminine." the fault cannot be laid at the feet of men.

None of this is intended to exonerate O.J. Simpson. If he is guilty of the murders with which he has been charged, he must answer for his actions. The point is that, in the reaction to this sensational case, we do ourselves a grave disservice to slip into a gender-biased frenzy, vilifying and accusing only men as abusers.

The women's movement claims its goal to be equal rights for women. If that is so, then women must share responsibility for their behavior and their contribution to domestic violence. Otherwise, we remain in a distortion that overshadows the truth. Only the truth will show us the way out of the epidemic of violence that is destroying our families and our nation.

Judith Sherven is a clinical psychologist. James Sniechotaski holds a doctorate in human behavior. The Los Angeles-based husband-and-wife consultant team works with corporations on gender issues and leadership.

Los Angeles Times

Tuesday, June 21, 1994

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Men take a beating

Society laughs at, degrades those who say they are battered

By DEBORAH HASTINGS
Associated Press

When the police came they refused to take a report. When he called battered women's shelters, they refused to help him.

Stanley Green, 42, an unemployed transportation engineer now living in Washington state, says he was beaten by his wife. But people often don't believe him, and he finds that degrading and humiliating.

Though the O.J. Simpson case has focused new attention on spousal abuse, little, if any, mention has been made of men who are battered by women.

Society simply doesn't take the issue seriously, victims and psychological experts say. Men who claim such abuse are deemed wimps and laughed at despite studies conducted since the 1970s showing women are just as likely as men to strike partners during domestic arguments.

"People are afraid of this issue," said researcher Murray Straus, co-director of the University of New Hampshire's Family Research Laboratory and co-author of some of the largest and most respected studies ever done on family violence.

Victims and psychological experts say the issue is simply not taken seriously.

People are fearful, Straus said, because those research findings confound conventional thinking on the issue of domestic violence. Some feminists and advocates for battered women have accused him of betraying women by publishing the results.

Straus' national surveys, conducted in 1975, 1985 and 1992, found that men are just as likely to be victims of domestic violence as women. In 1991, responding to accusations of gender bias, Straus retallied female responses to his 1985 study. According to women respondents, men were more likely to be assaulted by spouses.

Those results don't match national crime statistics. According to Justice Department figures, women report an annual average of 572,032 spousal abuse cases. Men report an average of 48,863. The wide gap, men's advocates say, is caused in part by the refusal of many battered men to seek help.

When they do, there are few options. Most domestic violence hot lines and programs serve women. There is one haven for battered men in the U.S., a seven-bed Victorian house in St. Paul called the Men's Shelter of Minnesota.

"Part of the reason that there is almost no shelters or help for men is because we're brought up to solve our own problems and not to admit we need help," said Alvin Baraff, a clinical psychologist with MensCenter Counseling in Washington, D.C.

"We're taught to take it like a man," Baraff said. "Most of the men I've worked with don't hit back. One man I'm treating did call the police. They had him step outside. The message was 'Why can't you control your wife?' He went back inside. The fight continued. She ended up stabbing him. He went to the emergency room and told them that he fell on his own knife."

PERSPECTIVES

Suzanne K. Steinmetz, Ph.D., associate professor of individual and family studies at the University of Delaware, is a respected researchers in the area of gender violence. In Women and Violence: Victim's and Perpetrators (American Journal of Psychotherapy, July 1980), Steinmetz wrote:

> **"If violence against men is recognized in history, recognized by law, recognized by the crime studies, why has there been almost no attention given to this problem? There are several reasons. First ... case material has been lacking for abused males. Second, selective inattention, both by the media and by the researchers,....It is not likely that feminist researchers and counselors will publicly acknowledge that males might also be victims."**

In 1977, Frodi et al found 61 percent of all studies on gender and violence show that women are no less violent than men -- and the Frodi study did not even take into account violence in the home. Among other research findings in other studies:

- Of every 100 children who are abused, 47 are abused by their mothers; 25 are abused by their fathers (Texas Department of Human Services).
- Of every 100 children victimized by violence, 62 are victimized by their mothers (Steinmetz 1980).
- Of every 100 children at serious risk of injury from abusers, 62 are boys (Steinmetz 1980).
- Of every 100 dating youthful males who are sexually molested, 60 of the molestations are by women (Fritz et al 1981).
- Of every 100 dating couples, 33 men commit a violent act upon their partners, but even more women -- 39 -- will also commit such acts (Sugarman et al 1989).
- About 1.8 million women are victimized by male intimates each year -- but 2.1 million men are victimized by female intimates each year (Straus 1977).
- Of every 100 women in battering relationships, 25 admit that they used physical force at some time to impose their will on their partners (Walker 1984).
- Of every 100 women in battered women shelters, 50 assaulted their partners in the previous year, and 42 will assault their partners in the six months after leaving the shelter (Giles-Sims 1983).
- Of every 100 families, 3.8 experience severe husband-to-wife violence -- but 4.5 experience severe wife-to-husband violence (Straus 1975).
- From 1976 to 1986, the rate of violence by husbands against wives dropped from 12.1 to 11.3 percent while the rate of violence by wives against husbands rose to 12.1 from 11.6 percent (Straus and Gelles 1986).
- Violent acts by wives against husbands exceed the number of violent acts by husbands against wives by 17 percent. (Straus 1977).
- "Throughout the centuries women have been the chief perpetrator of infanticide." (Steinmetz 1979)
- "What's said by the women's movement about all violence being male perpetrated and women being victims just doesn't ring true." (Janet Johnston, PhD. Stanford Univ. 1994)
- "According to the 428 women who responded to the question regarding who initiated the physical conflict, their partner struck the first blow in 42.6% of the cases, they hit first in 52.7% of the cases...." (Straus 1989)
- Of every 100 gay males, 12 have been victims of coerced sex by gay male partners, but of 100 lesbians, 31 have been victims of coerced sex by lesbian partners. (Waterman et al 1989)
- Of every 100 domestic assaults on men, 82 involve weapons used by females; of 100 domestic assaults on women, 25 involve weapons used by males. (McLead 1984)
- Of every 100 homicides committed by women, 58 are premeditated. (Mann 1988)
- While 1.8 million women annually suffer one or more assaults from a husband or boyfriend, 2 million men were assaulted by a wife or girlfriend.....54% of all violence termed "severe" was by women. (Journal of Marriage and Family, 1986)
- In the State of Alabama, for the year 1993, of 105 deaths due to domestic violence, 55% of victims were men. (Alabama Dept. of Justice, July 1994)

Words of Wisdom From Margaret Mead

"We have learned from Margaret Mead's classic study, *Sex and Temperament*," says Suzanne Steinmetz, "That aggressive interaction is essentially learned behavior and that it may be defined as a male or female characteristic, depending on the society. While aggression may have instinctual roots in human development, the arousal of this aggression, as well as the method by which it is displayed, appears to be learned behavior. Thus, we must look to the socialization processes, the structural characteristics of the society, as well as to individual differences for the explanation of this phenomenon."

The socialization process is largely complete by the age of 6.

The question then becomes: Which sex does the socializing? Which sex is in virtually complete charge of pre-school children? And which sex then predominates in elementary school class-rooms?

by Heather B. Hayes

O.J. Simpson Case Sparks Interest in Domestic Violence Legislation

In the wake of revelations that O.J. Simpson's arrest and conviction in 1989 for beating his wife, Nicole Brown Simpson, resulted in a lenient sentence, numerous state and federal legislators have begun to put together more strict domestic violence legislation.

- violence offenders, even when the victim refuses to press charges.
- New Jersey passed six domestic violence bills one week after Nicole Simpson was murdered.
- Florida increased its divorce filing fee by $18 to raise $1.5 million annually for 37 state domestic violence centers.
- Los Angeles and surrounding county governments created panels to discuss solutions for the domestic violence problem and quickly agreed to $6.1 million in funding for women's shelters.

DE) and Representative Patricia Schroeder (D-CO) demanded that lawmakers include the Violence Against Women Act, currently being debated by a conference committee, in the crime bill before Congress. Different versions of the Violence Against Women Act were passed by the House and Senate in November, 1993.

Critics of the civil rights provision note that domestic violence is a relationship problem and not always a male-perpetrated crime.

New domestic violence legislation

More than 1,500 women and 500 men are killed every year by current or former spouses and lovers. Among state and local actions:

- New York legislators endorsed a bill mandating the arrest of anyone suspected of spousal abuse when protective orders are violated. Thirteen states mandate arresting suspected domestic

Violence Against Women Act

On Capitol Hill, Senator Joseph Biden (D-

"Violence that primarily targets women is too often dismissed without response," Biden states. "Where the victim knows the perpetrator, there is a tendency to consider the crime a product of private relationship, not a matter of public injustice. This [bill] is an important step toward treating family and other violence that disproportionately affects women as the serious crime it is."

The Violence Against Women Act would appropriate $1.8 billion to states for domestic violence prevention, including:

- funding from programs,
- education of judges and police officers,
- the establishment of a national domestic violence hotline and
- a legal advocacy program for domestic violence victims.

Most importantly, this national law will mandate interstate enforcement of protective orders.

"This could be done on a state by state basis, but states aren't moving real fast on this," says Joan Zorza, senior attorney, National Center of Women and Family Law. "Right now, if someone has a protective order in New York but travels to Chicago and is beaten by the ex-husband, he may be prosecuted for assault but not for violating the protective order. This bill would enable women to transcend state lines and have their abuser prosecuted for violating the protective order, which in some instances is the heavier charge."

Domestic violence—A male-biased crime?

The key difference between the House and Senate versions is whether domestic violence should be labeled a gender biased crime and, as such, allow victims the right to bring civil action in federal court.

Critics of the civil rights provision note that domestic violence is a relationship problem and not always a male-perpetrated crime. In the Census Bureau's National Crime Survey, women acknowledged that they hit men more often than men hit women and were three times more likely to use a weapon.

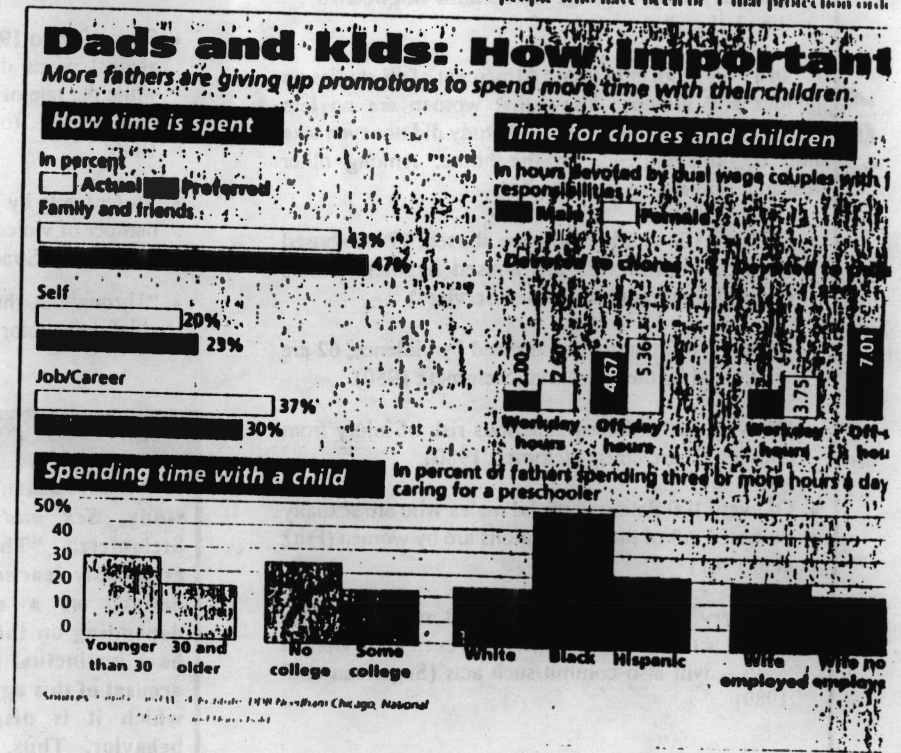
Additionally, more than half of women in lesbian relationships stated that violence existed in their current relationships. In such cases, "gender bias" would be nonexistent.

"Until the criminal justice system responds appropriately to violent crimes against women, women must be offered some form of recourse. A crime bill without this provision is impotent," said Patricia Schroeder, co-chair, The Caucus for Women's Issues.

Zorza noted that although the media and legislators are focusing on violence towards women, the language in any law would be gender neutral and leave it up to the state to define what type of relationship the act would cover.

For instance, New York only protects people who have been or are currently marri... have children in co... mon, Pennsylvania, Massachusetts, Ohio and Alaska extend protection to peopl... dating, engagement, live-in relationships.

"No state can say man beats up a wo... it's a crime, but if a woman beats a man ... not a crime," says ... The federal legislation ... silent on who is co... But, if a state offers ... protection to a co... who is just dating ... other states have to ... that protection ...



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September 20, 1994

Committee to Study the Law of Divorce
New Jersey State Legislature
Office of Legislative Services
Legislative Office Building
CN 068
Trenton, New Jersey 08625-0068

Dear Committee Members;

Your recommendations concerning the law of divorce in New Jersey will no doubt spark much needed discussion on this important subject and have a significant impact on the citizens of our State. As President of the New Jersey Association of Professional Mediators and as an attorney who has practiced in the area of family law for the past 15 years (Curriculum Vitae enclosed), I would like to add my voice to your deliberations as an advocate of the position that mediation ought to be an integral part of the process.

Divorce is a time of great emotional upheaval which adds to conflict among family members. Divorce is also a time of changing parenting responsibilities and financial arrangements for families. How these conflicts are resolved will influence a family's adjustment to divorce.

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For most people, conflict is frightening and stressful. Yet, when conflict is carefully directed, it can result in the productive airing of differences and can lead to creative solutions to address the changing needs of all family members. Too often in the divorce process, family members feel like bystanders while lawyers, judges and others work out these crucial issues for them. Even in the face of anger, fear and hurt, it is possible to negotiate an agreement which balances the interests of each family member and benefits everyone in the long run.

Mediation is one alternative for divorcing couples to resolve their own conflicts during and after divorce. The mediator, a neutral professional, helps participants to clearly define the issues, to facilitate the communication process, to allow rational discussions to take place and to help reach satisfactory agreements on the issues in dispute. The mediator does not make decisions for the family but helps the divorcing couple make decisions they believe are in everyone's best interest.

Rather than give up control to the uncertainties of the adversary system, couples in mediation retain control and negotiate a settlement agreement that best serves all family members.

CHOICES AND DECISIONS

A divorcing couple must decide how to restructure the family unit into two new family units, how to care for children, arrange finances and divide property. In the usual divorce proceeding, the many choices involved in these decisions are resolved by two attorneys who attempt to negotiate a settlement on behalf of their clients. If negotiations fail, the case is litigated by a judge who decides these issues for the couple.

In this traditional approach, the divorcing couple often assume passive decision making roles. The family is divided by hostile competition and battles over property, support and parenting issues which can be devastating. This process fosters destructive communication patterns, constant recrimination and prolonged bitterness. It is costly, time consuming, and emotionally and economically draining to the family. It often leaves the family with emotional scars that delay or even prevent the development of healthy new family patters.

DIVORCE MEDIATION - THE SENSIBLE ALTERNATIVE

Mediation provides a non-adversarial, dignified setting in which divorcing couples can resolve parenting arrangements and financial issues and keeps the family in control of the process so that the settlement serves the needs of the family.

Mediation helps the family resolve the issues quickly, more efficiently and at less cost so they can get on with the rest of

their lives and require an average of six to ten one-hour weekly sessions which greatly reduces the cost when compared to the traditional adversarial process.

HOW MEDIATION WORKS

In divorce mediation, a specially trained professional helps the couple work together to reach an agreement. The couple deals with its long and short term needs and goals for the future. The process involves a through review of the couples economic needs and the resources available to meet them.

The mediator helps to clarify the emotional and practical issues and helps identify all possible options for creative problem solving. The parties actively participate in the negotiations leading to reasonable solutions and a mutually satisfactory agreement that meets the needs of all family members.

The divorce mediator's job is to help a couple arrive at a fair and satisfactory settlement, in which there are no winners or losers. The mediator is neither an advocate for either side nor a decision maker. Instead, the mediator helps the couple explore all available choices and their consequences.

THE ROLE OF THE ATTORNEY IN MEDIATION

Divorce mediation changes the attorney's role from negotiator and advocate to advisor. Each party is encouraged to consult an attorney for advice on legal rights and obligations during the course of the mediation. When the parties have reached a mutually satisfactory agreement, the mediator prepares a memorandum of understanding reflecting the terms of the agreement. The attorneys use this memorandum to draft the formal settlement agreement that becomes the binding contract. The divorce can then proceed through the courts as an uncontested case. In most cases, successful mediation will mean that total expenses, including attorney's fees, will be less than they would be in traditional divorce litigation.

Should you require any additional information about mediation as it relates to divorce please do not hesitate to call me. Again, thank you for the opportunity to address the Members of the Committee.

Very truly yours,

FINK and ROSNER

Eugene Rosner

ER:bc

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EUGENE ROSNER

CURRICULUM VITAE

Professional Experience

Current	Fink and Rosner, Attorneys at Law 1093 Raritan Road, Clark, New Jersey Partner concentrating in Family Law
1975-1978	Union County Prosecutor Elizabeth, New Jersey Assistant Prosecutor
1973-1975	Forman, Forman & Cardonsky 125 Broad Street, Elizabeth, New Jersey Attorney Associate
1969-1972	Union County Legal Services Corporation Elizabeth, New Jersey Staff Attorney

Education

Rutgers University - College of Arts and Science, Bachelor of Arts - 1965

New York Law School, Juris Doctor - 1969

Seton Hall University, School of Law
Institute For Dispute Resolutions - 1991

Professional Associations and Activities

Union County Bar Association
- Family Law Committee

New Jersey State Bar Association
- Family Law Section, Committee on Alternate Dispute Resolutions, Judicial Administration Committee

New Jersey Association of Professional Mediators, Founding Member-Board
- of Trustees and President

Court Appointed Committees
- Union County Matrimonial Early Settlement Panel, Union County Complimentary Dispute Resolutions Committee

Member, National Academy of Elder Law Attorneys

Lecturer
- Institute For Continuing Legal Education and various professional associations regarding Family Law and Elder Law

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Mediation

Certified Family Law Mediator - New Jersey Association of Professional Mediators

Approved Family Law Mediator - Superior Court of New Jersey, Union County Family Part

New Jersey State Library

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To the Commission to Study the Laws of Divorce

Background:

My name is Charles "Peter" Staats, I was married for 17 years and have two children who I love beyond words. I have been a police officer for 20+ years and deal constantly with domestic violence and family matters of all kinds.

I first of all applaud you for your efforts. I have sat in the audience on past occasions and have observed and heard the testimony you have endured. Some of it emotional, some of it dramatic, however all of it I am sure is sincere.

I ask you, how many on your panel have experienced divorce? It cannot be understood completely without experiencing it. So if you think that some of us are out in left field try to understand that some of our emotions have been strained to the limit. Some of us barely hold on to what is left emotionally. Some recover and some never go on.

The issues I am sure you will find have all a similar ring. The system is not in step with reality. The system, created by lawyers, administered by lawyers is self perpetuating. Few are really interested in what is right and wrong. You have a chance to do something to change this.

LAWYERS:

I had two Lawyers involved in my case. The first at a fee of $225.00/hour and the second at $175.00/hour. The first, after approximately $8000.00, was questioned by me as to why I was being taken back to court and why the issues in question were not addressed the first time around. I was told by him, (Robert Durst, Stark and Stark) "I don't always dot every "i" and sometimes I don't always prepare as I should." I was shocked at this statement. I ask, where is the accountability? What do we pay for with these rates? Maybe it is time for some legislation to mandate accountability by lawyers.

CHILD SUPPORT:

Child support guidelines are not realistic. I ask why, when I was married I was able to support and provide for my children at a fraction of a cost of what "guidelines" reflect. Why is there no accountability for this money? Enormous amounts of money per month are given to spouses for support with no accountability. This needs to be addressed. It makes paying it that much more amenable. Money not spent on the children needs to be set aside in a fund for them and not squandered by the custodial parent.

New Jersey State Library

CUSTODY:

As our constitution states, we are all innocent until proven guilty. Custody should be joint and shared, unless there are aggravating factors to suggest differently. No one should have to fight for the right to see their children unless something specific has caused a forfeiture of that right. (i.e.; child abuse, incest)

JUDGES:

Divorce is a reality in life. It is probably the most important contributor to societies ills. Then why is it that junior judges are given this assignment? This requires judges who have the experience and compassion to honestly and fairly decide the issues.

Through all proceedings I've been involved in I have only been in the courtroom one time. Everything is reduced to the written motion. What can be decided from words on paper other than who is more creative? The people involved need to be present and heard.

The system has allowed a bureaucratic quagmire to emerge and control itself. It is time this is put to and end. So look into yourselves. You too may be victim of the system. You have a chance to make it better. Do something to put and end to the "matrimonial clubs" the attorneys belong to. It is sad to have attorneys tell you that they exist. They exist to the extent that they want to keep the client in the system until the funds exposed on the CIS are exhausted.

There isn't enough time to go into the fine details. I attach a copy of a letter addressed earlier to Assemblyman Kavanaugh for your review.

Thank you for your time and concern

Sincerely,

C.P. Staats
5 Midland Ave
Hopewell, NJ 08525

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C.P. Staats
5 Midland Avenue
Hopewell, N.J. 08525

Assemblyman Walter J. Kavanaugh
Chairman, Commission to Study the Law of Divorce
New Jersey State Legislature
Legislative Office Building, CN-068
Trenton, N.J. 08625-0068

September 20, 1994

Dear Sir,

I recently received notice of meeting for December 7, 1993 at 2 P.M. in reference to the Commission to Study the Law of Divorce. This notice directed comments and questions to Patricia Nagle, Elaine Fennelli, and Karen De Marco. Since my work schedule prevented me from attending the meeting I did contact Patricia Nagle. I briefly told her my concerns as to this matter. I was advised to put these concerns in writing and forward them to you.

I am happy to see an effort in the direction of reforming the divorce laws. I hope that the Commission reflects a broad range of individuals, that is, those that have lived and have felt the impact of divorce. Sometimes we get wrapped up in too much theory, to many so called "experts" that have the book knowledge down pat, but with no practical experience. We all know that, what in theory should be, is not what reality is. This reform needs to be kept in lay terms without the complicated legal jargon, a common sense approach to the problem.

Having experienced divorce, the following are some of the concerns I have found in need of review.

1. Realistic child support figures need to be considered. The current guidelines reflect a time when for the most part one spouse worked and one stayed home to raise the family. In a situation such as this there is a definite need to provide money, either as child support or as alimony. In the marriage where there are two career people making close to equal incomes the figures are out of line.

   There needs to be an examination of the realistic cost in raising a child. I often wonder how, while married, I was able to provide for my

children at a fraction of what the guidelines claim it cost?

2. Accountability for the money provided as child support is needed. Most fathers I have spoken with express my concern as well. We give the money, not small change, but there is no accountability of how it's spent on the child. It's frustrating to be strapped financially only to see that the custody parent, receives your check and buys a new sportscar. When you ask your child what new clothes he has he tells you "Mom says four pair of jeans are enough, wash can be done in the middle of the week."

3. Divorce should not be a profit making situation for the parties to the divorce. Lawyers need to be concerned more with the lives they are effecting than the lining of their pockets. It's frightening to hear attorneys refer to "Matrimonial Lawyers" as belonging to different "matrimonial clubs". Where they see how much you have and plan the case according to what you have to spend. Case information sheets tell the story not to the judge, but to the attorney as to how far he/she can take the client.

   I hired a reputable attorney from a reputable firm that specialized in divorce. After spending most of my savings, about $7000.00, the divorce was finally over. I was subsequently taken back to court when custody arrangements changed. I contacted my attorney again and expressed a concern of confidence in him. I was told by this attorney that he doesn't always dot every "i" and cross every "t" and that sometimes he doesn't prepare enough in advance. At $225.00 per hour that is hard for a lay person to handle. Where is responsibility and the accountability of the lawyers?

4. Fathers today are very much involved in the raising of their children. There will always be some that don't care, just as there are mothers that don't. For those fathers that are involved, awarding custody to the mother, unless shown unfit, is unfair. There is little concern given to the uncompensated loss the father experiences. The loss of contact with the child, loss of instilling values and having a role in forming a viable human being. Adding to this the father usually pays an absorbent child support payment. Yet he doesn't share in precious experiences, the first date, first heartbreak, the joys and pains

of growing up. Custody needs to be automatically joint shared custody unless circumstances dictate differently.

One of my co-workers went through a divorce, his wife threatened suicide several times, spent time in Carrier Foundation on more than one occasion. He fought for custody and lost.

5. College cost should be shared but not mandated. If I had stayed married, we would have had a choice whether we would pay for the children's complete college cost or have them contribute. That choice seemed to be taken away with the divorce. The courts come up with a formula for each parent to carry the cost. I don't believe in paying for the entire education. An earned education is appreciated more and you can be assured that your not sending the kids off to a four year party. Especially with the astronomical cost of college today.

I would venture to say that if you were able to poll all the "dead beat dads" you might be surprised to find that most want to support their children and be a part of their lives. The system must take some responsibility for creating the dead beat syndrome. The lack of fairness, the red tape, the stereotyping of fathers combined with the issues I've mention above make some fathers give up and run away.

Very truly yours,

C. Pete Staats

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Testimony of
Thomas Wisniewski
528 Stratford Road
Union, New Jersey 07083
September 20, 1994

Introduction

Today I am here to take you through the divorce settlement process to show you the unfair injustices that exist the New Jersey family court system today and suggest improvements. Throughout my testimony I will use facts from my own situation. I will do this for two reasons, one I know them the best and two they are representative of what is really happening. My testimony will cover child support, college, retirement, extra expenses and no fault divorce.

Child Support

I was divorced in Monmouth county. On the day of my settlement, I was brought before the early settlement panel who recommended that my child support obligation should be $175 per week. This became the amount that the judge wanted to and did put on the order. When I pointed out that this amount was $40 to $50 per week over the published guidelines. The judge told me that if I did not take this amount and settle, I would not be able to come back to court for six months and at that time my child support obligation would be $50 per week more. I am not a lawyer but this is a form of duress. The judge later told me that he is making my child support higher because it would be an incentive for someone to marry my xwife and at that time my alimony obligation will go away when this happens. Well he was right because my xwife has already remarried and divorced twice, but $175 per week is still significantly over the child support guidelines.

About one year later, I returned to court attempting to reduce my child support obligation to the amount published on the child support guidelines. At that time the judge said that my obligation under the guidelines should be between $130 and $144 per week but he would not reduce my obligation (see Exhibit A). Since I was divorced I paid $15,000 more that the published guidelines.

It is now seven and one half years later and my obligation is still over the published guidelines. The published guidelines are purely a percentage of income. This method is only effective at the time of divorce. As time passes things change. More that 75% of divorced people remarry and many have second families. The guidelines do not consider second families. When I married my xwife she was already divorced and receiving child support and I would like to tell you from

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experience that this money is like a bonus. It does not go to the children as intended is goes into the family budget most of which is absorbed by the parents. Now that I have remarried and have a second family I have experienced that paying high child support is a tremendous burden on my family, especially when the child support is above the published guidelines.

I am not here to complain about my situation. I am here to suggest the following improvements that will help reduce some of the problems with child support that exist today:

First establish child support guidelines that are fair and follow them.

Second provide for second families. When a support paying parent remarries and has subsequent children, his responsibilities change and guidelines should be in place to handle these changes. My suggestion is to allow a support paying parent to exclude a percentage of his income from any child support calculations.

Third retirement is not considered in child support guidelines. Since social security is rapidly becoming inadequate, our government is going to have a serious problem in the next ten to twenty years. Stretching an already stretched system. My suggestion is to prepare for this by allowing a support paying parent to exclude at least 5% of their income from any child support calculations. (I had to pay my xwife 50% of my 401k plan at the time of divorce and currently do not have one or can afford one).

Forth allow child support to be modified downward as well as upward. I recently received a letter from child support saying that either party can request a change in support and if there is a difference of 20% a modification will be made. History says that downward modifications will not be made. And the child support will be based purely on a percent of income. This is a very narrow minded approach and should be eliminated.

College

During my settlement hearing the judge took it upon himself to add a provision to the order that college expense will be payable by the both parents in accordance

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with their ability to pay. Both attorneys disputed this, neither wanted a college provision in the order but the judge insisted (see Exhibit B). This is not communism, no governing body has the right to order anyone to pay for their childrens college expenses.

Extra Expenses

For the past two summers, I was ordered to pay for the child from my first marriage to attend a seven week residential singing school. Something like this is clearly above and beyond what is expected from any parent and no judge in the world should have any right to order a parent to pay for this.

College and extra expenses should not be part of any divorce settlement. Divorced parents should have the same rights as parents in an intact family. My wife and I are happily married with a 20 month old child and the courts can't order me to pay for anything for him. Why should the court have a right to order me to pay for my other children?

No Fault Divorce

With no fault divorce the system is protecting the guilty. In my own situation, my xwife ran away with the carpenter that put the deck on our house and in order to comply with the court order, I ended up fully supporting both of them in the marriage residence for eight months after the divorce. This left me with $47 per month to live on. I would like to see some family court judge live on that.

Conclusion

I have taken you through some problems and offered some suggestions for improvements. On July 28, 1994 this Commission asked me to obtain a copy of the study done by Pollock and Stroup. I did so and sent it to the commission on August 8, 1994. I also recommend that the Commission also obtain a copy of "Child support Guidelines: The next Generation" put out by the U.S. Department of Health and Human Services. Thank you for the allowing me to speak to you tonight. Please make the laws for divorce fair.

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or a little less with tax consequences. And in addition to that, he's made $8,000 a year more than when he finally entered into the agreement.

Under the law, there can be change of an agreement if there's a significant change of circumstances. Certainly, there does not appear to be a significant change of circumstances. Mr. Wisniewski indicates that his wife is now employed. Well, certainly it was contemplated that she is employed. I don't know how much, -- how much is she making?

MR. GOLDMAN: I don't know exactly, Judge, but it's probably somewhere around between fifteen and $17,000.

THE COURT: Okay. It was contemplated obviously that she would be working. The figure of $125 a week in alimony certainly didn't indicate that she would be able to live on that. And in addition to that, there's no more alimony as it was terminated or bought out as a result of plenary hearing before me.

Mr. Wisniewski argues that the child support guidelines provide for him to pay less, -- that's true. Child support guidelines in this State are bare minimums on which children should live on. He is paying $175 a week and if he makes $650 a week net, his obligation under the child support guidelines for one child should be between 130 and $144 a week. For him to pay $175 a week or approximately $30 a week more, or $1560 a year more does not shock the conscience of

EXHIBIT A (1 of 2)
60X

the Court. He can agree to anything if he wishes to agree to. If it was substantially more than the child support guidelines, then he would have a stronger argument.

He's going to have a very difficult time convincing me that the burden under Lepis has been met, but in courtesy to him, I will reread the papers and rethink it. As far as the issues raised by Mr. Goldman, I will seriously consider awarding him counsel fees in this matter. This is -- how many times has the same motion been made?

MR. GOLDMAN: This is the third time on the summer camp, Judge and I believe the second on the support.

THE COURT: And we had the same motion every summer. I understand that Mr. Wisniewski is -- is emotional about this issue and I can understand that. But the emotions of this matter should not overtake what is practical and what is right and what is the law. I am terribly distressed at the fact that he had -- has indicated to me that he has a deteriorating relationship with his child and I don't understand why. Why is that happening?

MR. WISNIEWSKI: Because I cannot afford to see her, Your Honor.

THE COURT: Well that's -- that's your position that you take and that try to take and try to deal with that. I don't understand how you cannot afford to see her. How much does it cost to see her?

EXHIBIT A (2 of 2)
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that, no problem.

MR. GOLDMAN: Okay. Thank the husband.

The husband shall get the exemption for the child, on his tax returns, so long as the husband is not in arrears, greater than the amount equivalent to four weeks of child support, for the calender year in which he seeks to take the exemption.

I believe, respectively that, -- both parties will keep the car customarily used by them. The wife will keep the Honda, the husband will keep the Jeep. And I believe Judge that's all.

THE COURT: And they will pay the expenses akin to those cars.

MR. GOLDMAN: That's correct.

THE COURT: Future education of the child.

MR. GOLDMAN: Judge, we're going to let that abide the event, and according to the law at the time.

THE COURT: No, you won't. You'll put the following language in the judgment. Each according to their ability to pay, after maximum loans grants, aids, children's assests, and earning applied on a prorated basis over the life

Exhibit B (1 of 2)

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of the education.

MR. ROSENHOUSE: Excuse me, Judge, I didn't catch all that, was that each of their ability to pay.

THE COURT: Each according to your ability to pay, after maximum loans, grants, aid, children's assests and earning applied over the life of the education on a pro rata basis.

Summer camp is day camp, I presume?

MR. GOLDMAN: That's correct, Judge.

THE COURT: I also presume that is Mrs. Wisniewski is successful in getting work,-- where she has work-related medical insurance, which would cover her daughter, with a little more cost, she should maintain secondary coverage?

MR. GOLDMAN: I'm sorry, I didn't hear you Judge.

THE COURT: If Mrs. Wisniewski, obtains employment, where she gets work related medical insurance at little or no cost to her, that can cover the child, she would maintain that as secondary coverage, is that correct.

MR. GOLDMAN: Certainly, Judge.

THE COURT: And she'll also do the same for any work related life insurance.

EXhibiT B (2of2)
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Rodney J. Kerridge
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September 20, 1994

TO: The Commission to Study the Law of Divorce

I would like to thank the Commission to Study the Law of Divorce for this opportunity to testify this evening.

It is difficult to separate one's feeling when discussing such an emotionally charged topic. It has been my experience that the Law does little to expedite a Final Judgment of Divorce. The Somerset County Court allows the attrition of assets force a Consent Agreement instead of trying the case and permitting the parties to present evidence and testimony.

During the past five years, there have been over seventy (70) Motions, over thirty (30) by my former spouse in the past six (6) months alone, and two (2) appeals, and Custody-Visitation Plenary Hearing is to be scheduled within the next month or so. It is the absence of any clear support from the current laws that has drained marital assets, caused uncountable lost productive hours on the job, and strained my children's emotional well-being.

Three (3) emotional issues are paramount on my mind when ever the topic of Divorce Law is discussed.

1. Mediation
2. Visitation
3. Parenting

MEDIATION

Somerset County does not have any sort binding arbitration when settling divorce cases. There are Early Settlement Planel's comprised of a Blue Ribbon panel of lawyers. The recommendations of these panels was not binding and, in my case, two panels differed in their recommendations. It took twenty-two months and eighteen (18) trips to Court with my attorney to work out a settlement agreement. The deciding factor was the $1,600 it cost every time I went to Court. At the rates things were progressing there

would not be anything left to the parties. In all, the parties spent about $100,000 to come up with a Final Judgement of Divorce, and those funds are no longer available to my children to pay for college or to support them in any way. I recommend the establishment of binding arbitration in those cases where one party requests it, or after a reasonable period of negotiation is fruitless.

VISITATION

In the absence of any documented child abuse, *Pendente Lite* visitation must be established immediately. New Jersey should follow the example of other states in permitting approximately 37% of the children's time to be with the non-custodial parent. I cherish my time with my children and I know that they have a good time while with me. Children need the time to know both parent's.

In my case I struggled for eleven (11) months to establish any sort of visitation because my former spouse alleged that I was abusive and there was only her word against mine. In essence, I was declared GUILTY by the Court without any evidence to support the allegation. During those eleven (11) months my children were alienated from me despite my regular efforts to visit with them and to speak with them on the telephone. Today my former spouse continues to fight my visitation and my children continue to suffer.

PARENTING

Every parent going through a divorce should be required to attend a Parenting Class of from four (4) to eight (8) hours. The Do's and Don'ts of being a single parent should be covered. At the conclusion each parent should make a commitment to the other to abide by such guidelines as the Children's Bill of Right's in order to minimize the emotional impact on the children. Hopefully, this will curtail some of the unwarranted hostility between the parties, establish a framework of communication, and makes things better for the children.

Rodney J. Kerridge

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Martin Rodetsky
care of POB 615
Wayne, New Jersey PZ 07474

9/20/94

DISCUSSION, HEARING ON FUTURE OF FAMILY COURT

Ladies and Gentlemen:

We have been discussing the future of the Family Court for more than a year, now; and we are tired of waiting for this Commission to decide to make a decision. The time to do something is NOW - not next year; NOW - not next month; NOW - not next week; NOW.

In order for you to understand my recommendation, I am going to take you on a tour of the Family Court of the Future; as I would DEMAND that it be. Let us all sit back and enjoy the ride.

1. As you might expect, NO COURT CAN MOVE ITSELF SUA SPONTE. That means the judge cannot move on his own authority. If no litigant ever went to court, the judge would sit there and read newspapers all day long, collect his $106,000 PLUS each year, and go home having done an excellent job of hurting NOBODY.

Whenever ANYBODY moves the Court, it must be done as a SHOW CAUSE, why such an action should NOT be done. There are several AUTOMATIC DEFENSES to every court activity:

a. PRIVATE rights may NOT be violated. NO COURT has the power to violate one's rights for the benefit of another.
b. When the issue is enforcement of a Contract, FRAUD is a perfect defense.
c. If the accused was not aware of the Contract:
   1) if the terms of the contract were not included IN THE AGREEMENT
   2) if there are ADHESION clauses or IMPLIED terms
   3) if there was no 'meeting of the minds'
   4) if there was no 'consideration'

THERE IS NO ENFORCEMENT POWER IN A COURT OF LAW
- Jurisdiction -

2. The moving party MUST file a proper document, which will stand PRIMA FACIE, on its own.

a. If the moving document does not PLAINLY identify a cause of action
b. if it does not seek a remedy that the court can grant
c. if the court's action does not follow the CLEAR AND CONCISE meaning of law

THERE IS NO COURT

3. Now, you have been 'invited' into the Court. The OBVIOUS question is: DO YOU HAVE TO SHOW UP?

a. IF government is a party to the action
b. IF the summons fails to show Probable Cause
c. IF the summons is not accompanied by supporting documents, then you are perfectly within your rights to IGNORE the summons.

As a matter of fact, Judge Sweeney REFUSED to honor a summons he was served in Burlington County. The Courts REFUSED to sanction him for failing to obey a summons.

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Judge Zampino REFUSED to honor a summons he was served in Essex County. The Courts REFUSED to sanction him for failing to obey a summons.

IF JUDGES DON'T HAVE TO OBEY SUMMONSES, NEITHER DO WE!

4. REFUSE to go into the Courthouse and submit yourself to the metal detectors. It is a violation of your 4th Amendment protections against unreasonable searches and seizures, and is a violation of your Right to Privacy. If the bailiff refuses to let you pass without going thru the metal detector, simply tell him to inform the judge that the bailiff is keeping you from your court in violation of Law that traces itself back more than 700 years to the Magna Carta. For those of you who did not know, the Magna Carta is the FOUNDATION for all of our law in this country today!

5. IF you decide to appear at the court, REFUSE to go into the court without witnesses. It is safe to say that going into the court without witnesses is LEGALLY SUICIDAL. I was in Passaic County Court, saw a litigant go upstairs without his witnesses and, when we finally FORCED our way uptstairs, saw SIX bailiffs beat the hell out of the litigant, while Judge Riva watched!

6. As a matter of fact, REFUSE to go into court without your own private recorders. Video Cameras are the Weapon of choice against corrupt judges and lawyers. It is safe to say that your entire status before the court changes when the eyes of video are upon the judge. He might even be encouraged to do the right thing.

7. As a matter of fact, when WE THE PEOPLE file causes of action against government employees, THEY use a whole bunch of legal gobble-de-gook as what are called 'affirmative defenses':

   a. THEY ARE IMMUNE
   b. IT WAS YOUR FAULT THEY DID IT
   c. YOU FAIL TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED

8. The very first thing that you do when you enter the Court is make your Assertion of Rights. Begin by asking the judge whether he (or she) took an Oath to uphold the Constitution. The judge MUST say yes. If he does not, then the judge is an IMPOSTER IN A BLACK DRESS!

9. Then, DEMAND that the JUDGE and any lawyers present sign WAIVERS OF IMMUNITY from civil suit under Title 42 Section 1983, and from CRIMINAL PROSECUTION under Title 18 Sections 241, 242.

   For your information, New Jersey Constitution, Article 4, Section 7, Paragraph 9, Clause 8; states that ". . . The Legislature shall not pass any private, special or local laws: . . . GRANTING TO ANY CORPORATION, ASSOCIATION, OR INDIVIDUAL ANY EXCLUSIVE PRIVILEGE, IMMUNITY OR FRANCHISE WHATEVER".

   This includes judges and lawyers.

   If either the judge or the lawyer REFUSES to sign, YOU REFUSE TO PERMIT THEM TO STAY IN THE CASE, as they have just confessed that they intend to harm you. Why would you agree to go in front of any corrupt public official who will claim immunity - LACK OF ACCOUNTABILITY - when he breaks the law and harms you? THAT, according to Maryanne Espinoza Murphy, is LEGALLY SUICIDAL!

10. Then, DEMAND that the judge take JUDICIAL NOTICE of your moving papers, and state FOR THE RECORD that no review of this

matter would be complete without reviewing your moving papers. WAIT FOR AN ANSWER!

11. Let us start out by understanding some ground rules:
    a. YOU CANNOT APPEAL YOUR OWN STATEMENTS, so why make any?
    b. Since you NEVER make any statements, the only thing left is to ask questions. ASK THE JUDGE
        1) why were you brought into the court?
        2) why is it that you, judge, are getting paid, the lawyer is getting paid, the prosecutor is getting paid, the secretary is getting paid, the stenographer is getting paid, and the bailiff is getting paid; yet I am NOT getting paid? I DEMAND a finder's fee from each of you. It is absolutely fair - and EQUITABLE - for each of you - judge, lawyer, prosecutor, secretary, stenographer and bailiff - to pay me 20% of your salaries; because without me, YOU would not be paid for today!
    c. The only reviewable issues are the judge's statements. YOUR JOB is to get the judge to talk. As I experienced in Hudson County in front of Judge Healy, when he told me that he was not there to play 20 questions:

MY ANSWER WAS THAT IS EXACTLY WHY YOU ARE HERE, JUDGE. SINCE NOTHING THAT I SAY IS REVIEWABLE, WHY DON'T YOU SAVE US ALL A LOT OF TIME AND CONFESS TO WHAT YOU ARE DOING WRONG, SO THAT I CAN HAVE YOU IMPEACHED AND PROSECUTED FOR YOUR CRIMES?

12. We are now ready to BEGIN the case. You have stated your position for the record, you have demanded the judge and lawyers sign the waivers of immunity, NOW you CHALLENGE the jurisdiction of the Court to proceed with this matter. Inform the judge that, absent jurisdiction:
    a. There is no authority to proceed
    b. There is no power to sanction (no contempt citations)
    c. By THEIR standards, there is not even the illusion of a claim to immunity from suit.

13. When the judge tells you that he has it, inform him that it is not his place to assume jurisdiction; it is up to the moving party to establish it. If the judge proceeds, inform him that he is stepping down from the bench and becoming a litigant, and you move for IMMEDIATE dismissal.

14. Now, the fun begins. When your opponent calls a witness, OBJECT; unless the witness signs a Waiver of Immunity from prosecution for Perjury. As you are aware, ladies and gentlemen of this commission, the Supreme Court of the United States has ENCOURAGED witnesses to lie under oath on the witness stand. The case is Briscoe v Lahue, 460 US 325.

When the witness refuses to sign, YOU REFUSE TO PERMIT THAT WITNESS TO TESTIFY.

If the judge says that the witness doesn't have to sign, ASK THE JUDGE IF HE IS PART OF THE CONSPIRACY TO HARM YOU THRU PERJURED TESTIMONY.

Even Irene Von Seydewitz says that litigants ". . . also will sit in the courtroom and cite constitutional law and federal cases to try and confuse the judge". That is a real indictment of the system. If the Constitution is going to confuse the judge, what

the hell is he doing there? What happened to his Oath to uphold that Constitution? If it confused him, he obviously didn't understand it, and his Oath is MEANINGLESS. HE is an IMPOSTER IN HIS OWN BLACK DRESS.

Irene goes on to say that "EVERYBODY LOSES IN A DIVORCE". That is just not true, Irene. The lawyers ALWAYS win. The judge STILL gets his 106 GRAND and the children of the lawyer goes to Harvard on the money that should have been used for the litigants' children's education. NOBODY BEATS THE HOUSE.

Assemblyman Kavanaugh, members of the Commission, your job is not only a thankless task, it is an impossible task. You cannot clean up dirt. You cannot improve the perfectly awful. The ONLY recommendation that can be made by this Commission is to DISBAND Family Court IMMEDIATELY, and INDICT all of the members of the Family Court, for their CRIMES AGAINST HUMANITY.

Until that time, the solution is obvious. Put a spotlight on these creeps in black dresses. Put a muzzle on Bobby Wilentz and his coven of wrongdoers. Anyone who would protect a bad judge, or a bad lawyer, at the expense of WE THE PEOPLE is committing an act of TREASON AND SEDITION.

I would like to end this with a quote:

> "Decency, security and liberty alike demand that govt officials shall be subjected to the same rules of conduct that are commands to the citizen. In a govt of laws, existence of the govt will be imperiled if it fails to observe the law scrupulously. Our govt is the potent, omnipresent teacher. For good or for ill, it teaches the whole people by its example. Crime is contagious. If the govt becomes a lawbreaker, it breeds contempt for the law, it invites every man to become a law unto himself, it invites anarchy. To declare that in the administration of the criminal law the end justifies the means - to declare that the govt may commit crimes in order to secure the conviction of a private criminal - would bring terrible retribution. Against this pernicious doctrine this court should resolutely set its face. Olmstead v US, 277 US 433, 485, 48 S.Ct. 575 (1928).

To summarize, P.A.C.T.'s recommendation is - from the most preferred:

1. Abolish Family Court.
2. Provide Video and Tape Recorders for EVERY court, not only Family Court.
3. Recognize that there is NO immunity - by New Jersey Constitution, by the very rules of Court when there is no jurisdiction.
4. Make judges and lawyers ACCOUNTABLE for the harm they do.
5. Make witnesses liable for Prosecution for Perjury.
6. Make the Courts do their job. Without Evidence, THERE IS NO COURT. There can be no moving forward, and there can be no Contempt.

Commission To Study The Law Of Divorce

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Testimony of
William G. French, Jr.

September 20,1994

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William G. French, Jr.
Before
The Commisson To Study The Law of Divorce

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II. **Exhibit One**

- **A. Certification In Support of Notice of Motion**
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III. **Exhibit Two**

- **Letter From My Employer Concerning My Income**

Testimony Regarding The Conduct And Actions Of Superior Court Judge Kenith D. Bloom, Essex County

My experience began in August 1992 when my divorce case was assigned to Superior Court Judge Kenlth D. Bloom sitting in Family Court in Essex County. Throughout my trial, Judge Bloom's behavior towards me and my attorney can only be described as arrogant, offensive, spiteful, abusive and unprofessional. While matrimonial cases are difficult enough for the parties involved, Judge Bloom's conduct, or rather misconduct, exacerbated what was already a difficult situation.

Time constraints will not allow me to make a detailed narrative of the two years I spent in Judge Bloom's courtroom. However, I will relate a number of incidents, which taken together, serve to illustrate Judge Bloom's arrogant, abusive and offensive courtroom demeanor, his lack of sensitivity and proper judicial temperament. As noted in the index, I have included a number of documents in support of my testimony and am willing to supply additional documentation should you request it.

1. August 1992 at the Pendente Lite hearing Judge Bloom asked "Why do you have a pad and pen, Mr. French." I responded, "To take notes." Judge Bloom then replied, "You have a bad attitude."
2. During my testimony at a May 1994 hearing, Judge Bloom constantly ate while on the bench. After reading my certification, dated August 25, 1994, in support of a motion requesting his recusal, Judge Bloom stated in Court and on the record, "I wasn't eating chips and fritos, I was eating cookies."
3. On page 5 of the attached certification is the chronology of a hearing scheduled for July 25, 1994. Judge Bloom's inattention to the file caused numerous problems that impeded a fair hearing process.

4. Judge Bloom refused to accept my employers presentations as to my income and even refused to accept my pay stubs (see exhibit # 2). He yelled "There is no one qualified to testify or state Mr. French's income."
5. When it was mentioned that I had previously been involved in a cycle accident, Judge Bloom opted that it might have been a motorcycle accident because I resembled a Hell's Angel due to my mustache.
6. Yet on August 23, 1994, in the presence of my attorney and me, he complimented my wife saying "I love your hairdo."
7. My case was adjourned many times by Judge Bloom--sometimes without even the courtesy of informing my attorney of the postponement, causing us to waste countless hours, not to mention money. On another occasion the plaintiff's attorney was granted an adjournment while the trial was in progress so he could attend a paddle tennis tournament.
8. When Judge Bloom learned I had two Giant season tickets, he quipped that he would give one ticket to each party so that we would have to "attend the games together and enjoy ourselves." He then laughed.
9. On the record, before the case was heard, Judge Bloom remarked "We're talking lifetime alimony." On August 26, 1994 he so ruled, even though in her submittals my wife had asked for ten years of alimony.
10. Despite pleadings and affidavits that clearly showed that my wife had left our home almost 26 months before and despite testimony to that effect, Judge Bloom stated at the final hearing, "We are going to have to end this intolerable condition of these two people living together in the same house."
11. Despite protests from my attorney, Ralph Faasse, my wife's lawyer, in open court, repeatedly referred to him as "Ralphie." Judge Bloom did nothing.
12. In the presence of my attorney and Judge Bloom, my wife's attorney constantly referred to me as "that bastard". Judge Bloom chuckled.
13. Judge Bloom misrepresented many facts in the case and seemed unwilling or unable to grasp other pertinent facts.

14. Throughout the trial, Judge Bloom ridiculed me and my attorney, treating us in a rude and abusive manner often derisively yelling and screaming at us.
15. Judge Bloom had a penchant for multiple reversals--on one occasion changing his ruling three times on one matter during the course of an afternoon session.
16. I am not alone in being treated so abusively in Judge Bloom's courtroom. Any number of attorney's I have spoken with have had similar experiences of abusive treatment while appearing before him.

In conclusion, even though the vast majority of our judges perform their duties in an exemplary manner, it seems to me that something is amiss when even one Kenlth Bloom can slip through the judicial screening process. Based on his demeanor, conduct and actions within the courtroom it would appear doubtful to me that anyone could receive a fair hearing from Judge Bloom.

The judicial screening process must delve more deeply and openly into a candidate's demeanor, temperament, sensitivity and fairness if we are to continue to protect the constitutional rights of all New Jerseyans. With your combined experience and intelligence, I hope that this committee will arrive at a solution that will ensure that all our judges not only meet our high expectation of exemplary judicial conduct and demeanor, but also one that will also prevent future Kenith Bloom's from sitting in cruel judgment of your children and mine.

EXHIBIT ONE

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CARBONE & FAASSE
401 Goffle Road
P.O. Box 763
Ridgewood, New Jersey 07451
(201) 445-7100
ATTORNEYS FOR DEFENDANT/COUNTERCLAIMANT

	:	SUPERIOR COURT OF NEW JERSEY
	:	CHANCERY DIVISION: FAMILY PART
JUDITH FRENCH,	:	ESSEX COUNTY
Plaintiff,	:	DOCKET NO. FM-08957-92
vs.	:	
	:	CIVIL ACTION
WILLIAM G. FRENCH, JR.,	:	
Defendant/Counter-	:	**CERTIFICATION IN SUPPORT OF**
claimant.	:	**NOTICE OF MOTION**

I, WILLIAM G. FRENCH, JR., of full age, do certify as follows:

1. I am the Defendant/Counterclaimant in the within captioned matter and am fully familiar with all the facts and circumstances arising out of the within litigation. I make this Certification in support of the Notice of Motion filed by my attorneys, on short notice, returnable on Friday, August 26, 1994.

2. During trial on August 23, 1994, it appeared that the Court Clerk's log with respect to which items had previously been marked into evidence was inaccurate. My attorney pointed this out to the Court particularly with respect to D-1 in evidence, a letter dated October 29, 1993 from John Krause, Manager Institutional Sales of my employer,

First Albany Corporation. In checking his trial notes, Judge Bloom indicated that it had been previously entered as evidence, but he could reverse that ruling. This exhibit was marked in evidence back in May when the trial first commenced.

3. After this reversal, my attorney requested a continuance in order to produce John Krause in Court and a very brief continuance was granted until Friday, August 26, 1994 at 9:30 A.M. Trial adjourned after 5:00 P.M. on Tuesday, August 23, 1994 and I was unable to check with Mr. Krause until Wednesday morning August 24, 1994. In checking with Mr. Krause, he indicated that he could not under any circumstances be available to testify on Friday, August 26, 1994 as he had a long-standing commitment to attend an important meeting regarding a corporate merger. Mr. Krause indicated that upon reasonable notice, he could be available for a date in mid to late September.

4. In response to the request for a continuance, Judge Bloom declared that there would be no witness that could be brought in who could be qualified to explain my income and employment arrangement.

5. Judge Bloom did grant a continuance until Friday, August 26 1994 at 9:30 A.M. and directed my attorney to have a Certified Public Accountant prepared to testify with respect to an analysis of my income. He further directed that a report be faxed to Mr. Stevens by no later than 12:00 noon on Thursday, August 25, 1994. It is respectfully submitted that

this was an insufficient period of time to secure a thorough and proper analysis. I know that my attorney had to contact several Certified Public Accountants before one could be found to devote some time to this matter on such short notice.

6. Since the inception of this matrimonial litigation between myself and my wife, the case has been assigned to and handled by Judge Bloom. From the inception of this case and our dealings with Judge Bloom, it is my opinion and perspective that Judge Bloom's conduct towards me and my case has been abusive, arrogant, threatening and rude. I firmly believe that I cannot receive from Judge Bloom a fair, unbiased and impartial hearing or decision in this matter.

7. On numerous occasions, after Court appearances in this matter, I discussed this matter with my attorney, but decided to defer with the filing of any request for Judge Bloom's recusal. After the occurrences which preceded the recent hearing in this matter held on August 23, 1994 and what occurred during that hearing, I have been firmly convinced that this Motion for Judge Bloom's recusal had to be made.

8. In addition to the foregoing with respect to a reversal in an evidential ruling and with respect to the continuance of this matter, I submit the following as the basis for this Motion:

(a) At the original pendente lite hearing held in 1992, after Judge Bloom was on the bench and the parties and their respective attorneys were at counsel table, he asked me directly what my note pad and pen were for. I simply replied

in order to take notes. At that time, Judge Bloom barked at me "you have a bad attitude".

(b) During the pendente lite hearing when my attorney asked Judge Bloom how he realistically expected me to survive on what monies I had left after he made his determination as to alimony and child support payments, Judge Bloom replied "that's not my problem".

(c) During the hearing held on August 23, 1994, Mr. Stevens, the attorney for the Plaintiff, commented that there was only one person in the court room who doesn't understand what is happening. My attorney inquired "Who is that?" and the Judge responded "You" meaning my attorney.

(d) Throughout the course of these proceedings Judge Bloom's behavior towards my attorney and myself has, in my opinion, been rude, arrogant, pompous and nasty. He constantly yelled at my attorney while treating Mr. Stevens as if he were a saint. At one time Judge Bloom indicated that my attorney and myself were nitpicking when we sought to apportion approximately $1,200.00 of pre-marital debts. While this was nitpicking, he did not so chastise Mr. Stevens when he mentioned a $400.00 obligation due his client.

(e) During one of the hearings, I testified that our daughter had received no scholastic aid from Lafayette College as my wife had neglected to file the appropriate applications on a timely basis. Despite the fact that I informed the court that legally the forms had to be filled out only by the parent with whom the child resides, Judge Bloom blamed me for the

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failure to have the applications in on time.

(f) On July 25, 1994, this matter was set down for a further hearing, but the hearing was not held and only a conference was held between the Court and counsel. Confusion had arisen by reason of Mr. Stevens' belief that the matter was ready for summations and trial. The Court did nothing to correct this misconception prior to the July 25th date. On July 25, this matter was assigned a further trial date of August 25, 1994. Thereafter, both my wife and myself realized, that on that date our daughter had to travel to Lafayette to begin her college education. Mr. Stevens requested an adjournment to which both myself and my attorney agreed. The Court set the matter down for September 1, 1994. However, upon Mr. Stevens' request unilaterally to change the date, it was given the date of August 23, 1994. Immediately, my attorney called Judge Bloom's chambers to indicate that I was scheduled to be out of town on the 23rd and 24th by reason of an important long time scheduled business meetings. After 4:00 P.M. on Friday, August 19, 1994, I was advised that notwithstanding this business engagement, the case would, pursuant to Judge Bloom's directive, be continued on August 23, 1994 at 1:30 P.M. I took it upon myself to contact Judge Bloom's chambers and spoke to Rachel explaining the importance of the business meeting and the potential for loss of a major sale. She informed me that the matter would be held on August 23, 1994 as "Mrs. French's lawyer wanted it that way".

(g) During my testimony in May, Judge Bloom ate

constantly while sitting on the bench, consuming pretzels, potato chips, fritos and candy bars. It was particularly distracting to me during my testimony. On several occasions, Judge Bloom spoke while still chewing pieces of undigested bits of food which were shot in my direction.

(h) Throughout the course of my testimony, Judge Bloom continuously failed to accept any documents that I provided which had been supplied to me by my employer intimating that I had created them myself.

(i) When I attempted to explain my employment arrangement and attempted to explain how a draw versus commission package works, Judge Bloom refused to consider the same and accepted Mr. Stevens uncorroborated and incorrect version of how a "draw" works.

(j) In discussing my income, Judge Bloom failed to consider my income pattern and that I am on a draw against commissions with First Albany in the amount of $50,000.16 per year. This is the arrangement for 1994 as it was in 1991 and 1992. Notwithstanding this, Judge Bloom has indicated that he will utilize the $57,000.16 I earned in 1993.

(k) Immediately upon the inception of the hearing, it appeared that Judge Bloom had adopted certain pre-conceived ideas concerning this case. Without hearing any proofs, he immediately indicated that this would be a lifetime alimony case. Further, if I were going to proceed on a fault grounds, I had to make a pre-hearing election as to which one I would be proceeding under.

(l) During the hearing when testimony was adduced concerning the fact that I had suffered a bicycle accident in the past, and the word cycle accident was used, Judge Bloom quipped that I might be a Hells Angels motorcyclist because of my mustache.

(m) Despite his attitude towards me, when coming down the hallway on August 23, 1994 and passing the Plaintiff, he complimented the Plaintiff on her hairdo.

(n) During the hearing, Judge Bloom threatened to require me to pay 100% of my childrens' college education expenses, unless I compelled my mother to utilize monies which she were holding on the childrens behalf towards these expenses. In my opinion, Judge Bloom's conduct amounted to extortion.

(o) On August 23, 1994, Judge Bloom ruled in my favor that the obligation to my mother, June Harshaw, was in fact a debt and the monies utilized to repay the same would be deducted from the accounts which were subject to equitable distribution. Immediately thereafter, when my attorney and I would not waive the claim as to the monies owed my employer on the employment agreement, Judge Bloom indicated "Well, I'll just change my ruling on the June Harshaw loan obligation".

(p) One of the issues important to me throughout this matter was the fact that my wife removed most of all of the furniture and household goods and effects at the time that she abruptly left the marital premises. Included in these

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items were many items loaned to me by my family and other items which had been passed on to me my members of my family. When this issue was addressed, Judge Bloom quipped "If the parties can't enter an agreement, we will just sell all of the items".

(q) On August 23, 1994, he blamed my attorney and myself for the delays incurred in this matter contrary to the facts. Nothing could be further from the truth. On one occasion, Mr. Stevens was granted an adjournment so he could attend a paddle tennis tournament. On February 15, 1994, my attorney and myself prepared the case and traveled to the court house. Upon appearing, we were informed that the case had been adjourned, a fact which no one bothered to inform us about although Plaintiff and her counsel had been informed of the postponement.

(r) On August 23, 1994, when listing the issues which still had to be determined, my attorney indicated that we had just learned via a legal notice in the "Star Ledger" that Mrs. French appears to be the owner or beneficiary of a life or endowment policy or annuity contract and we would have to amend our request for equitable distribution accordingly. This matter was immediately put aside and Mr. Stevens accused me of committing fraud in that I never listed the fact that I owned two season tickets for the Giants. Upon hearing this, Judge Bloom with a gleam in his eye and a smirk on his face indicated that he would give one ticket to each of the parties so that they could attend the games together.

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(s) The treatment of myself and my attorney is vastly different from Judge Bloom's treatment of Mr. Stevens and the Plaintiff.

(t) On July 25, 1994 when I arrived at the Court house, I observed Judge Bloom and Mr. Stevens engaged in an animated conversation in the area of the Court house presently undergoing construction. Upon observing me, they were startled and both stammered that their conversation had nothing to do with our case. Notwithstanding this, the conversation was terminated and Judge Bloom hurried off to his chambers and Mr. Stevens mumbled something about fishing. To me, their actions were most inappropriate considering the ongoing trial.

9. For all of the above reasons, I firmly believe that Judge Bloom ought to recuse himself from any further participation in this matter so that I can be accorded my rights as a citizen to a fair, unbiased and unprejudiced hearing of this litigation.

I hereby certify that all of the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

William G. French, Jr.

Dated: August 25, 1994

85X

CARBONE AND FAASSE
ATTORNEYS AT LAW
401 GOFFLE ROAD
P.O. BOX 763
RIDGEWOOD, NEW JERSEY 07451-0763

JOHN M. CARBONE
RALPH E. FAASSE

445-7100
AREA CODE 201

August 25, 1994

Honorable Kenith D. Bloom, J.S.C.
Hall of Records (Room 444)
465 Dr. Martin Luther King, Jr. Blvd.
Newark, New Jersey 07102

Re: French v. French
Docket No.: FM-08957-92

Dear Judge Bloom:

Please accept the following to be a letter brief in support of the Notice of Motion, brought on behalf of the Defendant/Counterclaimant, William G. French, Jr., in the above captioned matter, on short notice with a return date of Friday, August 26, 1994 at 9:30 A.M.

This Motion is filed reluctantly and with the greatest respect for the parties involved, but with a greater respect for the procedure afforded which preserves the process and the public perception. Our courts and the judiciary are strong and respected because this procedure exists, thus engendering the respect of the public and participants.

RECUSAL

This Motion for Recusal is brought under the provisions of Court Rules 1:12-1, 1:12-2 and 1:12-3. Rule 1:12-1 provides in pertinent part:

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The Judge of any court shall disqualify himself on his own motion and shall not sit in any matter, if he ...

(d) has given his opinion upon a matter in question in the action; or

(e) is interested in the event of the action; or

(f) when there is any other reason which might preclude a fair and unbiased hearing and judgment, or which might reasonably lead counsel or the parties to believe so.

These motions are not brought lightly and must be carefully examined in light of the standing of the parties, the case before the Court, and the conduct of the Judge. These motions are not to be brought, and certainly this one is not, in an attempt to gain or better a position for any party. This matter involves important questions for the parties and their future. And it is not a decision reached lightly by the defendant or his attorney in making this request.

Recusal motions can be brought upon objective facts and appearances, i.e. relation of the trier of fact to a party, prior association with the attorney, etc. As noted in the Certification, the record is replete with actions forming the basis for this action and it does not arise from a single incident but a course of conduct.

But moreover, recusal motions can also be brought on a subjective basis. In most instances no record is clear cut demonstrating bias and very rarely are there comments upon the record that would cause a party to believe that a bias exists.

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On the record and ex cathedra statements and the perception by the defendant causes him to believe a bias and/or prejudice exists which would preclude a fair hearing in this matter by Your Honor.

This fairness of a hearing is important to the parties. The judge should not be an advocate for or against or interested in the outcome and function solely as a judge. The judge must remain neutral, unbiased, and unaffected by the realities which are apparent in this matter.

The Appellate Division in Magill v. Casel, 238 N.J. Super. 57, 63-64 (App. Div. 1990) stated:

> ... The facts supporting or refuting an objective ground for recusal are peculiarly within the knowledge of the judge. Chances of a disagreement over basic facts are disappearingly small. If the ground for recusal is subjective, such as bias or other incapacity to sit fairly, the judge ordinarily has readiest insight into his or her own mind. If the ground for recusal is a problem of appearance (R. 1:12-1(f)), then the judge is in as good a position as anyone to evaluate it.
>
> Consideration of one's own disqualification for bias can be a difficult task. See Annot. "Disqualification of Judge for Bias Against Counsel for Litigant," 23 A.L.R. 3d 1416 (1969). When one's own capacity and willingness to be fair to a party or a lawyer is challenged, it requires a conscious exercise of good will and mature judgment to decide the challenge. But it is the capacity to exercise good will and mature judgment in difficult circumstances that qualifies one to act as a judge at all. It must be assumed that a judge will bring that capacity to bear on a motion to recuse himself.

As in part, as has been evidenced here, our Courts have stated that the basis for the motion alleging bias or partiality may not appear as direct statements in a record but may have been conduct, tone or voice, or other conduct. Id.

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at 238 N.J. Super. at 65.

> ... If, as here, the movant relies on trial incidents allegedly exemplifying the judge's tone of voice or other mannerisms not revealed by the printed transcript, then the recollection of people who were there and witnessed the incidents may have to be produced, in certifications or testimony. id. pp. 63-64

In fact, the statements made for recusal need not have been knowingly stated or done. Liljeberg v. Health Services, 486 U.S. 847 (1988).

Any information which is in the judge's knowledge and not upon the record, which would form the basis for the opinion or bias, cannot be known to the defendant, cannot be explained by him or rebutted by him. Nevertheless, the defendant believes and perceives a bias exists as supported by your conduct and the perceived manner in which he and his attorney have been treated by you. Neither a tocsin sounded nor did the opinion rise at a particular time for this belief and perception to arise, it developed over time. As such, the Court should, after examination, recuse itself. See James v. State of New Jersey, 56 N.J. Super. 213 (App. Div. 1959).

What is important here are not the positions but the perceptions of the party, the perceptions of the public, and the preservation and the appearance of impartiality by the Courts and Your Honor.

The belief or feeling of the judge may be that no bias may exist in his mind. Your Honor may believe that you are fully able to fairly hear this matter in your own mind or

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that the incidents and statements complained of were mere banter or hyperbole and that the Court has not and will not consider the incidents or this Motion.. But that is not the test. What is the touchstone and test is the perception and belief of others. It is an objective standard of the reasonable person, In re Allied Signal, 891 F. 2d 967 (CA1 1989); U.S. v. Vespa, 868 F. 2d 1328 (CA3 NJ), and any doubts must be resolved in favor of recusal, U.S. v. Kelly, 888 F. 2d 732 (CA11 1989).

If a perception exists in the minds of the party that the judge harbors a bias, cannot be fair or otherwise cannot be impartial, the judge must recuse himself.

Even if the judge believes that he is impartial, but a case can be made by a party of a belief and perception to the contrary, then not because the party's factual perceptions are correct, but because the judge must preserve the "appearance of impartiality" that he must disqualify himself. See Haines v. Ligett Group, No. 92-5144, ____F2d_____(3d Cir. September 4, 1992), wherein the Court disqualified the Honorable H. Lee Sarokin, U.S.D.J. in hearing of various matters involving the tobacco industry. Despite the fact that the Court and the judge believed that his rulings were made upon evidence presented to him, the Court of Appeals held that the appearance of impartiality was not maintained by the Court because of the strong terms and language in which the judge expressed himself.

The defendant and/or his attorney may have himself,

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unknowingly or knowingly, engendered and exacerbated this relationship, but they are not the one sitting in judgment. What feelings, bias, partiality or lack thereof, or impartiality are maintained by the trier of fact in the relationship of the parties is known best to the trier of fact. It is for that reason that the motion for recusal is made first to the trier of fact before others.

The trier of fact must not consider how subjectively he feels, but how subjectively his conduct or statements are perceived. The trier of fact must consider the perception and appearance of bias by the parties and the public, and not whether in fact the trier of fact believes that it actually exists. It is that perception that controls Your Honor's decision and ultimate disposition of this motion.

MISTRIAL AND/OR CONTINUANCE

A Motion for a mistrial is addressed to the sound discretion of the trial court, but the power to grant such a motion should be exercised with the greatest of caution. Wright v. Bernstein, 23 N.J. 284 (1957). It is undesirable that a trial be aborted and that both parties be required to incur the expense attendant upon retrial. By the same token, expedition should not be served at the expense of crippling the cause of one party or the other by permitting the intrusion of evidence which will serve to confuse the trier of fact or cause it to reach its verdict by emotion rather than by reason. Runnacles v. Doddrell, 59 N.J. Super. 363 (1960). A mistrial must be granted as a matter of right whenever a

party is deprived of the essence of a fundamental right. Wright, supra. In the instant case, the Defendant contends that his fundamental right to a fair and impartial trial has been compromised by the actions of the Judge and by the ex parte reversal of decisions which had been made earlier on in the trial. The keystone in determining such a motion is to prevent a manifest denial of justice under the law, Id., and/or to assure the parties a fair trial. Greenberg v. Stanley, 30 N.J. 485 (1959).

The granting of an adjournment is discretionary with the trial court. Bartell v. Razzano, 119 N.J. Super. 243 (1972). An Appellate Court may reverse a denial of a continuance only if the judicial action was "clearly unreasonable in the light of the accompanying and surrounding circumstances" and "resulted prejudicially to the rights of the parties complaining". Stott v. Greengos, 95 N.J. Super. 96 (1967). In general, when a Plaintiff amends a Complaint and his adversary makes a showing of surprise or other good reason, a continuance should be granted to the adversary to give him time to meet the amendment. Stein v. Feldmen, 17 N.J. Super. 311 (1952). In the case, sub judice, the Plaintiff did not amend her Complaint; however, the Court did reverse prior rulings which dictate a continuance so that the Defendant has the proper opportunity to address. The many sporadic days of trial and the delay by the intermittent proceedings, works a hardship on the parties and the Court. But trial strategies and positions are based and formulated on

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evidential rulings and the record which was made to date. Changes such as occurred here clearly mandate that the party effected have time to address them.

CONCLUSION

For the reasons set forth herein, the defendant/counterclaimant most respectfully requests the Court recuse itself and have another judge assigned to hear this matter. Alternatively, a mistrial should be granted or a continuance of the trial be ordered.

Respectfully submitted,

CARBONE AND FAASSE
Attorneys for Defendant/
Counterclaimant

By: _____
Ralph E. Faasse
A Member of the Firm

REF:JD
cc: Charles J. Stevens, Jr., Esq.

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EXHIBIT TWO

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First Albany Corporation

18TH FLOOR, 71 BROADWAY, NEW YORK, NY 10006-2600 • 212 797-4600

October 29, 1993

To Whom It May Concern:

First Albany Corporation compensates William G. French, Jr. with a "draw" of $50,000 per annum.

If Mr. French's monthly commissions earned exceed his "draw" of $4166.67 per month, he is paid the amount of the overage.

However, if Mr. French's monthly commissions earned amount to less that his "draw", he is still paid the amount of the "draw". The shortage rolls into a debit account which must be fully repaid to the Firm from his future commissions before any monthly overages are paid to Mr. French.

In January 1993, Mr. French was paid a one time, non-recurring bonus of $5,000 to reward him for non-commission generating services he performed at First Albany.

During the summer of 1993, Mr. French requested a loan from First Albany so that he could pay down certain debts he had incurred during the past year. The Firm lent him $2,000 in August 1993.

Although both the January 1993 bonus and the August 1993 loan appeared on Mr. French's pay stubs, they were one time, non- recurring events and do not represent any change in this $50,000 per annum "draw".

Yours truly,

John Krause
Manager
Institutional Sales

MEMBER NEW YORK STOCK EXCHANGE, INC.
AND OTHER PRINCIPAL EXCHANGES

95X

Irwin R. Eisenstein
PRO-SE
601b Surf Ave. apt 17k
Brooklyn, New York 11224
Work 212-206-3961
After 718-996-6914

August 12, 1994

Pat Nagle,
Office of Legislative Services,
cn 068,
Trenton N.J. 08625

Dear Ms. Nagle:

I have included a copy of the motion that I submitted to the appellate court. I am sure that this motion will not be accepted. There are many good ideas that are contained in the document. The cost of producing 15 copies would be more than I could afford at this time.

The single most important factor for this committee to consider is the establishment of independent review boards for both lawyers and judges. I believe that when judges are judged only by their peers there is no judgement.

I would suggest that both lawyers and judges are not accountable to any group at this time except those groups that have as members other Judges or lawyers. In order to correct this problem I would suggest that civilian review board members be established and that these boards contain a minority of lawyers.

As a pro-se litigant I have sued a judge and several lawyers. Although I have not been unsuccessful, eventually, I will be. When lawyers are allowed to commit perjury on certifications and judges do nothing it is time to change the system.

Please feel free to call or have any members of the committee call.

Please pass this packet to the appropriate parties in the Commission. I would request that you audit this case and use it when drafting new legislation related to divorce.

Divorce in the court system is a disaster for all parties. The only "Best Interest" group is the matrimonial bar and the judges who preside over the carnage. The issue of "Best Interest of the Children" is very rarely available once a case goes to trial or court.

Perhaps the best way to limit the damage that is done is to limit the amount of money that is paid to lawyers. Once there is

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no money, most divorces end.

I would suggest that there is a need in New Jersey to review the actions of judges and lawyers. This review **should not be by other lawyers or judges** but by a public review board. This case (action) also involves a Federal Case where Certiorari was denied by the U.S. Supreme Court. Many of the issues raised in this case are common in New Jersey divorce courts.
The legislature should change the laws so the courts do not legislate! If I can help in any manner please call me. The group that benefits most in divorce is not the children "Best interest" but the lawyers who litigate in divorce actions.

Sincerely,
Irwin R. Eisenstein

I certify that the foregoing statements made by me are true. I understand that if any of the foregoing statements made by me are willfully false, I am subject to punishment.
Irwin R. Eisenstein... dated: August 12, 1994

When lawyers certify their statements there are so many omissions and errors that they should be punished. The matrimonial bar is perhaps the worst bar and probably the most seedy. Judges very rearly sanction lawyers and libel and slander are common. This is justified as adversarial conduct. Recently, I was in front of another judge and the issues related to a lawyer's certification was raised. The judge did nothing.

It is difficult for me to understand that each court is guided by the rules of court but none have to follow these rules.

judge58.812

Irwin R. Eisenstein
PRO-SE
601b Surf Ave. apt 17k
Brooklyn, New York 11224
Work 212-206-3961
After 718-996-6914

July 23, 1993

Honorable Alvin Weiss, A.J.S.C.
General Equity Court, Gibraltar Building Halsey Street
Newark, N.J. 07102

Honorable Thomas P. Zampino, J.S.C.,Superior Court of New Jersey
Chancery Division - Essex County, Essex County Hall of Records -
Room 321, 465 Dr. Martin Luther King, Jr., Blvd.
Newark, New Jersey 07102

RE: Miriam Eisenstein vs. Irwin Eisenstein
Docket No. M-19680-90, Supreme Court Docket No. 36,701
A-1673-92T5

Dear Judge Zampino:

Dear Judge Weiss:

I met with my daughter Carla on 8-3-94. Her stomach was upset and she was a little distant. She is a lovely, caring child and I love her dearly. Carla is not well. The relationship that I had with her would have changed but it would have changed differently. I would never have prevented her mother from seeing her if I had custody or if there was joint custody. **Your court system is a disgrace and must be reformed.** It brings tears to my eyes when I realize how you, judge Zampino, have allowed a lawyer and a system to build walls between a father and his children. I believe that your actions have impacted Carla's health. Ms. Eisenstein and her attorney have acted vindictively and not in the best interest of the children.

In order to respond to the actions This response will include Mr. Eisenstein's responses to the court letter, the signed orders and the proposed orders and sanctions that have been suggested by Ms Haber. Once again Mr. Eisenstein is suing Ms. Haber in another jurisdiction and would have no problem in embroiling this court in another Federal Suit. When the law is applied in an inequitably there is reason to take matters to a Federal Court. Fathers Rights

Metro has recently filed a suit against court bias in the Southern District of New York (The bias that exists in New Jersey courts is no different from what I note in this complaint. When there is systematic discrimination, then the Federal Courts can review the system). This suit is based upon court bias in New York. Comparable bias exists in New Jersey.

Mr. Eisenstein believes that you knowingly made errors in the orders that you signed and the letter that you drafted to both parties in this case. Mr. Eisenstein objected in writing to both the orders that the court has signed(7-22-94). These orders contained errors in billing by Ms. Haber in her certification statements. They contained other errors. These omissions and errors will only lead to another Appeal. Mr. Eisenstein rejects these orders as being flawed and contrary to conditions that exist and that were stated in court. **Mr. Eisenstein requests that you hold him in contempt so he can be tried before a jury.** This certainly would allow a better application of the law than that which you have followed.

I have tried to call Dr. Syracuse on several occasions and he has not returned my calls. Obviously, if I call him more than the 4-5 times that I have, I will once again, in his eyes, become an "obsessive compulsive". **How does a non-custodial parent get to see his children in New Jersey? Why aren't Custodial Parents ever sanctioned?** Dr. Syracuse acted improperly as a professional in the past and I again state that my request to record sessions with a court expert follow the intent of the rules of court. The rules state that another expert can be present or an attorney can be present. Since I can't afford either, I requested to use a tape recorder. Dr. Syracuse made many factual errors in his report to the court. These errors and the source of these errors could have been identified. **When the Rules of court are not followed or are arbitrary and are left to the discretion of a judge, then they should be legislatively enforced.**

Since there was fraud of omission and the court signed an order of divorce that was flawed, Mr. Eisenstein questions any

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action that the court now takes. Ms. Haber ESQ, the opposing counsel stipulated certain assets as pre-marital and the court ignored her stipulation. She left some of Ms. Eisenstein's retirement accounts (IRA's) out of the judgement of divorce (The judge acted vindictively, as any person would, when served with a Federal Law Suit. Although the Federal complaint was dismissed, Mr. Eisenstein still believes that Constitutional Rights are still being violated by Judge Zampino's decisions).

The court states that, in past orders, the issue of rent was decided. Circumstances have changed and the court should review the request for rent based upon the changed circumstances. When the court granted $150 a month in 1992, for the rental of 1/2 of an attic room, it was after the co-respondent had been living in the house for more than one year with Ms. Eisenstein (To date, I have received no rent). Ms. Eisenstein in her certifications to the court, stated that Mr. Ebsworth, her husband was only using the attic room. **This is perjury.** Mr. Eisenstein has been required to pay for 1/2 of the maintenance and remodeling of a house that is occupied by Ms. Eisenstein and her new husband. The court, in orders in 1991, held Mr. Eisenstein responsible for remodeling the marital home after Mr. Ebsworth moved into the home. Judge Zampino's orders held Mr. Eisenstein responsible for 1/2 of the expense of a maid, and did not leave him with enough money to rent an apartment in the town where his children lived.

The court states that Mr. Eisenstein's son is not emancipated and states that this is New Jersey case law. New Jersey case law outlines 12-13 criteria to be used for emancipation. The judge neither stated the statute, nor the case law that is used to evaluate each situation. This is a violation of law and a purposeful omission by a judge. Case law states that all money and income must be considered when reviewing child support and college expenses. This was not done!

In his most recent order dated July 22, 1994, Judge Zampino stated that law in New Jersey does not emancipate children if they are full time students. He did not cite any specific case law or

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the criteria that he was using for his decision. Judge Zampino just stated "case law" in New Jersey. The law in New Jersey that is used in determining this issue is case law. The criteria used for Majority is stated in statute but the issue of emancipation has been determined by Case law. When case law is used it puts an unjust and illegal burden on non-custodial parents. Case law defines the many criteria that can be used in determining emancipation. Judge Zampino stated none of these reasons. One of the criteria used in determining emancipation are the funds available to the citizen who has reached majority. Joshua, my son, goes to college for free because his mother is a professor at N.Y.U. He has or should have custodial funds, I believe, in excess of $90,000. I presented Interest statements to the court from custodial accounts that were held by both parents and his maternal grandmother.

Joshua no longer communicates regularly with his father. He does not expect or want any advice or guidance from his father. In recent meetings Joshua called his father crazy, and stated clearly that he was happy with his mother and his step father. There is no consortium between Joshua and his natural father. Communications between Joshua and I have broken down. He accepts no advice from me and requests that I communicate with him only by letter. This too, is one of the criteria that courts can use in determining emancipation. Some of the criteria used for determining emancipation are stated clearly in the Newburgh case. They include: The financial resources of both parents, The amount of the contribution sought by the child for the cost of higher education, the ability of the parents to pay that cost, The financial resources of the child including assets owned individually or in trust, college grants available, The ability of the child to earn money during the school year and during summers, The relationship of the child to the paying parent including mutual affection and goals as well as the responsiveness of the child to parental advice and guidance.

Judge Zampino refused to recognize or state these criteria in

his decision. Judge Zampino held Mr. Eisenstein responsible for child support for a nineteen year old who has assets of more than $90,000 (See **Newburgh v. Arriogo 88 N.J. at 529**). Case law in other jurisdictions can and has been cited in prior documents submitted to Judge Zampino and also to the other courts in New Jersey. Case law, as you know can be used to justify almost anything. It was used to justify slavery by the U.S. Supreme Court(The Dred Scott decision). Another interesting quirk in law can occur in capital cases before the U.S. Supreme Court. It only takes 4 justices to review a case but five to stay an action. A defendant can be executed while the court reviews a case.

Ms. Haber was requested to pay for court costs and fees. She has extended this litigation, has violated law, has acted unethically, and has committed fraud by omission. She has done this with intent. She has acted improperly in several instances but Judge Zampino's court seems to protect lawyers. One United States Justice has stated that in his opinion 90% of all lawyers are not properly trained and are incompetent. **Mr. Eisenstein believes that as long as the issue of judicial and legal ethics is left to the courts and the bar, the public will question how both organizations function.** Although the Judge refuses to report her to the bar, the judge now has signed an order to sanction Mr. Eisenstein. This is unequal treatment under the law. Ms. Haber presented an order to the court to use $12,000 in custodial funds to pay legal fees. The judge signed this order and it is still in effect. Mr. Eisenstein has presented a document from Citibank to the court and the Governor of New Jersey that show these accounts to be custodial accounts.

Mr. Eisenstein refuses to pay the court ordered un-reimbursed medical expenses that include improper medical bills of Ms. Eisenstein. Medical expenses are already included in the New Jersey Guidelines. Why establish guidelines when courts can at their discretion violate the guidelines? Mr. Eisenstein understands that sanctions are a method that courts use to remove cases from court. How frequently, has Judge Zampino sanctioned attorneys for

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improper behavior?

Mr. Eisenstein refuses to pay $2288 for day camp expenses since they exceed the amount stated in the order of divorce. Ms. Eisenstein used a camp that allowed her to work extra jobs and expects Mr. Eisenstein to pay for these costs. Since I do not have any say in expenses this is in effect taxation without representation (**I do believe a revolt is in order**).

Mr. Eisenstein has already stated that he has not used or abused any custodial accounts except when told by his ex-attorney that he could use these accounts. Judge Zampino did not sanction this attorney even though he had the letter instructing Mr. Eisenstein to use these accounts. This attorney was paid directly from custodial accounts. Mr. Eisenstein would like to remind the judge that Mr. Eisenstein holds custodial funds for Joshua in New York. **If the Judge desires to grant these funds to anyone they must be granted in accordance with New York statute not New Jersey statute. Joshua has reached Majority and is responsible for his own legal actions.** Emancipation, or lack thereof, does not prevent Joshua from bring his own actions against either or both parents. This is clear in New Jersey statute.

The court has stated that it would consider sanctions against Mr. Eisenstein based upon a certification by Ms. Haber, a new Jersey attorney. Mr. Eisenstein has received a copy of Ms. Haber's response and clearly agrees that Mr. Eisenstein made these statements. If any of these allegations are true then it is the responsibility of the court to sanction Ms. Haber and report her to the New Jersey Bar. More that one of the allegations are correct. Ms. Haber, in court and I believe in documents submitted to the court and in certifications stated that Mr. Eisenstein had committed at least 28 (twenty-eight) violations. Is her certification now flawed, or was her certification flawed in the past? In either case her certification is not worth the paper that it is written on. **It is a sorry state when the rules of ethics and morals by members of the legal profession are lower than the litigants in court.** Mr. Eisenstein affirms since he does not

believe in god... When lawyers and clients swear on a bible and do so without concern for the ethics and morals of this book, they lower the standing of all members of society who follow these ethical(religious) standards.

Mr. Eisenstein refuses to pay any cost related to the repair of the sidewalk in South Orange. He does not want to sell his interest in the house. He has never stated that he wants to sell his interest. The way that the court has responded to the issue of rent and the house is clearly, in violation of property rights granted in the New Jersey and United States Constitution. The judge has acted in a manner that is not consistent with the federal statutes and with New Jersey case law related to the house. He has acted improperly (The adage **"The only thing that is different between grand theft and a legal fee is a law degree"** seems to be applicable in this case and in this court.).

Mr. Eisenstein refuses to pay for half of any medical bills that should have been covered if Ms. Eisenstein submitted the bills properly. He would request that the two parties take this action into another court. When a hospital or a litigant makes errors, that party should be held accountable and responsible.

The court held Mr. Eisenstein accountable for house repairs that were really remodeling expenses. The court held Mr. Eisenstein accountable for repairs that were based upon Ms. Eisenstein and her new husband refusing to, or improperly maintaining the house.

As for the signed orders of 7-22-94

Item 1 is flawed. Mr. Eisenstein has been calling his daughter twice a week as directed by the court. He now calls on Mondays and Wednesday evenings and on the Sunday mornings before he visits.

Item 2. is flawed.. The court ordered that the visitation was from 12:30 to 8 p.m. This type of visitation very rarely occurs. Mr. Eisenstein did, as specified by the court, request a change of visitation in January. He was accused by the opposition of filing too many motions and re-litigating issues even though the opposition (Ms. Haber) drafted the order in 1993 that the judge

signed in July of 1994. In 1993, during the summer, Ms. Haber filed three separated motions and orders related to visitation within a one or two month period.

Item 4 will be an issue that Mr. Eisenstein will raise in a federal court complaint. Mr. Eisenstein believes that some of the "mental health" experts have acted improperly and will request this information, in discovery, in his Federal complaint. In other jurisdictions, when Mental Health experts present statements the parties have the right to question them. Some of the "experts" in this case made errors. They can be held accountable for these errors. Mr. Eisenstein gave judicial notice but the court did not recognize cases in other jurisdictions. The court did not recognize Federal Statute. The court did not recognize stipulations from the opposing counsel. Many jurisdictions hold experts accountable and they can be sued for tortuous actions. 42 USC 1983 allows for actions against Public officials including judges and lawyers for acting under color of law.

Item 6. The issue of the custodial funds in moot. The order from the court would however have been the easiest way to verify that the accounts(with 12,000 dollars) that Ms. HABER TRIED to use were in fact, custodial accounts belonging to my 12 year old daughter.

item 7. When the court uses Rule 1:10-2 and 1:10-5 to sanction one party but allows an attorney to regularly swear falsely in certifications and allows and accept these as common errors leaves me with a sense that the court has acted improperly, and in violation of Amendment 14 of the U.S. Constitution. Based upon 1:10-2 et al, Mr. Eisenstein would demand a trial by jury and certainly would demand that this matter be heard before another judge. If there is an issue of bail this bail shall be reviewable by a judge of the Appellate Division. Since Mr. Eisenstein has already questioned many of the actions of the Appellate court, he would request that this action be placed in a Federal Court. Mrs. Eisenstein and Ms. Haber, her attorney, continue to complain when Mr. Eisenstein requests visitation with his daughter. Mr. Eisenstein questions the ethics and morals of a judge who was a

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divorce attorney prior to being selected as a judge. He questions a judge who has helped to alienated children from a parent. Mr. Eisenstein does not question Judge Zampino's knowledge of the law, even if he abuses this knowledge. Mr. Eisenstein does question the way that the judge has acted in the Eisenstein case and in other cases before his court.

On item 14. where the order states that the accounts should be rolled over into an IRA, Mr. Eisenstein would like to note that these accounts are Keogh funds and should be treated differently than IRA accounts. There is a fine point of law that is recognized in several jurisdictions related to the difference between IRA and Keogh funds. Keogh funds are retirement funds and are based upon contributions from a business or from work. This is one of the points of law that is now in Federal court. This difference is one of the issues in Mr. Eisenstein's new, Federal law suit. Judge Zampino is aware of Keogh accounts because, as he mentioned in court, on the record, in this case, it was a Jeopardy question.

Although Mr. Eisenstein questions each and every one of the courts orders, Mr. Eisenstein also believes that each of these orders has been flawed. As long as the court violated Mr. Eisenstein's rights, he will continue to question each and every order that is drafted by Ms. Haber and signed by Judge Zampino.

The second order that was signed by the judge dated 7-22-94 contradicts the first order as it relates to visitation. Item 2 incorrectly states the telephone access that now exists and was granted by the court. This is different than the order that the court signed. This order was drafted incorrectly by Ms. Haber and Mr. Eisenstein questioned this order in past submissions to the court.

Item 4 of the second order that sanctions Mr. Eisenstein for allegations of illegality or assaults of illegality are not appropriate. Ms. Haber, and her client, have questioned my rights to write to the IRS, this is a clear violation of First Amendment rights. Does the court sanction Ms. Haber for her allegations or tortuous actions related to her intentional infliction of mental

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distress? This action also is one that has now been raised in a Federal Court.

Mr. Eisenstein will use these signed orders and will appeal them. Mr. Eisenstein has been involved in several cases where the actions of lawyers and judges can and should be questioned. **The question of judicial accountability is one that is being raised in many forums (including The New York Times) that question the actions of testilying by lawyers and police officers and the complicity of the judges who allow these actions.**

The court has signed the orders of February 1994 and March 4, 1994 even though they are flawed. Mr. Eisenstein will question the orders in the remainder of this document after he responds to the courts letter.

The court stated that Ms. Eisenstein is entitled to the Prudential Securities accounts with the amount of $23,500. This I believe to be in error.

Sincerely,

Irwin R. Eisenstein

c.c. K.D.Haber

Pat Nagle, Office of Legislative Services, cn 068, Trenton N.J. 08625, please pass this to the appropriate parties in the Commission. I would request that you audit this case and use it when drafting new legislation related to divorce. I would suggest that there is a need in New Jersey to review the actions of judges and lawyers. This review should not be by other lawyers or judges but by a public review board. This case (action) also involves a Federal Case where Certiorari was denied by the U.S. Supreme Court. Many of the issues raised in this case are common in New Jersey divorce courts. The courts do not reflect societal situations. The legislature should change the laws so the courts do not legislate! If I can help in any manner please call me. The group that benefits most in divorce is not the children "Best interest" but the lawyers who litigate in divorce actions.

Objections to Ms. Haber's proposed orders

I object to the allegations that Ms. Haber makes. She assumes that

Mr. Eisenstein, "as he always does", shall object to the form of order. This statement is defamatory. Ms. Haber has made errors in billing, has billed for days that she did not appear in rbi believe that the proposed letter opinion is flawed. Since it is flawed, signing it will only lead to an appeal and possibly a Federal action.

Item 1 of the form of order is flawed.. I have tried to contact Dr. Syracuse and he has not responded. Once again, as in court I have requested that I be allowed to bring a third party and or have the session taped. This is the intent of the rules of court.

Item 2. Ms. Haber has left out assets in prior statements and has made errors of omission that the court has accepted. These errors amounted to thousands of dollars. I am not a Donald Trump, I can't afford to accept these errors, double counting, and omissions under the guise of legal errors.

Item 3. will be raised before another forum... The court has not ruled on this issue before. As clearly explained the court ruled under different circumstances. Ms. Eisenstein in a certification stated that Mr. Ebsworth, the co-respondent (adulterer) was required to pay $150 per month for the use of 1/2 of an attic room. Mr. Eisenstein's 13th amendment rights are being violated. Slavery was intended to prevent one party from working in bondage for another party. While the court allows Mr. Ebsworth, to live in the Eisenstein house without paying rent Mr. Eisenstein is in affect Mr. Ebsworth's slave. Mr. Ebsworth was alleged to be Ms. Eisenstein's paramour in 1989 when this action began. Would the Judge accept this type of action from a husband? New Jersey case law clearly would hold Mr. Ebsworth and Ms. Eisenstein accountable. Is there a bias based upon sex in any of the courts prior decisions? **Absolutely!**

item 4. The issue of Emancipation is reviewed in New Jersey case law and 12-13 factors should be included in this review. This issue will be raised in the appellate court, the judge has erred and has acted, I believe, improperly (See case law above).

Item 5. Mr. Eisenstein understands that when Ms. Haber wastes time

and improperly presents issues to the court, she still gets paid(And gets paid still more for the increased litigation that she created). Mr. Eisenstein understands that the court system in this country is one that will be reformed in the future. Until that time, he will argue the improper judgements by morally and ethically corrupt politician and judges.

Item 6. The court has improperly signed the orders presented by Ms. Haber and they will be appealed.

item 7. If Ms. Haber reads the order that the judge signed, she would recognize that this item has been signed by the Judge, even though Mr. Eisenstein objected to disbursing these funds. Is she having the Judge duplicate orders? Should she be sanctioned for this? Is she, the professional in these matters? During the summer of 1993, Ms. Haber sent three separate orders to the court for review, some contradicting others. Is this re-litigating issues? Should she be sanctioned? Was she sanctioned? Is the court using a higher standard for Mr. Eisenstein than for Ms. Haber?

Item 8-9 Mr. Eisenstein rejects items 8, and 9 as being improper and requests that the court sanction him and hold him in contempt. Any jury trial would be preferable to the actions in this court.

item 10. The defendant has already stated that he has not touched any of his son's custodial accounts. This can be verified by checking with Citibank, if desired. He believes that he requested that the plaintiff account for all of Joshua's accounts and the court was not, I believe, clear on this issue. I believe that the court requested **"That there should be a written accounting of the custodial funds used for Joshua, the total amounts that were in the account on the date of the judgement of divorce and the amount that is presently in the account at this time."** The defendant requested that Ms. Eisenstein account for any money in these accounts. Since Joshua has not spoken to his father and has been alienated, no funds have been used. The plaintiff was to notify Mr. Eisenstein 30 days in advance prior to using any custodial funds. She has not! **The funds in New York in UGTM fall under the**

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jurisdiction of New York. These funds, I believe, and the use of these funds must comply with New York law. As to the other items in this proposed order, Mr. Eisenstein objects to having to maintain a house where Ms. Eisenstein has been living since 1991 with her new husband. The court was aware of this condition but still required Mr. Eisenstein to pay for 1/2 of the remodeling costs.

Ms. Haber in her certification requesting sanctions, Quotes Mr. Eisenstein (in part). I would suggest that the judge review all allegations in context. My statement here is not intended to be a threat and should not be considered as one. If the court sanctions Mr. Eisenstein, Mr. Eisenstein will test the court in the Federal arena again on issues that will also question the actions and laws of New Jersey and the threats that the judge has made to Mr. Eisenstein (and others) under the guise and color of law. Judge Zampino has questioned First amendment rights, as has Ms. Haber when she writes to the court and states that Mr. Eisenstein should be sanctioned for writing to the IRS. She does this under the guise and color of law as a court officer. Mr. Eisenstein understands that libel and slander are accepted as adversarial behavior and are generally protected in court. This behavior should not be allowed and should be sanctioned by judges. Testilying by attorneys should be sanctioned. It is not!

When the court participates in the alienation of children, then the court should bear some of the responsibility for this alienation. Family courts and the breakdown of the family structure are a National Problem. The credibility of the bar is also a national problem.

Mr. Eisenstein would propose that Judge Zampino review his actions and the actions of Ms. Haber or hold me in contempt so I can be judged by a jury of peers. Otherwise Mr. Eisenstein again suggests that you reject Ms. Haber's certification and report her to the bar for improper behavior.

As to Ms. Haber's New certifications of fees. Ms. Haber

made errors, did not show-up in court, submitted motions that were incorrect and improper and for this she expects to get paid! Once again, she has the unmitigated gall of requesting payment and depriving both Ms. Eisenstein and myself of funds that she does not deserve. The court clearly stated several cases that could be used in assigning court costs. In past certifications, Mr. Eisenstein stated that he was the party who could least afford to pay for legal fees. The cases that the court cited certainly favor Mr. Eisenstein. Since Ms. Eisenstein has not been required to produce income statements or her husband's income statements, Mr. Eisenstein is questioning this request for legal fees. **Once again, Ms. Haber is re-litigating issues that have been decided by the court related to legal fees and should be sanctioned.** Lawyers only have one "byte" of the apple(*this is a d.p. term*). Once they litigate and lose they can only go to the Appellate Court. Ms. Haber can and should take this matter to the Appellate Court as the judge has so frequently advised Mr. Eisenstein. When the trial court denies discovery and allows fraud by one party then there is no justice only law as interpreted by one individual.

As a point in law... or sociology I grew up spending a significant amount of time with an Italian family although my parents were of the Jewish faith. I believe that accounts for my idealistic and persistent behavior(A combination of the best of both cultures). I do not expect to change. I expect the court to change to conform to what I believe is correct. To quote George Bernard Shaw. **"The reasonable man adapts himself to the world. The unreasonable one persists in trying to adapt the world to himself. Therefore, all progress depends upon the unreasonable man."**

I certify that the foregoing statements made by me are true. I understand that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Irwin R. Eisenstein... dated: August 4, 1994

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14X

Irwin R. Eisenstein
PRO-SE
01b Surf Ave. apt 17k
Brooklyn, New York 11224
Work 212-206-3961
After 718-996-6914

July 29, 1994

Honorable Alvin Weiss
General Equity Court,
Gibraltar Building, Halsey Street
Newark, N.J. 07102

RE: Miriam Eisenstein vs. Irwin Eisenstein
Docket No. M-19680-90, Supreme Court Docket No. 36,701
A-1673-92T5

Dear Judge Weiss:

I would request that you review the rules of court that are being followed by your judges. When Rules of court are required by some judges and are ignored by others there is anarchy.

I agreed to see the same court appointed expert again (Dr. Syracuse). One who refused to allow me to take a tape recorder or another person into a session with him. Dr. Syracuse is an expert who was assigned by Judge Zampino. He has made unfavorable and factually incorrect reports. This same expert has called me obsessive compulsive and has mis-reported many items in his reports.

On 8-5-94 when I again requested that I be allowed to bring a tape recorder or a friend to an appointment he called me "confrontational". I have stated in open court that I believed that Dr. Syracuse by his actions was biased and should not be used. I have seen reports by experts used to deny access to children. Dr. Syracuse in his report has made many errors. I have seen these ?court appointed experts? take politically correct positions. I have been refused access to these reports as a pro-se litigant even though these reports were available to the other parties in this dispute.

It is time to open the windows and let out the disease and stench that has slowly crept into the gangrenous family court system in "Essex County" and into other New Jersey Courts as well. The issue of protecting reports and recordings by sealing them is **not** one that is used "in the best interest of the children". The best protection and the best interest of the children of New Jersey would be best served by an open court where judges were forced to act in a more responsible manner. One way to open court proceedings is to video tape court hearings and then allow video tapes to be used in Appeals. This approach is being used in some jurisdictions. Since Video tapes are inexpensive, it

would allow more people to seek remedies in the Appellate process. This would force judges to act appropriately.

When I was to see Dr. Syracuse again, I requested as I had in the past that I be allowed to bring a tape recorder. Based upon rule 5:3-3(d) that states **"The parties shall be entitled to have their attorneys and/or experts present during any examination by a court appointed expert."** Dr. Syracuse called me confrontational. This obviously comes from an unbiased expert?

I have never had a chance to cross-examine Dr. Syracuse. I could not afford to bring him into court. When any expert tenders a report and the court does not allow a cross-examination, justice is denied.

Judge Zampino, has requested that I again visit a court appointed psychiatrist before allowing me to see my daughter. In the past when I visited this doctor, his reported was unfavorable. I requested that I be allowed to have a third party present or that I be allowed to record these sessions. The court has refused this request. Although the rules of court are clear as they relate to the use of experts and the right of litigants to have their own experts present for any examination, each court can adhere to or not adhere to these rules of court. Quoting from a prior submission to Judge Zampino

"This is the first evaluation done by a "Court Expert" in more than two years. The court did not accept statements from Mr. Eisenstein's therapist, who has been seeing him for more than a year(These were presented to the court as requested.).

According to court rules, the judge can assign a court expert and present in evidence reports from this expert but the individual or their representatives can request that they can cross examine any expert who submits a report to the court.

(Rule 5:3-3(F) An expert appointed by the court shall be subject to the same examination as a privately retained expert and the court shall not entertain any presumption in favor of the appointed experts findings. Any finding or report by an expert appointed by the court may be entered into evidence upon the court's own motion or the motion of any party in a manner consistent with the rules of evidence, subject to cross-examination by the parties.)

When the judge calls or reads a report about the defendant calling him **"Obsessive Compulsive"** rather then **"Persistent and Determined"** and does not give the defendant an opportunity to question this report, then there is court bias. If a mother were separated from her children for more than three years, any actions by a mother to see her children would be considered proper. Rules related to Disqualification clearly state **"Disqualification (R. 1:12-1) (a) the judge has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;"** The judge can read the order related to custody that was issued in 1991 to see if there was a personal bias that would prevent the court from continuing in this case. (How frequently does the court make decisions that are later appealed because they are incorrect? Judge Zampino's lawyer, in the Federal case, relied on a brief sent to him by Ms. S. Silver(who has been working on the Eisenstein case with K. Haber and who has been included in a bill to his court).

This is a clear conflict of interest.

When the rules of court are applied differently in each court, then litigants, and the public in general, realize that the law is administered arbitrarily. I sent a letter to the court appointed expert who refused to allow me to tape record any meetings (this letter is available upon request).

If you want to clear the dockets in Essex County, correct the problems that exist. The inappropriate behavior of lawyers and judges overloads the court system. The easiest way to clear the court would be to sanction lawyers who act inappropriately.

Administrative responsibilities of Judges (1), (2), and (3) "A judge should initiate appropriate disciplinary measures against a judge or lawyer for unprofessional conduct of which the judge may become aware." Judges very rarely sanction an attorney and attorneys very rarely bring actions against judges.

The courts do not need additional judges, just judges who are elected for limited terms, are accountable, and are held to higher standards.

Certification

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are wilfully false, I am subject to punishment. **Recently, in New York, members of the N.Y. Matrimonial bar requested that the legislature not hold them accountable for their certification statements. New Jersey, obviously, is more advanced then New York. Lawyers are not accountable for their certifications and freely perjure themselves and knowingly relate information incorrectly to their clients and to the court.**

Dated: Aug. 7, 1994 Signature

Irwin R. Eisenstein

C.C. If any of the parties requires attachments, Mr. Eisenstein will supply them. Pat Nagle, Office of Legislative Services, cn 068, Trenton N.J. 08625, please pass this to the appropriate parties in the Commission.

Let me commend the committee and quote from some legal opinions Justice Brandeis in **Whitney v. California** said "Those who won our independence believed... that public discussion is a political duty," Justice Brennan in **New York Times v. Sullivan** said "thus we consider this case against the background of a profound national commitment to the principle that debate on public issues should be uninhibited, robust and wide-open" Court reform is necessary in New Jersey. Public debate will certainly clear the air and allow review of an inadequate system.

Judge Thomas Zampino

Judge56.806

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Irwin R. Eisenstein
C/O H.R.A.
111 8th Ave,
N.Y., N.Y., 10011
212-206-3961
Defendant (Pro-Se)

Miriam Eisenstein, Plaintiff, vs. Irwin R. Eisenstein Defendant	Superior Court of New Jersey Appellate Division, Essex County Family Part DOCKET NO. A-1673-92T5 BELOW: M-19680-90 Civil Action Calendar No. _____

Certified Statement
in Support of Notice for
Motion for Stay and review of
the order in the Superior Court

I, Irwin Eisenstein, of full age duly certifies as follows:

I am the defendant in the within matter.

1. I am requesting that the Appellate Court review the order of 7-22-94 and the accompanying letter opinion (appendix A). Mr. Eisenstein has responded to some of the issues in the letter opinion in a letter to Judge Weiss(Appendix D). The Appellate court in the past did not allow me to include the order of 8-4-93. This order contained a release of custodial funds. I have included a letter from Citibank related to these custodial funds (Appendix C page 6). The judge has not changed this improper order. Ms. Haber, the attorney who drafted this order, never verified information with Citibank. She had more than one year to do this. I have sent the Citibank letter to the Governor and also to the Assignment judge and have copied Judge Zampino. He is aware that these funds are custodial funds. Instead of reprimanding a lawyer who presented this order to him, (one of many errors? made by K. Haber), Judge Zampino has now sanctioned me. He has **not** acted fairly, equitably, appropriately, or "in the best interest of the children". Unless Judge Zampino means that the best interest of the children means that one parent is alienated from the children. He has not followed

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the legislative intent clearly stated by **N.J Statute 9:2-4 passed on 8-14-90. "The legislature finds and declares that it is the public policy of this state to assure minor children of frequent and continuing contact with both parents after the parents have separated or dissolved their marriage and that it is in the public interest to encourage parents to share the rights and responsibilities of child rearing in order to effect this policy. In any proceeding involving the custody of a minor child, the rights of both parents shall be equal" .**

For 9 months, Judge Zampino did not allow Mr. Eisenstein to call or see his children, even in a supervised setting. Then he only allowed a limited access for more than one year. Even now, after more than three years Judge Zampino has acted inappropriately and has participated in the alienation of the Eisenstein children from their father. Mr. Eisenstein believes that the judge has acted vindictively in response to the Federal Law Suit that Mr. Eisenstein filed against him.

"Visitation/parenting time is a constitutionally protected right which can be protected in Federal Court, even if the father is in prison. Father enjoys a right to associate with his children which is guaranteed by this amendment and incorporated in the 14th Amendment of which is embodied in the concept of "liberty" as that word is used in the Due Process clause of the 14th Amendment. Such right is "fundamental" whether asserted with the Due Process clause or the Equal Protection clause of the 14th Amendment. Mabra v. Schmidt, 356 F. Supp. 620, U.S. District Court, Western Dist. Wisconsin (1973)

Prison visits have long been recognized as critically important to inmates as well as to the communities to which the inmates ultimately will return. Without visits, a prisoner "may be entirely cut off from his only contacts with the outside world." Olim b. Wakinekona, 461 U.S., at 253, 103 S.Ct., at 1750 (MARSHALL. J., dissenting). Confinement without visitation "brings alienation and the longer the confinement the greater the alienation. There is little, if any, disagreement that the opportunity to be visited by friends and relatives is more beneficial to the confined person than any other form of communication. Ample visitation rights are also important for the family and friends of the confined person . .Preservation of the family unit is important to the reintegration of the confined person and decreases the possibility of recidivism upon release. . . . Visitation has demonstrated positive effects on a confined person's ability to adjust to life while confined as well as his ability to person's ability to adjust to life while confined as well as his ability to adjust to life upon release. . . ." Justice MARSHALL, with whom Justice BRENNAN and Justice STEVENS join, dissenting. Kentucky Dept of Corrections v. Thompson, 109 S.Ct. 1904 (1989)

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Mr. Eisenstein had fewer rights as a non-custodial parent then confined prisoners.

When you have lawyers who commit fraud by omission and judges who knowingly sign orders that contain these fraudulent statements, the public believes that the law is corrupt(Mr. Eisenstein too, believe that the court system is corrupt and will in any future hearings demand a trial by Jury). Mr. Eisenstein, too, believe that when judges do nothing about lawyers who are corrupt and act fraudulently then they too are guilty of breaking the law (complicity). Mr. Eisenstein believes that Judge Zampino has knowingly broken the law. The old adage **"The difference between grand larceny and legal fees is a law degree"** is appropriate in Judge Zampino's court. Judge Zampino has not acted according to the rules of court, the legislation or case law. Now Judge Zampino just uses generalizations ("New Jersey Case law") rather than cite cases that Mr. Eisenstein can look up and use to refute his decisions. When judges act vindictively, they are violating the public trust and their positions. Judge Zampino has been overturned in the Appellate Court and has been called over-zealous. I would say that **Judge Zampino is a disgrace to the Judiciary and has often acted illegally and vindictively.** In any case, he does not belong on the New Jersey bench. To quote Martin Luther King Jr. **"A law that is unjust is morally null and void, and must be defied until it is legally null and void as well" . When a judge does not follow the law, violates the rules of court and acts vindictively, there is no law, only anarchy.** Please help me to remove Judge Zampino from the New Jersey bench and

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declare him "Null and Void" as well. I demand that the Appellate Court rather than maintain an **"old boy network"**, begin to review cases fairly and appropriately. The purpose of an Appellate Court is not to condone errors in law, but to take the appropriate actions and correct errors in law or equity made in lower courts. You too have failed in your duty as public servants. Mr. Eisenstein is also requesting that a stay be granted and injunctive relief preventing Judge Zampino from signing any order allowing Ms. K. Haber from depleting any account that is being contested. I am requesting that you invalidate the outstanding order of 8-93 and the new order of 7-22-94 that allows Ms. Haber, **an unethical lawyer**, from violating Federal and New York statute by taking out approximately $12,000 that belongs to my daughter under the Uniform Gift To Minors Act. Mr. Eisenstein is suing Ms. Haber for participating in the alienation of children and for using Keogh funds to pay third party debt, including her legal fees. Mr. Eisenstein requested that the judge not sign any order while there are appeals pending, but he insisted that I request a stay in the Appellate Court. The Appellate court did not grant any stay in 1993. I have included a letter (Append. C. page 6) that was sent to the assignment Judge with the number of CITIBANK located in New York City. Not only is this a U.G.T.M. account but it is not in the New Jersey jurisdiction. The Appellate Court should prevent this account from being depleted to reward Ms. Haber, my ex-wife's attorney, at the expense of my 12 year old daughter. The Appellate court refused to grant a stay on this order.

On other issues, Judge Zampino has signed two orders dated 7-22-94

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that are contradictory in nature (Appendix A). These are the orders that were presented by Ms. K. Haber in late 1993(November) and later in March of this year(1994), I believe.

Item 1-3 of the first order relate to visitation with my daughter and access to my daughter by telephone. These items contradict what has happened since that time and are not correct.

Item 4 relates to the discovery of "experts" who have written statements to the court. In other Jurisdictions, once a person writes to the court, they are open for cross-examination. Judge Zampino has denied me the right to access information and a fair hearing. This violates the tenets of a fair trial or a fair evaluation. When the court does not allow a tape recorder or another person to be present during questioning by a court appointed expert there is a violation of the rules of court. This is anarchy(Rule 5:3-3(d)).

Item 5. When a pro-se litigant questions the actions of a lawyer, he is sanctioned. When a lawyer is questioned for drafting improper motions and for relitigating issues she is paid by one party or another. In drafted orders, Mrs. Haber has perjured herself on certifications, has made several billing errors(?), has requested billing for days when she did not appear in court, has violated rules of ethics, morals and law.

Item 6. The Citibank account was submitted to the court and the order that was drafted and signed was incorrect. How dare the court deny access and discovery to information that Ms. Haber ESQ. has fraudulently presented to the court? There is complicity between a lawyer and a judge. Judges and the court system should help Pro-Se litigants so they

are given equal protection guaranteed by the U.S. Constitution. Judge Zampino has refused to sign Subpoenas for Mr. Eisenstein, and has refused discovery. Lawyers are officers of the court. They have privileges that Pro-Se litigants do not have. It is the courts responsibility to insure a fair trial. Judge Zampino has violated many tenets considered necessary for a fair trial. In a letter to the Appellate Court dated sept 8, 1993 Mr. Eisenstein stated that he was not being treated fairly in judge Zampino's court

"Mr. Eisenstein has a right to request the four elements, cited by Prof. Davis, that are necessary for a Fair Trial:

1. Adequate Notice, 2. A chance to know the opposing evidence and argument and to present evidence and argument in response, 3. A chance to confront and to cross-examine adverse witnesses, and 4. An impartial deciding officer. (Administrative Law Treatise § 10:6 at 327 (2nd ed. 1979)

I did not have this opportunity even though I requested it in by Motion in Judge Zampino's Court.

Items 7--16. Since the judge is trying to correct errors in orders he has drafted by forcing the litigants to pay attorneys or by sanctioning them, he is clearing his court calendar by abusing the law. Based upon **rule 1:10-2 and 1:10-5** Mr. Eisenstein would request that another judge, one who has 20 or more hours to review the case file, or preferably a jury be used when determining sanctions. The Appellate Court has already reversed Judge Zampino on several other cases, and Mr. Eisenstein is requesting that they review the entire case folder. **Mr. Eisenstein is surprised that so few lawyers and judges are killed by angry litigants. To quote Shakespeare In Henry the VI in response to the question "How do you create a Utopia?", "the first thing we do, let's kill all the lawyers."** This is not a threat, just a question since I understand the difficulties and frustrations that people have in dealing with a corrupt bureaucratic system. When a judge denies access on

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Fathers Day, or does not sanction an attorney and her client for this action, he should be sanctioned. When a judge participates in breaking parental bonds, then he should be removed from the bench. **When a judge violates the law and allows an attorney to commit fraud by omission he should be prosecuted.** In the second order filed and signed on 7-22-94 judge Zampino again contradicts not only what has been occurring but also the first order that he has signed, dated 7-22-94.

Item 1-2 contradict the current access. The judge has acted vindictively and has used access to the children as a weapon. Judge Zampino has participated in the alienation of the children from their father.

Item 3. For the visit to the court appointed expert, the judge and the expert have denied me the right to use a tape recorder or to bring my own expert. This violates the rules of the court and is why anarchy rules in family court. Dr. Syracuse has already called me compulsive obsessive after one 2 hour meeting in 1993. He did not consult with the Person who I was seeing. Recently, Dr. Syracuse has called me confrontational when I requested that he follow the rules of court(see appendix b).

Item 4. **The issue of allegations or assaults of illegality against the plaintiff's attorney for $100 is one that would be acceptable if the court would act properly and follow the law. When a judge accepts fraud by omission, does not follow the rules of court, then he too is guilty of violating the law and the public trust. The court only proposed sanctions against one side(the pro-se litigant). The court is clearly in violation of Amendment 14, as well as displaying its anti Pro-Se bias(See the letter addressed to Judge Humpreys in Appendix D page 5).**

Judge Zampino wrote a letter opinion from which he will again have Ms. Haber draft an improper order (Appendix A). Judge Zampino has requested that Dr. Syracuse evaluate Mr. Eisenstein before allowing Mr. Eisenstein to call his daughter every other day and granting him additional time with his daughter. Dr. Syracuse has called Mr.

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Eisenstein **Compulsive-Obsessive**, and then **confrontational** when he requested that He abide by the rules of court 5:3-3(see letter appendix B). In his letter opinion Judge Zampino denies Mr. Eisenstein an increased rental from Ms. Eisenstein-Ebsworth. Judge Zampino states that this issue was resolved. Since Mr. Eisenstein has not collected any rent in the past, although there was an order for $150 a month for 1/2 of an attic room, Mr. Eisenstein believes that his property rights have been violated. Case law in New Jersey allow for adjustments based upon delayed realization and should also allow for IRS consequences. This type of decision should be legislated rather than left to the whims of capricious angry judges. The judge did not allow for either. **Mr. Eisenstein believes that the judge acted vindictively, in error, and has violated case law.** Mr. Eisenstein has been held responsible for the maintenance and remodeling of a house by a judge who knew that Ms. Eisenstein was living with another man(Now her husband). Mr. Eisenstein believes there is a change in circumstance and the sanctioning is improper. Mr. Eisenstein has requested that his son be emancipated. His son has assets exceeding $90,000, and he goes to college for free. Mr. Eisenstein is being sanctioned by Judge Zampino for requesting rent from Ms. Eisenstein's New Husband(as per the Judges's own order), for requesting that his son be emancipated, and for requesting that he be allowed to call and see his daughter more frequently. In prior orders, when Mr. Eisenstein's ex-wife stated that Mr. Ebsworth (The co-respondent named in Jan. 1990) was only living in an attic room judge Zampino granted 1/2 the rent of an attic room that he determined to be $150 a month. This order was signed in 1992 after they were living together for more than a year. Judge Zampino has also held me responsible for the remodeling of a house that the new couple now occupies. He has held me responsible for 1/2 of the maintenance of this house. I believe that this violates Constitutional Rights in both New Jersey and in the United States. **Although case law justifies reversing and sanctioning a judge, I am sure that since the political implications**

are too great the Appellate Court will ignore this request. Mr. Eisenstein also asked Judge Zampino to state why he was not emancipating my son. This too, he is determining unfairly and vindictively. He refused to give specific reasons or state the case law that he was using in not emancipating my son. I have included letters related to the issue of emancipation and the case law criteria used in emancipating children specifically those set in **Newburgh v Arriogo 88 N.J. at 529. All assets of parties must be used. The relationship between the paying parent and the mutual affection and goals as well as the responsiveness** of the child to parental advice and guidance. My son calls me crazy and does not accept calls from me. Alienation of children, often assisted by a corrupt court and a vindictive parent, are common in New Jersey.

The issues that must be reviewed by the Appellate court is not how to prevent people from exercising their rights in the Appellate Court but how to train lower court judges so people do not have to exercise these rights. At this time, Mr. Eisenstein does not believe that the appointment of judges should be for life. Although the judiciary should be independent, **Mr. Eisenstein finds that once a bad or corrupt judge is appointed he generally remains on the bench for life.** This is a true disgrace and the Appellate Court should clean their own house. Since Justice Humphrey's was just promoted to the Appellate Court, I question the criteria that are used for judicial appointments. He has been aware of the transgressions of Judge Zampino and has done nothing. During his time on the bench as the assignment judge he, to my knowledge, did nothing to sanction Justice Zampino. When an assignment judge, in his administrative capacity, does nothing he certainly should not be promoted to the next level. This sounds like an application of the Peter Principle where you promote judges who make bad decision to the next highest level where they can do less damage?

As a former citizen of New Jersey, I believe that the courts are corrupt on all levels and the need for both legal reform and judicial reform in long overdue.

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Since there is an Appeal in the New Jersey Appellate Court and a motion before the N.J. Supreme Court that relate to some of the matters raised in the lower court, I am requesting a stay and an injunction preventing the depleting of any accounts or money in this case.

My objections to the order of 8-04-93 are based upon not being allowed to Cite Rules of Evidence in New Jersey and in other jurisdictions. In New York, when a court appointed expert is assigned to review an individual then that individual is allowed to record any session and question any "Experts". This has not been allowed by Judge Zampino and I am requesting that the Appellate Court review the documents submitted related to the court hearing of 8-04-93. When the rules of court are not followed by judges then there is anarchy. I believe that it is time to open the windows and let the stench of illegality out of the courts. Judge Zampino intends to allow Ms. Haber, the opposing counsel to deplete custodial accounts belonging to my daughter Carla. Please review the letter from Citibank stating that this account is for my daughter Carla.

Additionally, Judge Zampino is violating my 13th amendment rights by making me responsible via child support of subsidizing Ms. Eisenstein and her husband in the Marital home. I have been required to pay maintenance and remodeling since 1991. I believe Judge Zampino's actions to be criminal in nature.

I believe that the trial court has made errors and request that an immediate stay be granted.

Certification

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are wilfully false, I am subject to punishment.

Dated: Aug. 12, 1994 Signature Irwin R. Eisenstein

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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1673-92T5
BELOW: M-19680-90

Irwin R. Eisenstein
601b Surf Ave. apt 17k
Brooklyn New York, 11224
212-206-3961 718-996-6914
Respondent, Sui Juris

Miriam Eisenstein	:	CIVIL ACTION
Plaintiff-Respondent	:	ON APPEAL FROM
	:	SUPERIOR COURT OF
	:	NEW JERSEY
v.	:	Essex COUNTY
	:	Family Part
Irwin R. Eisenstein	:	SAT BELOW
Defendant-Appellant Respondent	:	
	:	Hon. Thomas Zampino

To: Karin Duchin Haber, Esq.
123 Columbia Turnpike, Suite 103a
Florham Park, N.J. 07932, 201-966-6311

Civil Action

Notice of Motion for **Stay of the order of 7-22-94, injunctive relief, a request to review the rules of court since they are not applied in Judge Zampino's court, a review of the entire case folder and the Federal complaint filed by Mr. Eisenstein against Judge Zampino. Although this suit was dismissed; the bias that existed in Judge Zampino's court still exists. There can be no fair trial or judgements in this court for Mr. Eisenstein.**

Please take notice that the undersigned hereby moves before the Superior Court of New Jersey, Appellate Division, for an Order to Stay any action on the orders of the family court of 07-22-94. I am requesting that this court review the Order of 07-22-94 since the defendant was not allowed to present his arguments effectively in the lower court. There are flaws in the orders as it is drafted and it violates individual Civil and Constitutional rights.

In court on 8-04-93 the trial court did not consider any of the

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issues being raised by motion and in a certified statement submitted to the court. My requests for discovery were denied as well as other requests. I am requesting that Judge Zampino be removed from this case and that the Appellate Court report Ms. Haber to the N.J. Bar association for questionable, unethical and tortuous behavior. These requests appeared in my certification, and motion presented to the trial court. If denied by this court, **Mr. Eisenstein does not draft orders since the judge doesn't sign them if they are presented by a pro-se litigant. The plaintiff (Ms. Eisenstein) and her attorney have acted fraudulently, several times.** The trial judge acted without allowing the defendant discovery and has violated the 1st, 5th, 13th and 14th Amendment Rights(and also federal statute). Additionally, the trial judge said that the defendant was not allowed to contact N.Y.U. without his permission. Judge Zampino stated that Ms. Eisenstein could file a harassment charge in N.J. should Mr. Eisenstein exercise his right of free speech in New York, by contacting N.Y.U. This, I believe, is outside the New Jersey Jurisdiction and a change of venue can be requested by Mr. Eisenstein since there is a question of diversity and 1st Amendment Rights. No discovery can be done without Judge Zampino's approval and I can't support all of my statements related to the order of 6-3-93 that I have requested be included in the appeal(The citibank statement can be presented). , Mr. Eisenstein can request discovery in the Federal case that has been opened in the New York Southern District.

The trial court judge requested that the defendant see a court

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appointed therapist who has maliciously and improperly called him compulsive/obsessive in a report presented to the court. Judge Zampino then read from this report in open court and also called Mr. Eisenstein Compulsive/Obsessive. When Mr. Eisenstein requested to tape this interview in 1993 the court ordered him not to tape this session. Since the psychiatrist reported many items incorrectly, and Mr. Eisenstein could not afford the exorbitant fees associated with cross examining this "Biased Expert", he again requested to tape the interview that was scheduled in 1994. When Dr. Syracuse called and Mr. Eisenstein again requested to tape the session in accordance with the rules of court, Dr. Syracuse called Mr. Eisenstein **"CONFRONTATIONAL"**. Mr. Eisenstein believes that any expert appointed by the court should conform to the rules of the courts and either allow the recording of sessions or allow another individual into these sessions.

The judge, via judicial notice, was made aware that the psychological conditions of people in New York could not be used to prevent access to children. Mr. Eisenstein has brought actions against Judge Zampino to the U.S. Supreme court and believes that the actions of Judge Zampino have been improper. Even though the Writ of Certiorari was not granted Mr. Eisenstein believes that eventually, Judge Zampino will be held accountable for flagrant violations of the law. Judges are now given preferential treatment and violate the law on a regular basis. **This is a New Jersey Disgrace.**

In support of this motion, Mr. Eisenstein will rely upon the motions and papers submitted. The content and not the form should be

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used when reviewing this case.

I would request that this order (and any other order) signed by Judge Zampino in this case be reviewed by a higher authority. Additionally, since the rules and costs of a state appeal make it more difficult for a Pro-Se litigant, and deny equal protection and due process.

When a trial Judge acts vindictively, and expects more expertise from a pro-se litigant than from a corrupt lawyer and uses his position under guise or color of law, then he is violating 42 US 1983 and should be held accountable. I am requesting that I receive a copy of the court tapes. I would be willing to pay for these since they are much less expensive than ordering a transcript. The New Jersey Courts are now using tapes rather than a court steno-typist because the cost of recording sessions is less expensive than having steno-typist record court proceedings. Some Federal courts in New Jersey, I believe, are also using Video Tapes and are allowing these Video Tapes to be used instead of a transcript. Additionally, the tapes are the best available evidence since transcription errors occur and many verbal queues related to the recorded voice do not appear in the transcript. **Oral Argument is demanded.**

Dated: Aug. 12, 1994 ..... Irwin R. Eisenstein

In support of this motion, I shall rely on the attached short brief and attachments in the appendix

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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1673-92T5
BELOW: M-19680-90

Irwin R. Eisenstein
601b Surf Ave. apt 17k
Brooklyn New York, 1122[illegible]
212-206-3961 718-996-6914
Respondent, Sui Juris

Miriam Eisenstein
Plaintiff-Respondent

v.

Irwin R. Eisenstein
Defendant-Appellant Respondent

CIVIL ACTION
ON APPEAL FROM
SUPERIOR COURT OF
NEW JERSEY
Essex COUNTY
Family Part
SAT BELOW

Hon? Thomas Zampino

BRIEF OF DEFENDANT-RESPONDENT

Irwin R. Eisenstein, (Pro-Se)
601b Surf Ave. apt 17k
Brooklyn, New York, 11224
Work 212 206-3961 Home 718 996-6914

c/o HRA
111 8th Ave. rm. 6a
N.Y., N.Y., 10011-5201

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TABLE OF AUTHORITIES i-iv
This is limited because Mr. Eisenstein does not believe that case law or legislation is used in determining any appeal.

STATEMENT OF FACTS 1

LEGAL ARGUMENT 2-7

POINT I - A stay and injunction preventing Judge Zampino from signing any more orders until the Appellate Court reviews orders already signed in error. Judge Zampino in his letter opinion and orders, states that he will sanction me for his illegal actions.

- A Stay and reversal of the order allowing Ms. Karen Haber to disburse funds (as part of equitable distribution) belonging to my daughter Carla(These are UGTM funds). This order was raised before the Appellate Court and the Appellate Court denied this in 1993. Perhaps the letter from Citibank stating that these are custodial funds can be used to question this order.

POINT II - The Judge in his letter opinion and the orders that he has signed clearly is violating Mr. Eisenstein's rights. Judge Zampino is requiring me to pay expenses that are unjust and inappropriate. He states that he will sanction me in 60 days. As long as this case is in front of a biased, partial judge, Mr. Eisenstein will not follow any financial order that is signed. The courts in New Jersey, have arbitrary rules and follow the laws that they make. Laws must be made by the legislative branch of government.

POINT III - **A review of the trial court judge and his actions over the pendency of this case would show bias. When a trial court judge acts to protect a lawyer who commits fraud there is complicity. All action of this judge should then be reviewed. The order Signed on 7-22-94 based upon rule 1:10-2 and 1:10-5 requires that an appellate judge or another judge review the actions of the trial judge. Based upon rule 1:10-4, the matter for sanctions can't be heard by the judge who is sanctioning. The Judge, in signed orders, has violated rule 5:3-3(d) by refusing to allow Mr. Eisenstein to tape a meeting with a court appointed expert or have another party present. When Judges do not follow rules there is anarchy.**

CONCLUSION - The trial court should not have signed any order contrary to the spirit of the Law. The Judge should have recused himself when he was sued in Federal Court. The Judge should not have signed any orders releasing Custodial funds to pay legal fees. He did. The Appellate Court refused to allow this order into the appeal.

This violated law. When the courts are so set in rules that form has more value than substance, it is time to review both the rules of court and the courts themselves. The court violated Constitutional rights by denying access to information. When judges in New Jersey violate not only the law but the spirit of the law, then the Federal courts should become involved. Mr. Eisenstein does not believe that the Appellate court in New Jersey would sanction a judge in a lower court. This is a violation of the rules of ethics and undermines the public faith in the judiciary.

Oral Argument is demanded.

APPENDIX A

Letter opinion of 7-22-94 by Judge Zampino

Two contradictory orders signed on the same day by judge Zampino. These orders were drafted by Ms. Haber in November(93) and March(94) Mr. Eisenstein assumes that the judge did not sign these orders while his actions were being questioned by the board of Judicial ethics.

APPENDIX B

Letters to the assignment judge questioning the violation of the rules of the court as it relates to the testimony or report of an expert witness. Rule 5:3-3 entitles the litigant the right to have another person present during an examination. When the judge orders that no other party and no tape recorder is allowed then there is no rule. Only anarchy by the court. A letter to the Psychiatrist dated 9-93 questioning his response to the court.

APPENDIX C

A complaint to the assignment judge questioning the impartiality of a vindictive judge and a copy of the letter from Citibank related to the custodial account that Judge Zampino signed in an order drafted by Ms. Haber to use this custodial account for equitable distribution. Ms. Haber, in more than one year, did not verify that this account was a custodial account and not subject to equitable distribution.

A proposal for modifications of the courts of New York.

APPENDIX D

Letters to the assignment judge and an outline of issues that have been raised in Judge Zampino's letter decision. Emancipation is not as Judge Zampino stated, "clearly defined in New Jersey Law". Judge Zampino is holding Mr. Eisenstein accountable for several other adults who have more assets available to them then Mr. Eisenstein has available.

APPENDIX E

A letter brief related to emancipation filed by NJCCR and a response Judge Zampino's letter opinion and orders of 7-22-94 directed to the New Assignment judge and the legislative committee reviewing Judicial ethics.

APPENDIX F

A letter from Ms. Buklad stating that MR. Eisenstein could use Custodial funds. These funds were used to pay her. Additional letters and certifications stating that Some stocks were stipulated as pre-marital

In order to properly present an appeal, the entire case folder(all three boxes) and the Federal Complaint would and should be used. As long as Judges at the Appellate Court level justify the violation of law and rules by lower court judges, there will be anarchy in the courts.

TABLE OF AUTHORITIES

1 U.S. v. Landano, U.S. Supreme Court 91-2054 (from a New Jersey Case) under the Freedom of Information Act the issue of Confidentiality is not presumed. Information and the inference of confidentiality must be justified for each source of information. The burden of proof has been placed on the Government.

2 Lynch v. Household Finance Corp. 405 U.S. 538 (1972) violation of 28 US code 1983. Unlawful search and seizure infringes upon personal liberty or property.

3 Miles v. Miles (Exparte Weston); SC Fam Ct Greenville Cty, No. 91-DR-23-881, 11-25-91. Freedom of Information(5 USC 552)

New Jersey law, and rules.

4 **Code of Judicial Conduct (New Jersey)**

Cannon 2. **A judge should respect and comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary**

Cannon 3. **A judge should perform the duties of Judicial office Impartially and diligently.**

1. A Judge should be faithful to the law and maintain professional competence in it.

4. A judge should be impartial, and should not discriminate because of race, color, religion, age, sex, sexual orientation, national origin, marital status, socioeconomic status, or handicap.

4.1 N.J. section 2:4-3, 4:49-1, 4:42-2 and 1.7-4 request for additional testimony.

4.2 N.J. Rule 2:7 that the court supply me with the required court transcript if I can't afford to pay for it. (transcripts related to the trial).

4.3 N.J. RPC 1.2(d) fraudulent behavior, 1.6(1) criminal, illegal or fraudulent action
N.J. RPC 3.6 -5- information that will be prejudicial in a trial.

4.4 N.J. RPC 4.4 - respect for rights of a third person.

4.5 N.J. RPC 5.5 practice law in a jurisdiction where it violates the law of that jurisdiction.

4.6 N.J. RPC 8.4 dishonesty, fraud, or deceit or misrepresentation

5 N.J.S.A 2A:34-23 statute requiring post secondary ed.

6 **New Jersey Rules of Evidence.**

rule 1(1) **Evidence** - opinion and hearsay is admissible.

rule 1(6) **Conduct** - all active and passive behavior, both verbal and non-verbal.

rule 1(13) writing - any form of recorded information that is transcribed. This can be photo's, recordings etc. that can be transcribed and written about.

rule 3 Exclusionary rule not to apply to undisputed matter

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rule 4 discretion of Judge to exclude admissible evidence.

rule 5 Relation of these rules to law of evidence - This allows for the growth and development of the law of evidence based on fundamental principles so that the truth may be fairly ascertained.

Chapter II Judicial Notice
Rule 9 - facts and laws which may or may not be judicially noticed
This is applicable to the laws and cases of other states of the U.S. and also to congressional acts and decisions related to the constitution.

Rule 12 - Judicial Notice in proceedings subsequent to trail. Even if the Judicial Notice was not accepted during trial, it may be allowed subsequently.

rule 19 - Prerequisites of personal knowledge and experience
Personal knowledge, experience, training or education can be used as an example of an expertise in a field.

rule 22 - limitations on admissibility of evidence affecting credibility. Prior statements or testimony cannot be used to question credibility.

rule 25 - Self -incrimination : Exceptions
b. Question if this rule is required for access to hospital information.

rule 26 - Lawyer Client privilege.
(2) exceptions - Such privileges shall not extend (a) to a communication in the course of legal service sought or obtained in aid of the commission of a crime or a fraud -

rule 56 Testimony in the form of opinion - when can a person testify not as an expert witness and when can they testify as an expert. This testimony can be given at or before the hearing.

rule 63 (7) - admissions by parties who is a party to an action is admissible against him in that action.

(12) Statements of Physical or Mental condition of declarant and related history.
This include mental feelings, pain and bodily health as it relates to access to a psychologist and or records without authorization.

Chapter IX Authentication and content of Writings

rule 67 Authentication required
Must be authentication of a copy is required before it may be received in evidence.

rule 69 Certification of lack of record and rule 70 Original writings as the best evidence

.....

7 N.J. section 2:4-3, 4:49-1, 4:42-2 and 1.7-4 request for additional testimony.

8 N.J. RPC 1.2(d) fraudulent behavior, 1.6(1) criminal, illegal or fraudulent action N.J. RPC 3.6 (5) information that will be prejudicial in a trial.

N.J. RPC 8.4 dishonesty, fraud, or deceit or misrepresentation

9 Saia v. New York (334 U.S. 558) prior restraint of free speech is not allowed. (W.Douglas)

10 Thornhil v. Alabama (310 U.S. 88; 84 L. Ed. 1093; 60 S. Ct. 736) Fourteenth justifies first amendment for free speech. " The freedom of speech and of the press guaranteed by the Constitution embraces at the least the liberty to discuss publicly and truthfully all matters of public concern without previous restraint or fear of subsequent punishment."

U.S. Law

11 Sec 28 U.S.code Sec. 1391(b), 1331 and 1332, 1343, Title 7 of the Civil Rights Act of 1964, 42 U.S. Code Sec. 1983,(equity in law).

12 28 US 1343 The district court shall have original jurisdiction of any civil action authorized by law to be commenced by any person: (3) to redress the depravation under color of any state law, statute, ordinance,regulation, custom or usage of any right, privilege or immunity secured by the Constitution of the U.S. or of any act of Congress providing for equal rights of citizens.

13 28 U.S. code 1983 All unlawful search and seizure infringing upon personal liberty or property rights creates a cause of action for Civil Rights damages.

14 28 U.S.C.A. 455(a) any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality "might" reasonably be questioned.

15 28 U.S. code 1441, 1443 Federal Question Civil Rights

16 U.S. Constitution - Amendments 1, 4, 5, 7, 13, 14, etc.

17 U.S. freedom of information Act(5 U.S.C. Sec 552). Access to information.

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18 UGTM - federal guidelines related to gift to minors.

19 U.S. v. Poludniak, 657 f.2d 948 (1981), U.S. Ct. of Appeals, 8th Cir. Missouri) Judge should disqualify if the reasonable man might harbor doubts about the judge's impartiality.

20 28 U.S.C.A. 455(a) any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality "might" reasonably be questioned.

21 Rules 5:3-3(d) Investigation by experts. .... The parties shall be entitled to have their attorneys and/or experts present during any examination by a court appointed expert.

Mr. Eisenstein could include law from other jurisdictions as well as New Jersey, but the issue of case law is meaningless. As long as the use of the law and case law is arbitrary, any decision is made by one person. Mr. Eisenstein would request that any trial where the issue of custody and access to children should be before a jury. Judges do not have the wisdom of Solomon and more wisdom than that is required when two parents are involved.

Introduction

Please accept this "Letter Brief" instead of a more formal brief in support of a motion to reverse the orders dated 8-4-93 and 7-22-94(2) and to review the letter opinion dated 7-22-94(Appendix A).

Please review the certification and the motion along with this brief to request that the appellate court review the actions of a corrupt judge. Mr. Eisenstein believes that Judge Zampino has acted in a manner that was ethically and morally corrupt. Anarchy can't replace law in a court. Until proper discovery is allowed to Mr. Eisenstein and access to information is granted, Mr. Eisenstein believes that no fair trial can be given and no fair order can be drafted in Judge Zampino's court. The opposition and her counsel(Ms. Haber) have committed fraud by omission, fraud by submitting false certifications related to monetary matters, and both have committed perjury. Mr. Eisenstein has not been allowed proper discovery, and Constitutional Rights have been violated. The preceding where the order of 7-22-94 was signed was in violation of the U.S. Constitution Amendments 1, 13, 14. The judge has violated 5th Amendment Rights also(In open court he stated that the fifth amendment does not apply to civil actions(Appendix "d" letter dated june 15, 1994). He has acted inappropriately in court and in ways where most people who review his actions(who are not lawyers) have doubts about the court system. When a judge acts vindictively, angrily and arbitrarily then the parties can appeal.

Judge Zampino has used access to the children as a weapon against Mr. Eisenstein and has prevented him from seeing them and having a meaningful relationship with his children. By his actions he has participated in the alienation of the Eisenstein Children from their father. Even Criminals have had more rights than Mr. Eisenstein in Judge Zampino's court(See page 2 of the Certification). Judge Zampino has acted improperly during the 5 years that this case has been in the courts. As long as the higher courts continue to condone improper behavior by Judges, Mr. Eisenstein will continue to raise issues in the New Jersey Appellate court and the Federal Courts.

New Jersey needs not only legal reform but judicial reform. The "OLD BOY" network does not provide due process or equal protection under the law (In violation of the 14th amendment). New Jersey is in violation of not only the U.S. Constitution but of its' own Constitution, and will continue to violate the law, as long as family courts are run without reasonable controls in an open, fair court setting. The O.J. Simpson trial has made the Public aware of how trials and courts should be run. That trial has been held in a court where the proceedings have been broadcast to the world. New Jersey should follow this lead and open the courts. Some jurisdictions are permitting Video Tapes in the Appellate process. This would allow many people, who could not afford transcripts, access to tapes that could and should be used in an appeal. In New

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Jersey, even in the same county "Essex", the rules in each court are different. Some courts will allow litigants to access and copy tapes, others will not. When the rules of court are arbitrarily enforced by a judge there is anarchy.

Since the Judge would not allow me to submit additional information in court and would not allow oral testimony to support my certification and did not allow me the right of discovery, my Rights under the US Constitution and the New Jersey Constitution have been violated. In the order of 7-22-94 judge Zampino has denied access to records of "Experts" who submitted statements to his court. This has now been raised in Federal Court. These "experts" can be held accountable for Mal-Practice and libel. When "experts" supply records and reports, these experts should be open to examination. They should not be encouraged to lie in testimony because they are protected? Judge Zampino did not allow Mr. Eisenstein to access records or to cross examine "experts". Judge Zampino, in item 7 of the order of 7-22-94, states that he is sanctioning Mr. Eisenstein based upon rule 1:10-2 and rule 1:10-5. **Based upon rule 1:10-4 Mr. Eisenstein requests that this be heard before another judge(One who has had a chance to review the three boxes related to this case). Since Judge Zampino has already violated rule 5:5-3(d),** Mr. Eisenstein believes that he will try this sanction in violation of the rules of court. Mr. Eisenstein believes that Judge Zampino will again violate the rules of the court. This is

anarchy. Rather than review each of the problems with these orders Mr. Eisenstein would request that the Appellate court read the certifications and the appendixes included with this motion. The case law and the legislative intent of the law has been violated by a trial judge who has acted to protect himself and a corrupt attorney. Judges who make errors that may impact their career will never correct these errors. Judge Zampino has made so many errors that there is no way that he can reverse the orders or actions that he has taken.

I would request that I be allowed to give oral Arguments related to the briefs that have been filed.

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Statement of Facts

Since there have been so many errors in law and fact in this case and the Appellate has done nothing, Mr. Eisenstein believes that this court doesn't review or doesn't consider families important. In New Jersey there have been increases in violence after family court decisions. When the courts abuse the law, under the color or guise of law, only society suffers.

Please review that Mr. Eisenstein stated that the Rules of Evidence Judicial Notice(Rules 9 and 12) allows an individual to cite the use of tape recorders when state experts are requested to question or examine an individual for evidence. **The Family Court Act of New Jersey 5:3-3(d) indicates that a party being investigated is entitled to have their attorney or expert present. When the courts do not follow the rules of court then there is anarchy.** Certainly, a tape recorder would satisfy this requirement and would allow future review by any other qualified individual. If the court appointed expert does not have insurance coverage to support this condition than another expert can be found. Certainly, if an expert charges $200 for 45-50 minutes he/she should provide the appropriate insurance. Many jurisdictions, including New York, allow recording of meetings with court appointed experts(**New York Family Court Act**). I have submitted case law related to this to Judge Zampino. He did not recognize these New York cases(or follow the rules of the court of New Jersey). This issue was raised by Mr. Eisenstein in court in 1993 and again in 1994 and the judge signed orders saying that Mr. Eisenstein could not take a tape-recorder with him to see a court appointed expert (Appendix B).

Judge Zampino, in court, said that if a stay and injunction was

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not granted by the Appellate Court he would sign an order releasing Custodial funds to pay for costs of the divorce. He signed this order. This is collusion on the part of the trial judge and the lawyer defending Ms. Eisenstein and is in violation of **42 US 1983** under the color or Guise of law, and the UGTM law. I demand that Judge Zampino remove himself from this case since he has acted vindictively (as noted in a letter to the assignment judge APP.A). (See the certification and the appendix 'C' with a letter from Citibank). He has already allowed Keogh funds to be used to pay legal fees. Since these Keogh funds were held in New York, Mr. Eisenstein has taken action in the Federal court system against Ms. Haber. Judge Zampino expects to be protected by his black robes and white justice.

Joshua Eisenstein, my son, was not emancipated by Judge Zampino even thought he has custodial funds that may exceed $90,000. This is in opposition to **N.J.S.A. 9:17B-3** which lowered the age of majority in New Jersey from twenty-one to eighteen. Child support has become a method of subsidizing Ms. Eisenstein and her new husband in violation of U.S. Constitution Amendment 13(See Appendix E a letter brief and a letter with reference to the criteria in the **Newburgh v Arriogo 88 N.J. at 529**). Mr. Eisenstein is required to pay for the maintenance of a house where Ms. Eisenstein has been living with her husband, but is not allowed to collect rent (This also is in violation of both federal and state law related to assets and the delayed realization of property. Case law would be useless since this court only follows what it wants to follow).

Judge Zampino denied almost all of my requests including rent from Ms. Eisensteins' new husband who has been living **'rent free' since 5-92 in the home that Mr. Eisenstein is being forced to**

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maintain and remodel by Judge Zampino. The court was made aware of this living situation in papers submitted on 7-2-92. Since Mr. Eisenstein has no intentions of selling this house because of the tax consequences, this issue will be raised for the next 10 years in New Jersey. Please review this issue now. Judge Zampino knew about the tax consequences, but did nothing. The intent was to deprive Mr. Eisenstein of a fair and equitable return on a delayed realization.

He has received letters from my therapist, who favors my visitation with the children. He has interviewed the children, and in court records, Judge Zampino stated that my daughter wanted to see me more frequently (in the past). This was approximately two years ago. Since that time, both children have become more distant. This is not the intent of the legislation. **When a judge uses access to the children to settle a case, he stoops to a level that demeans the entire family court system.**

I have not been seeing my son for extended periods of time since he turned 18. He has become alienated. Ms. Eisenstein has informed the court by letter that any undue stress was not good for the colitis condition that my daughter suffers from. She submitted letters (through her attorney) that were meant to alienate Mr. Eisenstein's children. Karen Haber, Ms. Eisenstein's attorney has acted in a way that a jury would find to be inappropriate and has committed fraud by omission(more than once). Judge Zampino continues to act vindictively and not in the best interest of the children and has protected an attorney.

In an order signed in Dec. 1992 the judge allocated $700 dollars in legal expenses to Ms. Haber after she had made errors in the drafting of the divorce that amounted to approximately $70-90,000. The judge has not acted fairly or appropriately in this

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case and should have been removed by the appellate court.

Legal Argument I

A stay and injunction preventing Judge Zampino from signing any more Financial orders until the Appeal is heard.

A reversal of the order of 8-4-93, and of 7-22-94 where the judge sanctions only one party (the pro-se litigant) for re-litigating orders when Ms. Haber, an attorney, who should be held to higher standards is allowed to relitigate and to redraft orders without any sanctions. This violates Constitutional Case law that states that Pro-Se litigants should not be held to the same standard that lawyers are held to. Ms. Haber is an attorney who has over-billed, has billed when she did not show up in court, and has acted in a manner that was inappropriate. The Judge has not sanctioned her.

The Court should not have acted without allowing Mr. Eisenstein discovery. Ms. Eisenstein and Ms. Haber have perjured themselves in statements to the court. In September of 1992, Ms. Eisenstein said that her new husband was only living in the house temporarily, in April of 1993, Ms. Eisenstein indicated that her defacto Husband was using only an attic room. In August(1993) Ms. Eisenstein indicated that she could not charge her new husband any rent since she had not charged him anything when he was only a defacto husband(I believe they were married in June of 1993). Mr. Eisenstein has been supporting Ms. Eisenstein and her defacto Husband since 1989 when the couple first started to travel together.

Ms. Eisenstein has included statements from my son's therapist, an 'EXPERT', that are libelous, and I have not been able to cross-examine this witness. The judge denied me a subpoena to call in or review Ms. Toby Kaufman and her records for a cross

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examination.

The court has requested and accepted Ex-Parte communications without allowing access to this information to Mr. Eisenstein in the case file. Mr. Eisenstein examined the case folder on 8-12-94 and noticed that there were two ex-parte letters that were included in the folder(dated 4-30-93 and 11-18-92). Mr. Eisenstein also sent ex-parte communications related but they were not in the folder. Additional, only one of the several conferences with the judge and the children were noted in the case folder (dated May 12, 1993). Several psychological reports were not in the case folder and were not available to Mr. Eisenstein. This would include an evaluation by a Dr. Jeffreys related to custody. Mr. Eisenstein has never reviewed this report and it has not been available because he had a lawyer when it was produced. Mr. Eisenstein has requested access to this report since it was the basis for the custody decision. Ms. Haber and/or Ms. Eisenstein have had access to court reports and/or ex-parte communication that Mr. Eisenstein has not been allowed to access they have been sealed. **(U.S. v. Landano, U.S. Supreme Court 91-2054, NJ law and rules of evidence, 5 USC Sec 552, The N.J. Right to Know Law)**. Additionally, information, including stipulated assets, do not appear in the case folder being held in court(Mr. Eisenstein does not know what other submissions are missing from this case folder). Although a letter from Mr. Eisenstein's ex-attorney was present that stipulated several assets as pre-marital. This was ignored by the judge in his decision. In prior court transcripts the judge said that he did want to allow anyone to review his copy of the stipulated assets since he had made notes on the pages. Ms. Haber Esq., in argument in court on 8-4-93, said that Mr. Eisenstein has and could dispose of stocks that he owns. These pre-marital assets were not

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assigned to Mr. Eisenstein, because the court vindictively stated that they were jointly owned (App. F for certifications related to these stocks). Judge Zampino did this even after Pre-Marital ownership was established and the other attorney (Ms. Haber) and Ms. Buklad (My attorney) stipulated this in submissions to the court(**Appendix F**).

Mr. Eisenstein has expressed that there has been fraud and perjury by the opposition and her counsel and has requested the court to take appropriate action. The court said that this is nothing more than an adversarial situation. I differ with the court as I do not (yet) accept fraud or perjury as normal adversarial positions (**5.4 NJ RPC 1.2(d) fraud, 5.7 NJ RPC 8.4 dishonesty, fraud, or deceit**).

Justification for review of tapes, transcripts, court submissions and prior court hearings are the best available evidence.

Judge Zampino presided over my divorce trial. If one reviews Judge Zampino's actions, tone of voice, written judgements, and other verbal and non-verbal communications, he can be shown to have been hostile, prejudicial and in violation of Constitutional Rights. This should invalidate judgements he made in the divorce trial.

Judge Zampino arbitrarily set ground rules that did not allow me to pursue active search and discovery and, in so doing, denied Constitutional Rights that a defendant with an attorney would have. This is basic discrimination against a Pro-Se litigant.

Civil Litigants have Constitutional Rights

Civil litigants, as well as criminal counterparts, do have basic Constitutional rights at stake. Some of the issues related to the instant case are Constitutional issues and were raised in

a Federal Complaint. In **Griffin v. Illinois, 351 U.S.12 (1956)** the issue of **due process and equal protection** were raised.

The Constitutional rights to protect life, liberty, or property as stated in the Constitution and the Amendments must be permitted. This decision states "The Supreme Court may find other means of affording adequate and effective appellate review to indigent defendants. "Due Process" is perhaps, the least frozen concept of our law".

Denying access to a transcript, not allowing copies of the court tapes and denying oral testimony, and then allowing ex-parte communications by the other party, is denying equal protection and due process of the 14th Amendment.

When the court specifically tries to impede the legal process by putting economic constraints upon individuals and denying discovery there must be a remedy in law. A judge should not place restrictions on a party to an action that limits the right of appeal or access to his children. The judge, in his instructions and decisions, has violated First Amendment Rights. The threat of incarceration was raised, as well as monetary damages. The violation of 1st, 5th, 13th, and 14th amendment rights was noted in prior documents as well as violation of **42 U.S. Sec. 1983, (Saia v. New York (334 US 558), Thornhil v. Alabama (310 US 88;84 L.Ed. 1093;S. Ct. 736). Additionally, judge Zampino has not acted fairly or in a way that would be considered impartial.**

Judge Zampino has threatened, under duress, Mr. Eisenstein's rights to **see** his children by requiring visits to a court therapist, ignoring the rules of court. He has violated First Amendment rights related to free speech in another jurisdiction, and has acted inappropriately in other areas of law.

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Conclusion

The judge, in this case, should not have continued with the case after being served with a Federal summons and complaint. The defendant requested that he recuse himself. He has acted in a prejudicial manner, and instead of allowing additional testimony has required that this action be filed in the Appellate Court. This is a violation of Constitutional Rights and an effort by the judge to make the process more difficult for the appellant. Judge Zampino has been asked many times to recuse himself from the case. He should have disqualified himself from the case **since he was being sued in Federal court (28 U.S.C.A. 455(a), U.S. v. Poludniak, 657 f.2d 948 (1981), U.S. Ct. of Appeals, 8th Cir. Missouri)**

The trial court should not have signed any order contrary to the spirit of the Law. The Judge should have recused himself. The Judge should not have signed any orders releasing Custodial funds to pay legal fees. The court violated Constitutional Rights. The court has violated laws in both the N.J. Constitution and the U.S. Constitution.

Their is sufficient evidence to establish probable cause that **Ms. Eisenstein and her attorney have acted in a fraudulent manner by misdirecting funds from the appellant's minor children and that the appellants 1st, 5th, 13th, and 14th Amendment Rights have been violated.**

I kindly request that the court excuse me for any inadequacies in this brief. Mr. Eisenstein has had difficulty dealing with a corrupt court system that justifies actions by a judge that should instead be prosecuted on criminal charges.

When Judge Zampino applies the proposed sanctions, stated in his order of 7-22-94, Mr. Eisenstein will not accept the penalties. If he is jailed, he can again write to the newspapers who may

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question why a court would spend $26,000 to hold an individual in jail for 6 months. They may question how a court can act in a manner that would put Mr. Eisenstein in jeopardy of losing his job(and not being able to pay child support). The answer to the issues and questions raised have been presented more eloquently by men of much greater stature than Mr. Eisenstein.

"I hold, that a little rebellion, now and then, is a good thing" Thomas Jefferson

Martin Luther King Jr. "A law that is unjust is morally null and void, and must be defied until it is legally null and void as well"

Sincerely,

Irwin R. Eisenstein

C.C. K. Haber

stapp\a94-08-01\brief.804

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APPENDIX A

Letter opinion of 7-22-94 by Judge Zampino

Two contradictory orders signed on the same day by judge Zampino. These orders were drafted by Ms. Haber in November(93) and March(94) Mr. Eisenstein assumes that the judge did not sign these orders while his actions were being questioned by the board of Judicial ethics.

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION, FAMILY PART
COUNTY OF ESSEX

CHAMBERS OF
THOMAS F. ZAMPINO
JUDGE

HALL OF RECORDS
NEWARK, N.J. 07012

July 22, 1994

Irwin R. Eisenstein
601b Surf Avenue
Apt 17K
Brooklyn, NY 11224

Karin Haber, Esq.
123 Columbia Turnpike
Florham Park, NJ 07932

RE: EISENSTEIN VS. EISENSTEIN
DOCKET NO. FM-19680-90

Dear Ms. Haber & Mr. Eisenstein:

In regard to the matters concerning Mr. Eisenstein's motion, concerning access to his daughter, the Court has indicated its determination by letter sent July 22, 1994, dictated subsequent to the argument on notice of motion to Dr. Paul Syracuse and all of the determinations will await his recommendation.

The Court, at this time, want an accounting of the assets, pursuant to their division under the terms of the final judgment decree, as to what monies have been received by each party. This is to be prepared with separate columns for the monies and the monies that remain outstanding to be divided.

The Court denies the application for rental from Mr. Ebsworth in the amount sought, the Court has previously ruled on this application.

The Court has made it clear that, under New Jersey Law, Joshua is not emancipated, although he may have reached majority and is still a full time student at New York University as an undergraduate student. Graduation from the institution after 4 years of schooling, unless application is made for any other purpose will define Joshua's emancipation upon his graduation from college.

Mr. Eisenstein's request for Ms. Haber to pay attorney's fees to him is denied.

In regard to the cross-notice of motion, brought by Ms. Eisenstein, the Court will in fact sign the orders for February 17, 1994 and March 4, 1994 concerning decisions made on the bench and

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copies of said orders are attached.

Paragraph 3 has been addressed by the Courts determination previously.

Paragraph 4, pursuant to the judgment of divorce under Prudential Securities Account No. TMA029707-1-47, the amount of $23,500.00 may be disbursed to the plaintiff as part of the equitable distribution funds owed.

Further, the defendant is ordered to pay the un-reimbursed medical expenses in the amount of $1182.37 within 60 days of July 22, 1994.

The day camp expense for Carla, in the amount of $2288.00, shall be paid by the defendant within 60 days of July 22, 1994.

The Court also orders that there should be a written accounting of the custodial funds used for Joshua, the total amounts that were in the account on the date of the judgment of divorce and the amount that is presently in the account at this time.

The Court will not permit ex-parte application and there will be no transfer at this time to the plaintiff as trustee.

The Court, as indicated, will await certification as to the occasions where allegations of fraud and illegal acts by plaintiff's attorney is made within the body of certifications and that the Court will then consider such certifications for the award of fines against the defendant for willful violation of this courts order.

The assessment imposed by the township of South Orange for sidewalk repairs will be allocated equally between the parties. Said assessment will be paid at the time of the sale of the property from the gross proceeds of sale.

If the defendant, in writing, indicates that he desires the plaintiff to purchase his half interest in the marital home and that written request is made within 10 days of receipt of this letter, then Richard Marashlian will be appointed to appraise the fair market value of the property to establish the purchase price for buy-out of the defendant's interest in said residence. If no letter request is received, then this provision will not take effect.

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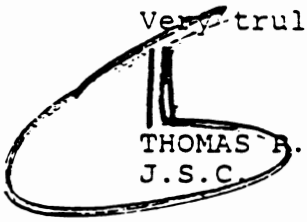
The outstanding obligation to Beth Israel Hospital for $2000.00 may be resubmitted to medical coverage, if no further coverage is available, it will be born equally between the parties.

Repair reimbursement is fixed against the defendant in the amount of $3916.20 and will be deducted from the defendant's entitlement of proceeds from the sale of the marital home, either between the parties or at the time sale occurs to a third party.

Very truly yours,



THOMAS P. ZAMPINO
J.S.C.

TPZ/pw
Enc.

FILED
JUL 22 1994
Thomas P. Zampino, J.S.C.

KARIN DUCHIN HABER, ESQ.
123 Columbia Turnpike, Suite 103A
Florham Park, New Jersey 07932
(201) 966-6311
Attorney for Plaintiff

Plaintiff,

MIRIAM EISENSTEIN

vs.

Defendant,

IRWIN EISENSTEIN

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION:FAMILY PART
ESSEX COUNTY

DOCKET NO. M-19680-90

Civil Action

ORDER

This matter having been opened to the Court by Irwin Eisenstein, pro se, and Karin Duchin Haber, attorney for plaintiff, having filed a Cross Notice of Motion on behalf of the plaintiff, Miriam Eisenstein Ebsworth, and the parties having appeared before Honorable Thomas P. Zampino on November 10 and 19, 1993, and the Court having reviewed Certifications filed, and having heard oral argument, and for good cause shown;

IT IS on this 22nd day of July 1994,

ORDERED as follows:

1. Defendant shall be permitted to telephone the parties' daughter, Carla, once per week on Wednesday nights.

2. Defendant shall be permitted to have unsupervised visitation with the parties' daughter, Carla, every other Sunday from 12:30 p.m. - 6:00 p.m.

3. Defendant's application for visitation during the week for dinner is denied except that after January 30, 1994, the defendant shall be permitted to make application to the Court and

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the Court will consider a modification of visitation dealing with the defendant having dinner with the parties' daughter, Carla, at some time during the week.

4. Defendant's application that defendant be permitted to have access to the records of Dr. Toby Kaufman, Dr. Jim O'Brien, Dr. Jay Frankel and any other therapist who has submitted documents to the Court is denied again.

5. Defendant's application to compel Karin Duchin Haber to pay reasonable counsel fees and reparations to the defendant and to reprimand plaintiff's attorney is denied again.

6. Defendant's application requesting an Order from the Court to Citibank verifying the custodial accounts are linked to the account is denied as it remains to be defendant's obligation and right to contact Citibank and to provide documentation with regard to defendant's claims that said accounts are custodial funds.

7. Defendant's application to the Court asking that the Court report plaintiff's attorney to the New Jersey Bar Association is denied, and defendant shall be and is hereby sanctioned pursuant to Rule 1:10-2 and Rule 1:10-5 with regard to defendant's continued harassing and improper court applications.

8. With regard to plaintiff's Cross Notice of Motion, the defendant is held in violation of litigant's rights for continuously litigating issues which have been denied on numerous occasions.

9. The plaintiff's application requesting the defendant be sanctioned for his relitigation of issues is granted, however plaintiff's application that future violations of Orders result in an immediate warrant for the arrest of the defendant is denied.

9. Defendant shall be and is hereby sanctioned for re-litigating issues previously decided and re-decided by the Court.

10. Plaintiff's application requesting that defendant be prohibited from raising issues which were previously decided by this Court unless they are under separate determination by the Appellate Division and prohibiting the defendant from using litigation for the purposes of harassment of the plaintiff is granted.

11. The defendant, or anyone on behalf of the defendant, is prohibited from contacting the plaintiff's husband's employer at any time.

12. Plaintiff's application requesting that Carla Eisenstein be permitted to have veto power and to determine when she wishes to visit with the defendant is denied.

13. Plaintiff's request that the Court consult with Dr. Jay Frankel with regard to the visitation with the defendant is denied.

14. Fidelity Investment Funds, which are to be divided pursuant to the Judgment of Divorce, shall be divided as follows: One half of the M and I Communications profit sharing account shall be rolled over into an individual retirement account on behalf of

the plaintiff, and the balance of said funds will go to th defendant as per the Judgment of Divorce. Those accounts includ account Nos. 021-0241301258 and 021-0241301266.

15. The balance of the Fidelity Investment Joint Fund shall be distributed. One half of said funds shall be distribute to plaintiff, Miriam Eisenstein, and the balance of said fund shall be held in escrow by plaintiff's attorney in order to hav a fund for payment of future counseling bills to Dr. Jay Frankel and Dr. Toby Kaufman and for payment of unreimbursed medical bill and for any sanctions imposed against the defendant. Thos accounts include Fidelity Investments account No. 417-036378340 in the name of Irwin Eisenstein with a balance of approximatel $3,190.00 as of May, 1993, and joint accounts held by Miriam an Irwin Eisenstein being account No. 416-035533826 with a approximate balance of $1,000.00 as of May, 1993. It is hereby ordered that all said funds be disbursed to plaintiff's attorney, Karin Duchin Haber, to distribute in accordance with this Order of the Court.

16. It is hereby ordered that defendant shall pay the sum of $ representing sanctions by way of counsel fees as the result of the defendant's continuous re-litigating of issues previously decided by the Court on numerous occasions.

THOMAS P. ZAMPINO, J.S.C.

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FILED
JUL 22 1994
Thomas P. Zampino, J.S.C.

KARIN DUCHIN HABER, ESQ.
123 Columbia Turnpike, Suite 103A
Florham Park, New Jersey 07932
(201) 966-6311
Attorney for Plaintiff

Plaintiff,

MIRIAM EISENSTEIN

vs.

Defendant,

IRWIN EISENSTEIN

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION: FAMILY PART
ESSEX COUNTY

DOCKET NO. M-19680-90

Civil Action

ORDER

This matter having been opened to the Court by Irwin Eisenstein, pro se, and Karin Duchin Haber, Esq. appearing on behalf of Miriam Eisenstein Ebsworth, and the Court having reviewed the Certifications filed, and having heard oral argument on March 1, 1994, and for good cause shown;

IT IS on this 22 day of July, 1994,

ORDERED as follows:

1. The visitation between the defendant and Carla Eisenstein shall be as follows:

(a) The defendant shall be permitted to visit with Carla every other Sunday from 12:00 noon through 8:00 P.M., except on days when Carla shall attend Hebrew School. On the days when Carla shall attend Hebrew School, the visitation shall be from 2:00 P.M. through 8:00 P.M.

(b) The defendant shall be permitted to have dinner with Carla every other Wednesday following the Sunday in which the defendant does not visit with Carla. Said dinner visitation shall

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be from 6:00 to 8:00 P.M. In addition, said dinner visitati shall take place if Carla wishes to go. If Carla does not wish exercise said dinner visitation with the defendant, she shall permitted to decline said visitation. In addition, the defenda shall not pressure Carla in any way if she says that she does n wish to exercise said visitation.

2. With regard to telephone visitation, the defenda shall continue to be permitted to speak with Carla every Wednesd from 6:00 P.M. to 8:00 P.M. by telephone. In addition, t defendant shall be permitted to telephone Carla between 8:30 A.M and 9:00 A.M every other Sunday on the Sundays on which t defendant is scheduled to visit with Carla and for the purpose discussing plans with Carla for that visitation day. The defenda shall also be permitted to speak with Carla on the telephone on th Monday night after the defendant does not have Sunday visitatio with Carla. The defendant may telephone Carla between 6:00 P.M and 8:00 P.M. on said alternate Monday nights and at that time ma inquire whether or not Carla wishes to attend the Wednesday dinne visitation with the defendant.

3. Both parties shall be obligated to schedule a appointment and visit with Dr. Paul Syracuse on one additiona occasion. Said appointment shall be made after thirty (30) days of the implementation of this visitation schedule. In addition, if Dr. Syracuse deems it necessary to see Carla, he will do so. Also, if Dr. Syracuse shall determine that it is necessary to see

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the parties more than once, the parties shall cooperate with Dr Syracuse in seeing him on those additional occasions.

4. With regard to the plaintiff's Cross Notice of Motic concerning the defendant's relitigation of issues against th plaintiff's attorney, it is ordered that on each future occasio that the defendant shall make any allegations or assaults c illegality against the plaintiff's attorney, Karin Duchin Haber, the defendant shall be fined the sum of $100.00 for each allegatic made against plaintiff's attorney.

5. The defendant shall pay plaintiff's attorney's fees in this matter in the amount of .

THOMAS P. ZAMPINO J.S.C.

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APPENDIX B

Letters to the assignment judge questioning the violation of the rules of court as it relates to the testimony or report of an expert witness. Rule 5:3-3 entitles the litigant the right to have another person present during an examination. When the judge orders that no other party and no tape recorder is allowed then there is no rule. Only anarchy by the court. A letter to the Psychiatrist dated 9-93 questioning his response to the court.

sion sent
ave it.

Irwin R. Eisenstein
PRO-SE
601b Surf Ave. apt 17k
Brooklyn, New York 11224
After Work 212-206-3961
718-996-6914

rable Alvin Weiss
eral Equity Court,
raltar Building, Halsey Street
ark, N.J. 07102

July 29, 1994

RE: Miriam Eisenstein vs. Irwin Eisenstein
Docket No. M-19680-90, Supreme Court Docket No. 36,701
Judge Weiss: A-1673-92T5

I would request that you review the rules of court that are being ed by your judges. When Rules of court are required by some judges and ored by others there is anarchy.

greed to see the same court appointed expert again (Dr. Syracuse). efused to allow me to take a tape recorder or another person into a ith him. Dr. Syracuse is an expert who was assigned by Judge o has made unfavorable and factually incorrect reports. This same called me obsessive compulsive and has mis-reported many items in On 8-5-94 when I again requested that I be allowed to bring a or a friend to an appointment he called me "confrontational". in open court that I believed that Dr. Syracuse by his actions should not be used. I have seen reports by experts used to children. Dr. Syracuse in his report has made many errors. I court appointed experts" take politically correct positions. ed access to these reports as a pro-se litigant even though available to the other parties in this dispute.

n the windows and let out the disease and stench that has slowly ous family court system in "Essex County" and into other New

The issue of protecting reports and recordings by e that is used "in the best interest of the children". the best interest of the children of New Jersey would en court where judges were forced to act in a more

Syracuse again, I requested as I had in the past a tape recorder. Based upon rule 5:3-3(d) tha entitled to have their attorneys and/o



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present during any examination by a court appointed expert.' Dr. Syracuse stated me confrontational This obviously comes from an unbiased expert?

I have never had a chance to cross-examine Dr. Syracuse. I could not afford to bring him into court. When any expert tenders a report and the court does not allow a cross-examination, justice is denied.

Judge Zampino has requested that I again visit a court appointed psychiatrist before allowing me to see my daughter. In the past when I visited this doctor, he reported unfavorably. I requested that I be allowed to have a third party present or that I be allowed to record these sessions. The court has refused this request. Although the rules of court are clear as they relate to the use of experts and the right of litigants to have their own experts present for any examination, each court can adhere or not adhere to these rules of court. Quoting from a prior submission to Judge Zampino

"This is the first evaluation done by a "Court Expert" in more than two years. The court did not accept statements from Mr. Eisenstein's therapist, who has been seeing him for more than a year(These were presented to the court as requested.)

According to court rules, the judge can assign a court expert and present in evidence reports from this expert but the individual or their representatives can request that they can cross examine any expert who submits a report to the court.

(Rule 5:3-3(F) An expert appointed by the court shall be subject to the same examination as a privately retained expert and the court shall not entertain any presumption in favor of the appointed experts findings. Any finding or report by an expert appointed by the court may be entered into evidence upon the court's own motion or the motion of any party in a manner consistent with the rules of evidence, subject to cross-examination by the parties.)

When the judge calls or reads a report about the defendant calling him **"Obsessive Compulsive"** rather then **"Persistent and Determined"** and does not give the defendant an opportunity to question this report, then there is court bias. If a mother were separated from her children for more than three years, any actions by a mother to see her children would be considered proper. Rules related to Disqualification clearly state **"Disqualification (R. 1:12-1) (a) the judge has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;"** The judge can read the order related to custody that was issued in 1991 to see if there was a personal bias that would prevent the court from continuing in this case. (How frequently does the court make decisions that are later appealed because they are incorrect? Judge Zampino's lawyer, in the Federal case, relied on a brief sent to him by Ms. S. Silver(who has been working on the Eisenstein case with K. Haber and who has been included in a bill to his court).

When the rules of court are applied differently in each court, then litigants, and the public in general, realize that the law is administered arbitrarily. I sent a letter to the court appointed expert who refused to allow me to tape record any meetings (this letter is available upon request).

If you want to clear the dockets in Essex County, correct the problem

:hat exist. The inappropriate behavior of lawyers and judges overloads the :ourt system. The easiest way to clear the court would be to sanction .awyers who act inappropriately.

Administrative responsibilities of Judges (1), (2), and (3) "A judge should initiate appropriate disciplinary measures against a judge or lawyer for unprofessional conduct of which the judge may become aware."

The courts do not need additional judges, just judges who are elected, are accountable, and are held to higher standards.

Certification

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are wilfully false, I am subject to punishment. Recently, in New York, members of the N.Y. Matrimonial bar requested that the legislature not hold them accountable for their certification statements. New Jersey, obviously, is more advanced then New York. Lawyers are not accountable for their certifications now and freely perjure themselves and knowingly relate information incorrectly to their clients and to the court.

Dated: Aug. 7, 1994 Signature

Irwin R. Eisenstein

C.C. If any of the parties requires attachments, Mr. Eisenstein will supply them. Pat Nagle, Office of Legislative Services, cn 068, Trenton N.J. 08625, please pass this to the appropriate parties in the Commission.

zampino... syracuse called me confrontational, I said that I have seen to many people denied access by court expertsa and reports... I question how experts can submit reports without having them or there reports questioned.

mlge56.806

Irwin R. Eisenstein
c/o H.R.A.
111 8th Ave.
Manhattan, N.Y. 10011-5201
Work 212-206-3961
After 718-996-6914

Sept. 21, 1993

Dr. Paul Syracuse
75 Main St.
Millburn, New Jersey 201-376-0150

Dear Mr Syracuse.

Judge Zampino in a cover letter with your report attached has said that he also expects some type of report related to our visit of 8-19-93. My recollection of the visit may be different from yours(I did take some notes after the visit). Since I did not have a tape recorder I can not question what was said or not said (I did give you a copy of the rules related to experts in court cases and hope that in the future you will be open to having sessions taped). **I want to thank you for saying that I can have access to see my daughter in an unsupervised setting.** One of the difficulties with most reports that are developed from one meeting are that they are not complete and lead to additional requests. It has taken two years to change an order related to seeing my children, signed in Sept of 1991. I understand that you are concerned about Carla's health. **I am also concerned. Her most recent Colitis flair-up was when her mother refused to allow me to see her alone for dinner. This was after our meeting of 8-19.** Since I can not call and have not been allowed to call her since Sept. of 1991, the flair-ups may be because of perceived difficulties that Carla sees in her relationship with her father. The Judge wrote to Ms Haber directing her to tell her client, Ms. Eisenstein, to allow visitation, twice. This is not the first time that Ms. Eisenstein and Ms. Haber have interfered with or tried to prevent visitation.

I understand that Ms. Eisenstein said that I am opposed to therapy. I am not. I do feel that therapists should, **like every other group**, be accountable, they frequently are not. The letters that the childrens' therapists have sent to court related to the children show more concern with how their bills will be paid, then with the children.

I received your report of 8-25-93 from Judge Zampino on 9-17-93 and find it disturbing that your report is based upon what Ms. Eisenstein states in her letter and in her meeting with you. The letter includes a certain revisionist history. I could point out that much of what is stated in this report is from Ms. Eisensteins' prospective. This perspective is very slanted. If you have interviewed other parties, I would like to review statements that they made to you. I believe that in any court hearing, one has the right to access any information and review or cross-examine any parties that may have been used in developing an opinion. I do not believe that Ms. Eisenstein should talk about my suicidal gestures since she views them in a light most favorable to her position. For a period, she felt very depressed and

cioned her existence. Ms. Eisenstein has a Ph.d. in Linguistics but in Psychology or medicine!

I understand that you base your report upon the three page letter that was sent by Ms. Eisenstein, with many items incorrectly stated and her interview. I find it disturbing when you and she refer to my "mental deterioration". With the compassion that Ms. Eisenstein shows, I am glad that I do not have friends who function similarly. I must **beware of "Greeks bearing gifts".**

When Ms. Eisenstein references "hopes and prayers", her "naivete" and her wishes to "work things out", I can only state that she **acts well.** She and her lawyer have both perjured themselves, frequently, in court and in certifications, and have caused difficulties for the children (as noted in statements in court by Judge Zampino after interviews with the children). I still do not comprehend the difference between adversarial and perjury. Ms. Eisenstein spent approximately 7 years getting a doctorate, Mr. Eisenstein spent about 3 months finishing an MBA.

The children do react when they see me. This may be because their er tells them that I am not well and that is why I can't see them I am sure they are upset because they do see the conflicts that esent between their mother and their father. They see no reason n't see me alone and this has caused undue stress.

you state that "**Her Affect was appropriate at all times.**" it that she presents in front of large audiences and does act specialty relates to communications between **people.** I know one case where she has obviously failed in her **specialty.** the statement that "Things began to **deteriorate** between oshua, their son was diagnosed with a learning **disability** Ms. Eisenstein did not want to have **Joshua classified** social stigma attached to this classification. Joshua d in Junior High and was classified in Junior High School only had started. I went along with this decision even o have him classified in Junior High School.

about her perceived negative influence of Mr. ldren, I must respond. When she took her frequent nt to conferences, I took care of the children. anted a divorce and I was depressed in 1989 and e time to go to conferences with Mr. Ebsworth, ut one and 1/2 years later that I had paid for loan that has been forgiven by the court).

are different. My style is/was more open, and hers was more directing. I wonder what atherly duties? I prefer to refer to them he gender bias. Since I was not allowed of 1991 and still can't call them, t **toward the children is impro** negative input, I would sugg in June of 1992 for 1 ho

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Ms. Eisenstein, her mother, and her new husband were with the children for 167 hours each week. Ms. Eisenstein has had Carla for Two years with very little input from me. This has done more harm than good. Carla needed two parents to balance her life. **Ms. Eisenstein is driven in many ways and puts an inordinate amount of pressure on the children. She doesn't want kids, she wants little adults.** Carla was under a tremendous amount of pressure to perform in school and out of school.

Ms. Eisensteins' mother, who obviously is a distrusting person, and comes out to stay with the children because of trouble in her own marriage, also puts stress on the children. She has always been religious and matriarchal. This seems to be the direction her daughter is heading. She has caused trouble for years and doesn't seem to know when to mind her own business

If the court and the "shrinks" really had the childrens best interests at heart, they would have allowed visitation between Carla and her father and would have taken a much more active part in accomplishing this goal? . When there is a strong parental bond and an adversarial party and her lawyer try to break bonds between a child and father, a tremendous amount of pressure is placed on the children. If Ms. Eisenstein was concerned about her children, she would not have left them as frequently for her own social activities and career.

I wrote frequently to the childrens therapists and begged them to take a more active role. They suggested that I speak(write) to the court. I did. Very little happened for two years. If you want to review any of these letters, I can send copies. I have at least thirty of them and several motions The process relating to seeing the children has taken more than two years. , Ms. Eisenstein has created a hostile environment for the children. She has moved in her husband, and his son. This created difficulties for both children. When the problems became so bad that Joshua's grades in school suffered, she and her then defacto husband, decided that his son wanted to go back to live with his mother. In court during this period, Ms. Eisenstein and her lawyer argued that Ms. Eisenstein was merely a friend with Mr. Ebsworth. If a husband was involved with another woman, he would definitely be held accountable. In court this doesn't seem to matter. The phrase "In the best interest of the children" seems to be one used for convenience.

Carla suffered severe attacks of Colitis and had to take high doses of medicine. Joshua became upset, fought with the unwanted guests, and became depressed. I had no contact with the children at this time. Ms. Eisenstein has had every opportunity to take the children to therapists several times a week if required, but she instead chose to pay a cleaning woman. Where are/were her priorities? Now, she says she needs additional money to live. She has gone on several trips with her New Husband, has purchased another car, has bought computers for both children. I expect that she will be flying frequently, as she has in the past several years to see her husband in Puerto Rico or that he will fly in to stay with her. In either case, the result is that the children have not gotten the attention that they should have been getting over the last four years.

As Carla says in the poem that I sent to you, she doesn't believe her mother. Would you?

I understand that you strongly favor Ms. Eisenstein retaining her daughter with her and very limited hours with her father. I understand your concern for Carla's health. I am not going to complain about a change that allows me to see my daughter more frequently. I would question a process that takes two years to make a small change. Carla developed a severe case of Colitis after the separation from her father. Ms. Eisenstein has done everything to prevent Carla from seeing me. If a mother were to attempt suicide because of a separation from her children, people view it differently than if a father is upset and requires help in dealing with a separation.

It has not been in the **"best interest of the children"** to have separated them from an involved parent(for two years). I requested supervised visitation in the past. In June of 1992 (10 months after the restraining order was issued) the judge decided that I could see the children for diner one night a week. No action or suggestions were made by the childrens' therapists. Ms. Eisenstein's suggestion was that I not see the children and that if I must see the children it should be in the presence of a social worker and that I bare the cost of these supervised visits. There was no restriction put on her lover or his son when they were living in the house for months at a time. One wonders what type of harmony existed in the house during this time period and if Ms. Eisenstein was really acting in the childrens best interest? You say that **"She suggests that periodically things calm down for the children but after visits of a few days with their father, issues re-emerge(undoubtedly re-stimulated by contact with their father) and have to be reworked."**. I have not seen the children for more than 5 hours at a time since September of 1991. Since that time I have only seen them, I believe, three times for more than the one hour period. Once was on fathers day of 1993(June 20th). Another time was in Aug. of 1993 and prior to that I saw my daughter with her aunt for approximately 2 1/2 hours when her mother was at a conference out of the state. I have seen my son independently since he turned 18.

I find the remark by Ms. Eisenstein about me both sad and amusing when she states that I should "regain a balance on his once healthy handling of his daughter". I find it more disturbing when a lawyer, Ms. Haber, and a vindictive ex-wife determine what is best for children!!

Since October of 1991 I have requested additional visitation either supervised or unsupervised. If one is really interested in the **"best interest of the children"** one doesn't separate children from the non-custodial parent. This process is the approach that is taken in most family courts and obviously the safest approach for therapists(It is politically correct). It doesn't work. The results of longitudinal studies suggest that the children suffer.

I don't understand why a copy of the report was sent to Ms. Haber and not also to me. As a pro-se litigant, I should have as much access to information as the opposing party.

I understand your position related to limited access to Carla. If I thought that by not seeing or talking to Carla, would help to improve her condition, I would comply. This has not been the case. Her most severe attacks have been when she has not been able to see me or talk with me

Carla, was a well adjusted little girl of seven (7) who had no worries before her mother requested the divorce. At that time I suggested that we wait until the end of the school year. A period of six months. I suggested that we try to work out our differences. I did not know at that time that Ms. Eisenstein had already decided that she wanted the divorce, was already in another relationship and already had plans for her future

I understand that Colitis is not helped by stress, but at this time, It is not classified as a psychosomatic illness. Doctors indicate that several factors contribute but do not call it psychosomatic. Some doctors say that it appears in family groups and may be genetic, others thing it may be caused by some auto-immune system deficiency. Since First, second and third cousins on both sides of the family have contracted colitis there may be a propensity to this disease.

When I spoke to Carla on 9-18-93 she said that she was being put on another medication and that she seemed to want to have surgery. I do not know enough now but do feel that surgery should be used only as a last resort

Please feel free to share this letter with anyone you please, including Ms. Eisenstein since I sometimes wonder if her lawyer shares information with her! If I can be of any assistance do not hesitate to call

Sincerely,
Irwin R Eisenstein

C.C.
Judge Thomas Zampino, Superior Court of New Jersey
Chancery Division - Essex County, Essex County Hall of Records - Room 321, 465 Dr Martin Luther King, Jr., Blvd., Newark, New Jersey 07102

Honorable Burrell Ives Humphreys, A.J.S.C
Superior Court of New Jersey, Essex County Courts Building
Newark, N.J. 07102

K. Haber

fI:syracus2.917

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APPENDIX C

A complaint to the assignment judge questioning the impartiality of a vindictive judge and a copy of the letter from Citibank related to the custodial account that Judge Zampino signed in an order drafted by Ms. Haber. Ms. Haber in more than one year did not verify that this account was a custodial account. distribution.

A proposal for modifications of the courts of New York.

Irwin R. Eisenstein
PRO-SE
601b Surf Ave. apt 17k
Brooklyn, New York 11224
Work 212-206-3961, Home 718-996-6914

Feb. 20, 1994

Honorable Burrell Ives Humphreys, A.J.S.C.
Superior Court of New Jersey, Essex County Courts Building
Newark, N.J. 07102

RE: Miriam Eisenstein vs. Irwin Eisenstein
Docket No. M-19680-90, U.S. Supreme Court Docket No. 93-6619
A-1673-92T5

Dear Judge Humphreys:

I am writing to you complaining about the procedures used by Judge Zampino. According to Judicial Cannons, a judge must act impartially and must respect individuals. In your position as the Administrative Judge in Essex County, I am requesting that you review the actions of Judge Zampino.

I have included a copy of an article from Judge David Saxe of New York that you should shared with other judges in the Superior Court where custody or visitation is an issue. I understand the difficulty in deciding cases and the time pressures associated with clearing dockets. This should not be used as a determining factor when decisions are made that impact lives for many years.

Judge Saxe outlines the need to address children separately during interviews. Your Judges should follow this practice to insure that both older and younger children have a chance to express their feelings, independently. Judge Zampino did not take this approach when my children were initially interviewed.

I. I have included a copy of a bank statement that I received from Citibank related to custodial funds that I am holding for my daughter Carla. Judge Zampino signed an order allowing Ms. K. Haber to disburse these funds, even though I questioned this action in certification statements and motions. In motions and in court, I said that these funds were custodial and that Ms. Haber drafted an order that was flawed(She intended to take $12,000 of custodial funds to pay fees). Judge Zampino said that I could request a stay in the Appellate court or appeal his order. I included the telephone number for Citibank in motions and requested that the judge call the bank to verify my statements. Ms. Haber, the attorney for my ex-wife also received this number and was present for the court hearings. In court in Nov. 1993, I requested that Judge Zampino include in the order that Ms. Haber was to draft a statement allowing me to subpoena information from Citibank related to these accounts. In the past, Citibank would not release

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information and the judge would not sign an order. On 2-18-94 I visited a Citibank branch and requested that they draft a letter requesting either that a subpoena would be required or a letter specifying that these funds were custodial. They drafted the letter that I have included. I spent approximately two hours in Citibank to get this letter and information. A subpoena, a call or an order by Judge Zampino would have expedited this process. Judge Zampino, has denied me Subpoenas and requests for information and has threatened incarceration if I try to access information. Ms. K. Haber, the lawyer for my ex-wife again presented these funds to the court as open for disbursement and questioned putting any statement or request to the bank in the orders that she drafted. In court, the judge told Ms. Haber to include a statement allowing me to access the Citibank accounts. This is not the first improper, fraudulent action that Ms. Haber has made favoring her client. Before suing her in Federal Court, she made a significant error in Pension funds. Rather than wait for the Judge to question her actions, since she has perjured herself in other statements to the court, I sued both of them in Federal Court. I question when a preceding is adversarial and when a lawyer is allowed to libel others. When can a judge allow a lawyer, an officer of the court, to commit perjury?

I have frequently requested that the judge reprimand Ms. Haber and report her to the bar. He has stated that this is not part of his responsibility. He suggested that I report her to the ethics committee of the bar. He has stated that she is a good lawyer. I have also requested that he recuse himself from the case since I am questioning his actions and his impartiality in another forum. His actions can easily be questioned (using the average man test). One of the reasons that the public (I) questions the actions of Judges and attorneys is that they are not believable. To his credit, on Feb. 10th Judge Zampino did reprimand two lawyers. He reprimanded one for sending subpoenas improperly and one for not cooperating with discovery. This verbal slap on the wrist certainly does not discourage lawyers from acting improperly. When Judges become aware that lawyers send Subpoenas that may impact a persons business or personal life then the judges should punish them severely. On the other hand, a lawyer who knowingly does not allow discovery should also be punished. This process requires a significant amount of time and judges do not have the time to review the actions of lawyers. Lawyers are paid by clients for any time wasted in court. They benefit no matter what actions they or their opponents take in court.

In most jurisdictions, the Judiciary appoints the ethics committee. The ethics committee functions as part of an administrative arm of the Courts. I do not know how it works in Essex county? The ethics committee stated that they could not review the actions of a lawyer while a case was still in court. My case has been in court for several years and no action has been taken by the ethics committee.

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The judge has protected lawyer(s) and has justified improper actions by attorneys. He has not acted impartially.

II. Ms. Haber has disbursed retirement funds to a third party. Bankruptcy Court in New York protects these funds (Judge Eisenberg in the EDNY Bankruptcy court has written the definitive decisions related to retirement funds). I am a citizen of New York and should be afforded no fewer rights than people who declare bankruptcy (I can no longer afford to live in New Jersey). I haven't reviewed the bankruptcy laws in New Jersey (rule 9029) since I am a resident of New York. The Judge has been made aware of this condition (Judicial Notice). Additionally, I have not been notified by Ms. Haber when she disbursed these funds. Proper procedure requires that when funds are disbursed the other party should be notified. When an action is being questioned (Appealed), then a judge can stay any action based upon an anti-alienation clause to protect a person's interest in a qualified plan from the claims of his creditors regardless of the state in which he lives. The same issues related to the IRS codes can be questioned(title 26 of USC - I.R.S. code).

III. On February 10th, Ms. Haber did not appear in court. Her associate (S. Silver) appeared in her place (She arrived late and may have been called by the Judge). This associate has been involved in the Appellate action and the Federal action. In Federal papers she has stated in certified statements that she is thoroughly familiar with the case(Copies are available from the Federal Court). She certainly could have represented Ms. Eisenstein on February 10th, 1994. Ms. Eisenstein did not appear in court on Feb. 10th, 1994. Earlier in the case, when a conference was scheduled, I was not notified and did not appear. Judge Zampino, had my attorney send a regular letter and a certified letter requesting that I appear in court. At this hearing he stated that if I did not appear in the future, he would issue a Bench Warrant. He took no such action when Ms. Eisenstein did not appear on the 10th of February to respond to a motion (not a conference). Since I travel from Brooklyn, my trip to Court takes two and one-half hours. On February 10th, it took 3 1/2 hours because of the snow and weather. It took about 3 hours to get back to Brooklyn. Ms. Eisenstein was not in court and Ms. Haber did not appear in court. Judge Zampino's staff called me to insure that I appeared on Feb. 10th in court. The initial hearing date was delayed because of death of Ms. Habers's father. The Feb. 10th date was one that the judge decided upon. If this hearing date was not a good one then, the Judge, or Ms. Haber or both should have postponed the court hearing and called me. This never occurred.

IV. Since I am not an attorney, I have a different, higher standard then most divorce lawyers. When the judge allows discovery, testimony, certified statements and expert reports without allowing the other party(me) to access or subpoena information, or cross-examine the contributing party than the

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hearing is flawed. I was not allowed to record the session that I had with the court appointed expert (The rules of court clearly state that an expert can accompany an individual or an individual can be represented by his attorney). I was not allowed to subpoena records or information from N.Y.U. or from other individuals who submitted statements, fraudulently.

V. In court on Feb. 10th, the judge raised several issues. He complained about my motion papers. I am not an attorney and should be given more flexibility when motion papers are filed. Don't deny due process to Pro-Se litigants by forcing then to act as attorneys (Most are more likely to tell the truth than attorneys in adversarial actions). Judge Zampino also questioned if he should hear the issues related to custody. Many of the orders that he has signed are now in the Appellate court. He was questioning his jurisdiction(9:2-1?). Judge Zampino has continued to hear these and other issues and has signed additional orders knowing that his actions are in the Appellate Court. Since the Appellate court acts more slowly than the Superior court, the issue related to visitation(custody) should be heard in his court or in the chambers of another Superior Court Judge. If Judge Zampino's signed orders violate my rights, I can then raise them in the Appellate court. To deny me this process is effectively denying me due process. The Appellate court takes longer to process cases, and frequently will dismiss cases without reasons. This procedure has already been questioned in the U.S. Supreme Court in other jurisdictions. Judge Zampino has assigned Dr. Syracuse to evaluate visitation. Evidently, Judge Zampino uses two therapists to evaluate cases. They obviously may not act impartially since they may have a vested interest. Judge Zampino has used the Report of Dr. Syracuse to call me a compulsive-obsessive without allowing me to cross-examine Dr. Syracuse. This clearly shows a prejudice. Judge Zampino would not sign subpoena's allowing me to cross-examine or review any other reports that were submitted by Ms. K. Haber.

VI. The judge requested that we both send a letter to Dr. Syracuse. Although Ms. Eisenstein doesn't lie, she certainly does bend the truth. She was told by the judge that any court actions should not be addressed in the letter to Dr. Syracuse. Ms. Eisenstein clearly mentions court actions. Judge Zampino certainly would not hold Carla's mother in contempt. Ms. Eisenstein distorts the truth, mentions court actions to the children and has violated many court orders with the knowledge and approval of her attorney and the judge. Since Judge Zampino is not capable, as a former divorce attorney, of reprimanding other attorneys, I am requesting that you review his actions.

If I can be of any help please contact me.

Feb. 20, 1994 Irwin R. Eisenstein _____

175K

Sincerely,
Irwin R. Eisenstein

With the Citibank statement.
C.C. Honorable Thomas P. Zampino, J.S.C.,Superior Court of New Jersey, Chancery Division - Essex County, Essex County Hall of Records - Room 321, 465 Dr. Martin Luther King, Jr., Blvd.
Newark, New Jersey 07102

176X

bank, N.A.
21 Fifth Avenue
New York, NY
10021

CITIBANK

February 18, 1994

Irwin R. Eisenstein
601b Surf Avenue Apt.#17K
Brooklyn, New York 11224

RE: IMRA A/C#62960314

Dear Mr. Eisenstein:

Per your request, this letter is to confirm thatInsured Money Market Account =62960314 was opened in the name of Irwin R. Eisenstein A/C/F Carla Beth Eisenstein in December 1985. Per our records this is a custodial account for Carla Beth Eisenstein.

For monthly statement purposes this account appears on a combined statement including an inactive checking account (=61944814) in the name of Irwin Eisenstein, Miriam Eisenstein.

We trust this information is of assistance to you.

Sincerely,

Bernice B. Collins
Customer Service Representative
Br.#0024
(212) 229-3550

17IX

Ernest Williams
Court Advisor,
1474 Shakespeare Ave.
Bronx, New York 10452, Phone 718-992-3257

Sept. 24, 1993

Oliver Koppell,
Office of Assemblyman Koppell
270 Broadway - Room 1506
New York, New York 10007
212-385-6650 Fax 212-385-6635

Dear Mr. Koppell and Committee members:

I agree with the court changes but they do not go far enough.

In *Gulliver's Travels*..(1800's J. Swift) explaining English law and lawyers: "*I said there was a society of men among us, bred up from their youth in the art of proving by words multiplied for the purpose, that white is black , and black is white, according as they are paid. To this society all the rest of the people are slaves.*"

A Response and an Agenda

Access to children and the best interest principal...

Access to the children by both parents and grandparents is in the best interest of the children. Make this a priority issue. **The major concern of courts during divorce should be the protection of relationships between children and both parents.**

Ethics Boards

Any board that is responsible for disciplinary actions be one that is independent. The financing of this board should be from part of the license fee that is paid by lawyers to the State. This board should be selected from a broad spectrum of society and not from a select group of lawyers and judges. Boards should be composed of 1. Lay people, 2. Judges, 3. Lawyers, with a majority being Lay people.

Establish boards to review the conduct of both Lawyers and Judges.

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The Rules of professional conduct are not enforced for lawyers or Judges, legislation is required.

Access to Information

All information should be available to all litigants. Documents sealed by the court should be available to Civil litigants. Any hearings and documents filed should be available to the public under 5 U.S.C. 552, and Sunshine laws. When hearings are open to the public, the public is more likely to believe in the proceedings. Since so few of the complaints are processed because of inadequate staffing, the issue of Probable Cause - is no justification to use to close hearings.

More than a form letter must be required when dismissing complaints. Legal remedies available should be addressed in any response.

Arbitration - I would oppose binding arbitration boards. Since these boards are usually composed of lawyers, any binding decision would deny "DUE PROCESS".
Legally Frivolous - is different in meaning from Frivolous. Before finding complaints to be 'Legally Frivolous' let them be heard and reviewed in an open public forum.
Certification - Lawyers should be accountable under law for their certifications. When a Lawyer, an officer of the court states "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am suject to punishment" THEY SHOULD BE HELD ACCOUNTABLE.

The statistics related to complaints against lawyers as noted in the BAR reports are flawed. Mark Twain said "*THERE ARE LIES, DAMNED LIES AND THERE ARE STATISTICS*".

A lawyer (JUDGE) should be held to a higher standard of professional ethics. They are 'OFFICERS OF THE COURT' and have rights and privileges not available to citizens. The Attorney General and/or a Consumer advocate should be responsible for reviewing /prosecuting complaints. Public officials are open to public review and suit in Federal Court.

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The Courts

a. Court Schedule - Change the hours - most people work!

b. Better Scheduling would reduce costs significantly to the public.

c. Better Services - availability of libraries and information. Private libraries that are supported via tax subsidies should be open to the public for a reasonable fee.

d. Allow legal aid other than lawyers.

e. Establish a method of enforcement.

f. Speed up the discovery and trial process.

g. Follow the current rules or legislate these rules!

Conclusion

One reason that citizens question the ethics, and morals of lawyers,judges and others in the court system is there are no independent review boards. This first step along with actions taken in other jurisdictions related to MINIMUM PARENTING BILLS, REASONABLE CHILD SUPPORT GUIDELINE, ACCESS TO GOV'T DATA, and the ESTABLISHMENT OF A COURT OF JUDICIAL DISCIPLINE, may help to restore faith in our legal system. Let me thank this committee for holding these hearings. I would also like to thank all of the family groups that i have helped me, including NJCCR, Family Advocates, NY Family Advocates etc. I would request that Legislation be proposed and passed as soon as possible. There are many other areas where changes should and could be made. If I can be of help please contact me.

Sincerely,
Ernest Williams

C.C. Irwin Kimmel

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APPENDIX D

Letters to the assignment judge and an outline of issues that have been raised in Judge Zampino's letter decision. Emancipation is not as Judge Zampino stated clearly defined in New Jersey Law. Judge Zampino is holding Mr. Eisenstein accountable for several other adults who more assets then Mr. Eisenstein has available.

Irwin R. Eisenstein
PRO-SE
601b Surf Ave. apt 17k
Brooklyn, New York 11224
Work 212-206-3961
After 718-996-6914

July 29, 1994

Honorable Alvin Weiss
General Equity Court,
Gibraltar Building Halsey Street
Newark, N.J. 07102

RE: Miriam Eisenstein vs. Irwin Eisenstein
Docket No. M-19680-90, Supreme Court Docket No. 36,701
A-1673-92T5

Dear Judge Weiss:

Congratulations on your appointment to the position of Assignment judge in Essex County.

I have included a copy of a letter that was sent to Judge Humpreys lated June 15, 1994.

One of the issues that you can expect me to raise in one manner or nother while you are the assignment judge will be the issue of Judicial ccountability. Recently, the New Jersey Supreme Court changed the rules of he attorney ethics panels. Perhaps the same type of open hearings should be vailable when litigants file complaints against judges.

My case started in 1989. After a decision by Judge Zampino, in 1991, attempted suicide. Recently, Judge Zampino was overturned in the Appellate ourt in another case where the person was hospitalized after his decision. have been denied reasonable access to my children since that time and my hildren have been alienated.

In court, Judge Zampino has acted improperly. He has protected an ttorney by his orders. When judges allow attorneys to act improperly then he public in general questions the actions of all judges.

In his most recent order dated July 22, 1994, Judge Zampino stated that aw in New Jersey does not emancipate children if they are full time tudents. He did not cite any specific case law or the criteria that he was sing for his decision. Judge Zampino just stated "case law" in New Jersey.

The law in New Jersey that is used in determining this issue is case aw. The criteria used for Majority is stated in statute but the issue of mancipation has been determined by Case law. When case law is used it puts n unjust and illegal burden on non-custodial parents. Case law defines the

any criteria that can be used in determining emancipation. Judge Zampino tated none of these reasons. One of the criteria used in determining mancipation are the funds available to the citizen who has reached majority. oshua, my son, goes to college for free because his mother is a professor at YU. He has custodial funds, I believe, in excess of $90,000. I presented nterest statements to the court from custodial accounts that were held by oth parents and his maternal grandmother.

Joshua no longer communicates regularly with his father. He does not xpect or want any advice or guidance from his father. In recent meetings oshua called his father crazy, and stated clearly that he was happy with his other and his step father. There is no consortium between Joshua and his atural father. Communications between Joshua and I have broken down. He ccepts no advice from me and requests that I communicate with him only by etter. This too, is one of the criteria that courts can use in determining mancipation. Some of the criteria used for determining emancipation are tated clearly in the Newburgh case. They include: The financial resources f both parents, The amount of the contribution sought by the child for the ost of higher education, the ability of the parents to pay that cost, The inancial resources of the child including assets owned individually or in rust, college grants available, The ability of the child to earn money uring the school year and during summers, The relationship of the child to he paying parent including mutual affection and goals as well as the esponsiveness of the child to parental advice and guidance.

Judge Zampino refused to recognize these criteria. Judge Zampino held r. Eisenstein responsible for child support for a nineteen year old who has ssets in excess of $90,000 (See Newburgh v. Arriogo 88 N.J. at 529). Case aw in other jurisdictions can and has been cited in prior documents ubmitted to Judge Zampino and also to the other courts in New Jersey. Case aw, as you know can be used to justify almost anything. It was used to ustify slavery by the U.S. Supreme Court.

On another point, Judge Zampino has held me accountable for maintenance f a house that is being used by my ex-wife and her 'new husband'. This ondition has existed since 1991. I have been required by the court to pay or one-half the maintenance and remodeling of the former marital house. The

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court has refused to allow me to collect rent from Ms. Eisenstein's new husband(In motions to the court I have requested that the court allow me to collect rent).

In the order of divorce, Ms. Haber Esq. my ex-wife's attorney left out assets when she drafted the divorce order. I objected to the proposed order but Judge Zampino still signed the order. The judge refused to recognize pre-marital assets though they were recognized by my ex-wife's attorney in a certification. Ms. Haber did not include all IRA's belonging to Ms. Eisenstein. Ms. Haber presented fraudulent statements to the court that related to Custodial funds. Ms. Haber submitted orders to Judge Zampino to disburse custodial funds and Judge Zampino signed these orders. I believe that Ms. Haber, with the knowledge of Judge Zampino has committed fraud by omission.

Judge Zampino, has requested that I again visit a court appointed psychiatrist before allowing me to see my daughter. In the past when I visited this doctor, he reported unfavorably. I requested that I be allowed to have a third party present or that I be allowed to record these sessions. The court has refused this request. Although the rules of court are clear as they relate to the use of experts and the right of litigants to have their own experts present for any examination, each court can adhere or not adhere to these rules of court. Quoting from a prior submission to Judge Zampino

"This is the first evaluation done by a "Court Expert" in more than two years. The court did not accept statements from Mr. Eisenstein's therapist, who has been seeing him for more than a year(These were presented to the court as requested.).

According to court rules, the judge can assign a court expert and present in evidence reports from this expert but the individual or their representatives can request that they can cross examine any expert who submits a report to the court.

(Rule 5:3-3(F) An expert appointed by the court shall be subject to the same examination as a privately retained expert and the court shall not entertain any presumption in favor of the appointed experts findings. Any finding or report by an expert appointed by the court may be entered into evidence upon the court's own motion or the motion of any party in a manner consistent with the rules of evidence, subject to cross-examination by the parties.)

When the judge calls or reads a report about the defendant calling him "Obsessive Compulsive" rather then "Persistent and Determined" and does not give the defendant an opportunity to question this report, then there is court bias. If a mother were separated from her children for more than three years, any actions by a mother to see her children would be considered proper. Rules related to Disqualification clearly state "Disqualification

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(R. 1:12-1) (a) the judge has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;" The judge can read the order related to custody that was issued in 1991 to see if there was a personal bias that would prevent the court from continuing in this case. (How frequently does the court make decisions that are later appealed because they are incorrect? Judge Zampino's lawyer, in the Federal case, relied on a brief sent to him by Ms. S. Silver(who has been working on the Eisenstein case with K. Haber and who has been included in a bill to his court).

When the rules of court are applied differently in each court, then litigants and the public in general realize that the law is administered in an arbitrary manner. I sent a letter to the court appointed expert who refused to allow me to tape record any meetings(this letter is available upon request).

In Judge Zampino's order dated 7-22-94 the judge stated that I was responsible for paying several expenses within 60 Days. Since these expenses are improper Rather than follow this onerous order, I am now stating that I will refuse to follow this order and would request that Judge Weiss tell Judge Zampino so he can apply the inappropriate sanctions now.

If you want to clear the dockets in Essex County, I would suggest that you review the decisions in cases that have not been cleared. I would suggest that you review the actions of the judges in these cases. Judges are not accountable for their actions. Once they are appointed for a second seven year term Judges are appointed for life in New Jersey. I understand the need for an independent judiciary. When a judiciary, however, acts in a way that undermines the public trust in the law then the legislative and administrative branches of Government must change the criteria used for judicial appointments. Judges should not be appointed for life.

Sincerely,

Irwin R. Eisenstein

C.C. Without attachments. If any of the parties requires attachments, Mr. Eisenstein will supply them. Gov. Christie Todd Whitman, Office of the Governor, Attention:OCR, State House, CN-001, Trenton, N.J. 08625, Other interested parties...

judge54.729 include judge 50 to humphries

Irwin R. Eisenstein
PRO-SE
601b Surf Ave. apt 17k
Brooklyn, New York 11224
Work 212-206-3961
After 718-996-6914

June 15, 1994

Honorable Burrell Ives Humphreys, A.J.S.C.
Superior Court of New Jersey, Essex County Courts Building
Newark, N.J. 07102

RE: Miriam Eisenstein vs. Irwin Eisenstein
Docket No. M-19680-90, Supreme Court Docket No. 36,701
A-1673-92T5

Dear Judge Humphreys:

Administrative Functions

I am unclear about the duties of the administrative judge? Since the rules of court and the interpretation of state statute must emanate from some higher authority, I would like to know where that authority lies? Any administrative function of the courts, I thought, was determined by the administrative judge of the court. I believe this is your job?

Is it your job to establish this policy? If it is not your job than perhaps you can direct me to the person who sets policy. Where is this policy written? How is it enforced? Is this policy different in each county in New Jersey?

Federal Law relating to the Fifth Amendment

In March, in court, Judge Zampino stated that the Fifth amendment could not be used in Civil Cases. I disagreed with him and stated that I had read cases that clearly stated this principal of law as interpreted by the Federal courts could clearly be used in Civil Cases (The Fourteenth Amendment Justifies using the Fifth Amendment in state proceedings). Rather than give legal advice to other pro-se litigants that is incorrect, I would suggest that the following cases be reviewed, at least some of the following federal cases...

Case law relating to the Filing of Papers

Judge Zampino said that he expected my moving papers to have an air of professionalism. He said that he would not accept papers that were not drafted properly. Since I am not a lawyer, the rules of Court clearly must be more lax than for someone who has passed the bar. This is clearly stated in some of the Federal cases that are cited below..

Thank you for passing this information to the other judges in the Essex County Court. Some seem not to counsel Pro-Se litigants correctly?

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Sincerely,

Irwin R. Eisenstein

C.C. Committee on Judicial Conduct, Gov. Christie Todd Whitman, Office of the Governor, Attention:OCR, State House, CN-001, Trenton, N.J. 08625, New Jersey Law journal Russ Bleemer , law editor, 238 Mulberry St. PO box 20081, Newark, New Jersey 07101-6081, letters to the editor, Newark Star Ledger, Star-Ledger Plaza, Newark, N.J. 07101

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"To penalize the failure to give a statement which is self incriminatory is beyond the power of Congress." U.S. v. Lombarde, 228 F. 2d 980

"The privilege against self incrimination is neither accorded to the passive resistant, nor the person who is ignorant of his rights, not to one indifferent thereto. It is a fighting clause. Its benefits can be retained only by sustained combat. Its benefits can be retained only by sustained combat. It cannot be claimed by an attorney or solicitor. It is valid only when insisted upon by a belligerent claimant in person." (Emphasis added) U.S. v. Johnson, 76 F. Supp. 538

"One need not be a criminal to claim Fifth Amendment privilege. It applies to civil suits as well." Isaacs v. United States, 256 F 2d. 654; 297 U.S. 1

"Fifth Amendment right is available outside of criminal court proceedings and serves to protect persons in all settings. . Where rights secured by the Constitution are involved, there can be no rule-making or legislation which would abrogate them." Miranda v. Arizona, 380 U.S. 436 (1966)

Editor's Note: 'When a judge tells you that this is the way it is because it is a rule of the court, state the Miranda case. If a law is unconstitutional, challenge it; claim that the law is unconstitutional and state the Miranda case.'

The privileges and immunities of citizens of the United States, protected by the Fourth Amendment, are those arising out of the nature and essential character of the federal government, and granted or secured by the Constitution; and due process of law and the equal protection of the laws are secured if the laws operate on all alike, and do not subject the individual to an arbitrary exercise of the powers of government. Duncan v. Missouri, 152 U.S. 382

The essential elements of due process of law are notice and opportunity to defend. Simon v. Craft. 182 U.S. 427 The effect of the guaranty is to inhibit the taking of one person's property and giving it to another, contrary to settled usages and modes of procedure, without notice and opportunity for a hearing. An attempt by statute to work such a change of ownership would be a glaring violation of this guaranty and could not be defended as an exercise of the police power of the state. 16 Am. Jur. 2d, Constitutional Law, Section 544.

"The preparation of petitions must never be considered the exclusive prerogative of the lawyer. Laymen- in and out of prison - --should be allowed to act as "next friend" to any person in the preparation of any paper or document or claim, as long as he does not hold himself out as practicing law or as being a member of the

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Bar. . .Reasonable access to the courts is a right (secured by the Constitution and the laws of the United States), being guaranteed as against state action by the due process clause of the Fourteenth Amendment." Johnson v. Avery, 393 U.S. 483, 498; 89 S.Ct. 747 (1969)

Members of groups who are competent non-lawyers can assist other members of the group achieve the goals of the group in court without being charged with "unauthorized practice of law". . . ."A state cannot, by invoking the power to regulate the professional conduct of attorneys, infringe in any way the right of individuals and the public to be fairly represented in lawsuits authorized by Congress to effectuate a basic public interest. Laymen cannot be expected to know how to protect their rights when dealing with practiced and careful adversaries (Gideon v. Wainwright, 372 U.S. 335), and for them to associate together to help one another to preserve and enforce rights granted them under federal laws cannot be condemned as a threat to legal ethics." Brotherhood of Railway Trainmen v. Virginia ex rel. Virginia State Bar, 377 U.S. 1, 7

Other cases that allow non-lawyers to help PRO-SE litigants include:

United Mine Workers v. Illinois Bar Association, 389 U.S.217, NAACP v. Button, 371 U.S. 415, Sierra Club v. Norton, 92 S.Ct. 1561, United Mine Workers v. Gibbs, 383 U.S. 715, ...

"Pro se complaints, according to the Supreme Court, are held to less stringent standards than formal pleadings by lawyers." Jenkins v. McKeithen, 395 U.S. 411, 421 (1969(; Haines v. Kerner, 92 S.Ct. 594 (1972)

The pleading of one who pleads pro se for the protection of civil rights should be liberally construed. Blood v. Margis, 322 F. 2d 1086 (1971)

"Lack of counsel of choice can be conceivably even worse than no counsel at all, or having to accept counsel beholden to one's adversary." Burgett v. Texas 389 U.S. 109

The Bill of Rights and the procedures it guarantees are not to be abrogated merely because a guilty man may escape prosecution of for any other expedient reasons. Kennedy v. Mendoza-Martinez, 83 S.Ct. 554, 372 U.S. 144, 9 L.Ed.2d 644 (1963)

Any deprivation of Constitutional Rights calls for prompt rectification. . . Vindication of conceded constitutional rights cannot be made dependent upon theory that it is less expensive to deny than to afford them. Watson v. City of Memphis, 83 S.Ct. 1314, 375 U.S. 526, 10 L.Ed.2d (1963)

The First Amendment may be invoked against infringement of protected freedoms by law or by lawmaking; investigation in a part

of lawmaking and the First Amendment, as well as the Fifth, stands as a barrier to state intrusion of privacy. **DeGregory v. Attorney General of State N.H., 86 S.Ct. 1148 383 U.S. 825, 16 L.Ed.2d 202**

To some extent the Fifth Amendment reflects the Constitution's concern for the right of each individual to a private enclave where he may lead a private life. **Katz v. U.S., 88 S.Ct. 507, 389 U.S. 347 19 L.Ed. 2d 600 (1969)**

An individual may not be punished for exercising a protected statutory Constitutional Right. **U.S. v. Goodwin, 102 S.Ct. 2485, 457 U.S. 368, 73 L.Ed 2d 74, on remand 687 F.2d 44 (1982)**

While no "right of privacy" is found in any specific guarantee of the Constitution, "zones of privacy" may be created by more specific constitutional guarantees and thereby impose limits upon government power. **Paul v. Davis, 96 S.Ct. 1155, 424 U.S. 693(1976)**

"Courts interpreting the Constitution have established that irrebuttable presumptions can violate the right to due process of law by denying persons subject to the statute or rule a reasonable opportunity to present specific circumstances to rebut the presumption. "The state. . . .may provide that proof of a particular fact, or of several facts taken collectively, shall be prima facie evidence of another fact when there is some rational connection between the fact proved and the ultimate fact presumed. The legislative presumption is invalid when it is entirely arbitrary, or creates an invidious discrimination, or operates to deprive a party of a reasonable opportunity to present pertinent facts in his defense." **Bandini Co. v. Superior Court, 284 U.S. 8, 18-19 (1931)**

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APPENDIX E

A letter brief related to emancipation filed by NJCCR and a response Judge Zampino's letter opinion and orders of 7-22-94 directed to the New Assignment judge and the legislative committee reviewing Judicial ethics.

In order to properly present an appeal, the entire case folder(all three boxes) and the Federal Complaint would and should be used. As long as Judges at the Appellate Court level justify the violation of law and rules by lower court judges, there will be anarchy in the courts.

stapp\94-08-01\appendix

Bob Vinik
271A Rt. 516
Matawan, New Jersey 07747
908 583-0925

May 26, 1994

Hon. Mark B. Epstein, J.S.C.
Middlesex County Courthouse
1 John F. Kennedy Square
P.O. Box 964
New Brunswick, N.J. 08903

Dear Judge Epstein:

Please accept this letter brief in lieu of a more formal brief.

I was exposed to the transcript of the hearing to emancipate John Tindorf's son. I was impressed that the court ordered the adult child to be made a party and to be served, May 13, 1994 transcript at page 12, I and New Jersey Council For Children's Rights (NJCCR) have been involved in litigation regarding the very issues raised therein. Many of our members are similarly situated or will be soon. Our arguement follows:

AGE OF MAJORITY

Most particularly, we Bob Vinik and NJCCR, argue herein that reaching the age of majority is statutorily mandated (**N.J.S.A. 9:17B-3**) to occur at age eighteen unless there

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is a substantial reason prohibiting the eighteen year old from majority[1] and the status of Sui Juris.[2] The reasons most likely would be mental or physical affliction. However, the age of Majority is mandated by statute to occur at age eighteen unless a court of competent jurisdiction has ordered otherwise. In the matter of Gregory Tyndorf no court has so ordered. Gregory Tyndorf is no longer a minor and he hasn't been for several years. He is an adult past the statutorily mandated age of majority and therefore is Sui Juris.

EQUAL PROTECTION

While either the married parents or the separated parents of an adult child may have a statutory or Common Law obligation to provide support and post secondary educational funding for an adult child, the Equal Protection Clause of the Fourteenth Amendment requires that they be treated alike by the courts. Therefore any obligation that parents may have must of Constitutional necessity be applied to all parents equally, both married and single as well as fathers and mothers. This issue was raised only once in the Appellate Division. See ***Johnson v. Bradbury*** **233 N.J. Super. 129 (App. Div. 1989).** The ***Johnson*** Court held that the adult child has standing to sue for post secondary education funding and that the defendants are both parents. If one of the

---

[1] Full age; legal age; age at which a person is no longer a minor. The age at which, by law, a person is legally responsible for all his or her acts. . ., and is entitled to the management of his own affairs and to the enjoyment of civic rights. The opposite of minority. . . ***Blacks Law Dictionary, Sixth Edition*** at 955

[2] Of his own right; possessing full social and civil rights; not under any legal disability, or the power of another, or guardianship.

Having the capacity to manage ones own affairs; not under legal disability to act for owns self. ***Blacks Law Dictionary*** at 1434

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parents is also permitted to sue on behalf of the adult child a conflict of interest is created wherein that parent is not likely to aggressively litigate for his own share of the expenses to be paid, but will most surely attempt to create the most liability on the part of the other parent.

STANDING TO SUE

The legislature has considered the issue of who has standing to sue or be sued. They have clearly stated the law as follows:

N.J.S.A. 9:17B-3

"The Legislature finds and declares and by this act intends... to:

> "Extend to persons 18 years of age and older the basic civil and contractual rights and obligations heretofore applicable to persons 21 years of age or older, including the right to contract, sue be sued and defend civil actions, apply for and be appointed to public employment, apply for and be granted a license or authority to engage in a business or profession subject to state regulation, serve on juries, marry, adopt children, attend and participate in horse race meetings and parimutuel betting and other legalized games and gaming except as Otherwise provided in Subsection C of this section, sell purchase and consume alcoholic beverages, act as an incorporator, registered agent or director of a corporation, consent to medical and surgical treatment, execute a will, and to inherit, purchase, mortgage or otherwise encumber and convey real and personal property."

Amicus does not argue herein that the parents of an adult child do not each have an obligation to pay for that child's post secondary education, but that the obligation is not any greater than that of a parent in an intact family, pursuant to the Fourteenth Amendment of the Constitution. And that right of the adult child to sue and be sued precludes any standing of either of the parents to plead on behalf of the adult child. A Common Law Obligation or Relief is overturned by a Statute enacted by the Legislature.

Now, in *Tyndorf v. Tindorf*, we have a situation wherein the real plaintiff, the adult Child, may be represented in court by one of the real defendants (The putative plaintiff, through her attorney). It is plain that if one of the two defendants in a matter is allowed to plead as plaintiff, on behalf of the adult child plaintiff (emancipated or not) he will not aggressively litigate to his own obligation. The basic unfairness to the other defendant is obvious. The unfairness to the adult child is that he is denied the right to court mandated post-secondary education subsidy from one of his two possible sources, his mother. Defendant Therrsa Tindorf has been fallaciously permitted to appear as plaintiff in the matter Sub Judice[3].

Moreover, the rules of professional conduct do not permit Mr. Gottlieb, Esq. to represent more than one side of a dispute before the court.

EMANCIPATION

Next, of course, we have to look at the emancipation issue. Here we have a much less final requirement. As a matter of fact, it appears that emancipation is left almost without question to the discretion of the court. There is not a specific incident or time that dictates the time in the life or the calendar at which emancipation occurs. However, it more frequently occurs at the time of financial independence or the cessation of schooling. Typically in intact families emancipation is a de facto event, the courts are not involved.

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[3] Attorney Gottlieb may not represent both the plaintiff (adult child) and a defendant (either parent) notwithstanding that the mother is incorrectly called plaintiff.

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That both his parents are defendants is to the advantage of the plaintiff adult child as well, he now has two sources of parental funding for his education. Our position is expressed clearly in our logo, "*A CHILD DESERVES TWO HELPING HANDS*". NJCCR opines that the adult child should sit his Mom and Dad down, maybe even at dinner (his treat), and plead his case for continuing support for his education. That failing, and he still believing that he is entitled to support, it is his prerogative to sue. He should sue both parents and the court is obliged to rule on the obligation and ability of each. ***Johnson v. Bradbury 233 N.J. Super. 129 (App. Div. 1989),***

Although not controlling the court will find ***Blue v. Blue*** (400 Pa. Super. 613, 576 A.2d 1129, 1990) persuasive. The Pennsylvania Supreme Court held that:

> **"Under common law a parent had a duty to support a minor child. In its wisdom, our General Assembly has bestowed adulthood on minor children at age 18. Consequently, the common law duty to support a minor child must by necessity cease at 18...Accordingly, since no legal duty has been imposed by our legislature, nor have we developed such a duty by case law, we decline to do so. Since our legislature has taken an active role in domestic matters through amendments and reenactment of the divorce code and the Domestic Relations act. We feel the more prudent course is to wait for guidance from that body rather than creating duties and obligations by judicial announcement.**
>
> **A basic education as guaranteed by our Commonwealth Constitution must be available to all Commonwealth citizens...Therefore, notwithstanding a child reaching majority at age 18, a parental duty of support is owed until the child reaches 18 or graduates from high school, whichever occurs later. This will ensure that children have a minimum education to prepare them for the challenges of life.**
>
> **The judgment of the Superior Court is reversed and the complaint for support for aid to higher education is dismissed."**

JURISDICTION

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In matters of child support the courts obtain jurisdiction pursuant to the 'Parens Patriae Doctrine". This Doctrine can be applied only to a minor child who has not reached the age of maturity since at the age of maturity their disability to litigate on their own is removed and they have standing to litigate in their own behalf. From the first day of his eighteenth year of age the child is statutorily mandated to have attained the age of majority. If the right to litigate in his own behalf exists it overrules the need or right for the court to act as a "Super Parent" under the "Parens Patriae Doctrine" in their behalf. The adult child may petition the court in his own behalf, but another adult cannot represent him, particularly not one of the defendants. Notwithstanding that the child has reached the age of majority and is legally an adult, he may still not be emancipated and his parents may continue to be obligated to support him or provide post-secondary education.

Parens Patriae jurisdiction is based on the principal that the State must care for those under legal disability such as juveniles or the insane. See *Blacks Law Dictionary* at 1114. It is the principal that the state must care for those who cannot care for themselves. It is a concept of derivative standing of a parent of a child who does not have standing to sue on his own behalf. In the matter sub judice the adult child has standing to sue on his own behalf and Parens Patriae jurisdiction doesn't exist any longer. See ***E. v. T.* 124 N.J. Super 535, *Vannucchi v. Vannucchi* 113 N.J. Super 40, *Gibbs v. Titelman, D.C.Pa.* ,369 F.Supp. 38, 54, and *State of W.Va. v. Chas. Pfizer & Co., C.A.N.Y.* , 440 F.2d. 1079, 1089.**

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When we (society, through the courts) pit Mom against Dad in court for the first contact in a protected First Amendment familial issue we set the scene for continued friction and battles between those, socially and perhaps legally mandated to the protection of the adult child.

AMICUS' STANDING TO APPEAR

The last issue for the court to consider is the representation of a group (such as NJCCR) by a competent non-lawyer. I am competent, I have successfully appeared in all levels of courts in the state and Federal system, except the "U. S. Court of Claims". I am also a volunteer representative at the Prisoners Self Help Litigation Clinic at Seton Hall Law School co-sponsored by Seton Hall and the American Civil Liberties Union (ACLU).[4] And the law, 2A:170-82c, permits me to appear.

The Federal courts have addressed this issue and held that a state may not pass statutes prohibiting the unauthorized practice of law to interfere with, or to otherwise interfere with the Right of the Freedom of Speech, secured in the First Amendment.

> A state cannot foreclose exercise of constitutional rights under First Amendment by mere labels. . . State may not, under guise of prohibiting professional misconduct by attorneys, ignore constitutional rights under First Amendment. *NAACP v. Button, 83 S.Ct. 328, 371 U.S. 415, 9 L.Ed.2d 405 (1963)*
>
> "The preparation of petitions must never be considered the exclusive prerogative of the lawyer. Laymen --- in and out of prison --- should be allowed to act as "next friend" to any person in the preparation of any paper or document or claim, so long as he does not hold himself out as practicing

[4] This matter is not connected with Seton Hall or ACLU.

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law or as being a member of the Bar. . .Reasonable access to the courts is a right (secured by the Constitution and the laws of the United States), being guaranteed as against state action by the due process clause of the Fourteenth Amendment." ***Johnson v. Avery, 393 U.S. 483, 498; 89 S.Ct. 747 (1969)***

"Members of groups who are competent non-lawyers can assist other members of the group achieve the goals of the group in court without being charged with "unauthorized practice of law". . . ."A state cannot, by invoking the power to regulate the professional conduct of attorneys, infringe in any way the right of individuals and the public to be fairly represented in lawsuits authorized by Congress to effectuate a basic public interest. Laymen cannot be expected to know how to protect their rights when dealing with practiced and careful adversaries ***Gideon v. Wainwright, 372 U.S. 335,*** and for them to associate together to help one another to preserve and enforce rights granted them under federal laws cannot be condemned as a threat to legal ethics." ***Brotherhood of Railway Trainmen v. Virginia ex rel. Virginia State Bar*, 377 U.S. 1, 7,** See also ***United Mine Workers v. Illinois Bar Association,* 389 U.S. 217, *NAACP v. Button,* 371 U.S. 415, *Sierra Club v. Norton,* 92 S.Ct.1561, *United Mine Workers v. Gibbs,* 383 U.S. 715, *Faretta v. California,* 422 U.S. 806**

Anyone, not a lawyer, trying to help another gain access to the courts cannot be denied the right --- he is protected under Freedom of Speech, Due Process, and Equal Protection of the Laws, provisions of the Constitution, as is the right of the represented.

The Constitutional Guarantees do not end at the courthouse door.

Respectfully submitted,

Dated:_____,1994

Bob Vinik, Pro Se Litigation Committee, Chair
& Member of the Board of Directors
New Jersey Council For Children's Rights
271A Rt 516
Matawan, NJ 07747
908 583-0925

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APPENDIX F

A letter from Ms. Buklad stating that MR. Eisenstein could use Custodial funds. These funds were used to pay her. Additional letters and certifications stating that Some stocks were stipulated as pre-marital

stapp\94-08-01\appendix

BUKLAD AND BUKLAD
ATTORNEYS AT LAW
76 SOUTH ORANGE AVENUE
SOUTH ORANGE, NEW JERSEY 07079

HENRY J. BUKLAD, JR
M. THEODORA BUKLAD

201 762-5300
FAX 762-1329

September 6, 1991

PERSONAL AND CONFIDENTIAL

Mr. Irwin Eisenstein
c/o HRA
11[illegible] Eighth Avenue
Sixth Floor, Room A
New York, New York 10011

Re: Eisenstein v. Eisenstein

Dear Irwin:

I spoke with Karin Haber. She is preparing the Court Order and will provide me with a copy of the transcript. I told her I would be sending a list prepared by you of items you wish to take from the house. Please get that to me as soon as possible. If we have to file a motion for this we should do so as soon as possible so you can set up your apartment. You should go to a few house sales this fall and pick up items you will need to purchase.

Karin said that you and Miriam agreed to increase the $10,000 to $[illegible],000. You should take that amount from one of the accounts you have access to and put it in your own name and feel free to use it for your expenses. As I explained, any custodial account is actually your money and can be used by you for your needs.

I am enclosing herein my bill for services rendered to August 30, 1991. It includes a past due amount from my August statement.

The trial date for the continuation of this matter is November 27, 1991.

Very truly yours,

BUKLAD AND BUKLAD

M. Theodora Buklad

MTB\mm
EISENSTE\ESNSTN-I.906

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BUKLAD AND BUKLAD, ESQS.
76 South Orange Avenue
South Orange, New Jersey 07079
(201) 762-5300
Attorneys for Defendant

MIRIAM EISENSTEIN, Plaintiff, vs. IRWIN EISENSTEIN, Defendant.	SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION, ESSEX COUNTY FAMILY PART DOCKET NO.: FM-70220-89 CIVIL ACTION CERTIFICATION OF M. THEODORA BUKLAD

I, M. Theodora Buklad, of full age hereby certifies as follows:

1. I was attorney for Defendant, Irwin Eisenstein, during most of this litigation.

2. Attached hereto are letters from Florida Progress Corp. and ITT indicating that the stock in these two corporations was acquired prior to the marriage.

3. These documents were shown to Ms. Haber during this litigation and it was agreed that they were not part of the assets distributable under the statute.

4. Regarding the U.S. Savings bonds in the name of Irwin Eisenstein and his mother which became his alone when his mother died, those facts would make them exempt from equitable distribution. The Plaintiff would have to present testimony to rebut the presumption that these were gifts to Miriam Eisenstein. I understand no such testimony was introduced at trial.

5. Mr. Eisenstein asked me to prepare this certification on these two issues.

"I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are wilfully false, I am subject to punishment."

DATED: November 5, 1992

M. THEODORA BUKLAD, ESQ.

EISENSTEIN\CERT-MTB.N92

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#25

FLORIDA
PROGRESS
CORPORATION

November 14, 1990

Irwin Eisenstein
601-B Surf Ave. Apt 17K
Brooklyn NY 11224

Dear Mr. Eisenstein:

The following are the dates that the stock certificates were registered in your name:

FA 234850	32 SHARES	JULY 29, 1964
FA 291678	5 SHARES	Date not legible on microfilm.
FA 283995	4 SHARES	JUNE 2, 1971
FA 297431	50 SHARES	FEBRUARY 27, 1973
N 18186	91 SHARES	MAY 1, 1980 (split share certificate)

If we may be of any additional help please feel free to contact us.

Sincerely,

Alfred S. Delikat
Analyst

ASD/jda

205X

ITT

#9

ITT

Corporate Stock Services
ITT Corporation
World Headquarters

November 14, 1990

Mr. Irwin R. Eisenstein
601B Surf Avenue
Apt. 17K
Brooklyn, NY 11224

RE: Irwin R. Eisenstein

ear Mr. Eisenstein:

eference is made to your recent communication in which you inquired bout the origin of your ITT shareholder account.

examination of our shareholder records revealed that your account iginated on March 17, 1960 with the purchase of 53 shares of common ock. Due to a 2 for 1 stock split on January 26, 1968, an litional 53 shares were posted to your account, bringing the total ber of shares to 106.

your records, we are attaching herewith a notice applicable to 2 for 1 stock split which will assist you in calculating gain or for Federal Income Tax purposes.

closing price of ITT common stock on the date of issuance, h 17, 1960, as quoted on the New York Stock Exchange, was $35.63 share.

ust that you will find this information helpful.

ery truly yours,

Katherine Conits

Katherine Conits
Administrator,
Legal Transfer

re

2064

100 Plaza Drive, Secaucus, NJ 07096-0002
Telephone (212) 258-1000 Facsimile (201) 601-0913

I, Frances Eisenstein, of full age hereby certify as follows:

My mother gave shares in Beth. Steel to both my brother and to me.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are wilfully false, I am subject to punishment.

Dated: Nov. 5, 1992

Frances Eisenstein.

Franbeth

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Presented to the Commission to Study the Laws of Divorce
September 20, 1994
Wayne, New Jersey

Presentation on Joint Physical Custody and the need for a Minimum Parenting Bill

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Robert Kowal
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"The Legislature finds and declares that it is the public policy of this State to assure minor children of frequent and continuing contact with both parents after the parents have separated or dissolved their marriage and that it is in the public interest to encourage parents to share the rights and responsibilities of child rearing in order to effect this policy." **P.L. 1990, Chapter 26, approved May 21, 1990, 1990 Assembly No. 1181, N.J.S.A. 9:2-4.**

In evaluating the question of the welfare of the children, the New Jersey Legislature has established that there shall be no gender based discrimination as between the parents. "in any proceeding involving the custody of a minor child, the rights of both parents shall be equal..." **N.J.S.A. 9:2-4.** Therefore, in a custody dispute , neither the mother or father shall result in any advantage or disadvantage to the contestants.

The New Jersey Legislature has provided guidelines for determining the welfare of the children while recognizing that the gender of the parents create no presumption in favor of either one.

> In any proceeding involving the custody of a minor child, the rights of both parents shall be equal and the court shall enter an order which may include:
> a. Joint custody of a minor child to both parents, which is comprised of legal custody or physical custody which shall include: (1) provisions for residential arrangements so that a child shall reside either solely with one parent or alternatively with each parent in accordance with the needs of the parents and the child; and (2) provisions for consultation between the parents in making major decisions regarding the child's health, education and general welfare;
> b. Sole custody to one parent with appropriate visitation for the noncustodial parent; or
> c. Any other custody arrangement as the court may determine to be in the best interest of the child.
> In making an award of custody , the court shall consider but not be limited to the following factors: the parents' ability to agree, communicate and cooperate in matters relating to the child; the parents' willingness to accept custody and any history of unwillingness to allow visitation not based on substantiated abuse; the interaction and relationship of the child with its parents' and siblings; the history of domestic violence, if any; the safety of the child and the safety of either parent from physical abuse by the other parent; the preference of the child when of sufficient age and capacity to reason so as to form an intelligent decision; the needs of the child; the stability of the home environment offered; the quality and continuity of the child's education; the

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fitness of the parents; the geographical proximity of the parents' homes; the extent and quality of the time spent with the child prior to or subsequent to the separation; the parents' employment responsibilities; and the age and number of the children. A parent shall not be deemed unfit unless the parents' conduct has a substantial adverse effect on the child.
The court, for good cause and upon its own motion, may appoint a guardian ad litem or an attorney or both to represent the child's interest. The court shall have the authority to award a counsel fee to the guardian ad litem and the attorney and to assess that cost between the parties to the litigation.
d. The court shall order any custody arrangement which is agreed to by both parents unless it is contrary to the best interest of the child.
e. In any case in which the parents cannot agree to a custody arrangement, the court may require each parent to submit a custody plan which the court shall consider in awarding custody.
f. The court shall specifically place on the record the factors which justify any custody arrangement not agreed to by both parents.
N.J.S.A. 9:2-4 (Emphasis Added)

The Apellate Court, **In re Jackson**, having found from a review of the record that both parents were fit and proper persons to have custody, held that the trial court restrictions on the father's rights of visitation were erroneous. The Court stated:

> "A Court always determines that, whenever custody is awarded to a parent, the other parent shall not only be privileged to see the children at all times, but shall be encouraged by the parent-custodian in seeing them as freely, as fully, as often, and as long as possible, and in a manner best suited to the encouragement of mutual affection"
> **In re Jackson, 13 NJ Super 144 (App. Div. 1951)**

Justice Schreiber's concurring opinion in **Cooper v. Cooper** stated that "children continue to have an interest in maintaining a close and abiding relationship with both parents following a divorce. Researchers have found that a large majority of children whose parents have divorced yearn for their absent parent with surprising persistence and passion. Wallerstein and Kelly, in one of the most complete, long term studies of children of divorced parents, found that children expressed the wish for increased contact with the noncustodial parent, usually the father, "with a

startling and moving intensity," **that they found twice-monthly weekend visits woefully inadequate**, and that "[t]he intense longing for greater contact persisted undiminished over many years."" (emphasis added) **Cooper v. Cooper, 99 NJ 42 (1984) (citing J. Wallerstein & J. Kelly, Surviving the Breakup: How Children and Parents Cope with Divorce 134 (1980)).**

During the last few years, much research has been done on the impact of divorce on children. The results of this research coupled with progressive social changes have forced a critical examination of the traditional winner-take-all approach to child custody contests. Exhibiting the new and enlightened approach to child custody determinations one appellate court decision made the following observations:

> Mr. Mason concluded that he was faced with the choice of one or the other. The lower court in its opinion echoed that sentiment: "It is unfortunate in a case where both parents are excellent that one parent must "lose"..." We disagree with the preceding conclusion that one parent must "win" and the other must "lose", and we suggest that Mr. Mason's findings as outlined in the three reports to Judge Keller lead inexorably to the conclusion that both parents are fit and that shared custody is in Jesse's best interests.There was no need for that most difficult of choices. **Smith v Smith, 453 A. 2d 1020 at 1025 (Pa. Super. 1982).**

Studies demonstrate that extremely positive results flow from joint custody arrangements:

> Although there appears to be widespread opposition to joint custody, none of the concerns expressed have been validated by research. In fact, there is a growing literature on joint parenting that documents the positive effects such arrangements have on parents and children alike. Such findings are supported by the results of this study, in which fathers with joint custody found their children feel it works very well; these fathers seem most satisfied with their postdivorce relationship with their children. Results of the present study show that all of the fathers in joint custody relationships had high satisfaction scores, while father-child relationships in which children were in sole custody of their mother accounted for all of the low satisfaction scores reported. Children need active involvement with both

parents, and the findings clearly indicate that fathers with joint custody are most likely to continue to have a high degree of influence on their children's growth and development.

Of added interest, some generally held concerns about the effect of joint custody do not seem borne out by this sample. For one, the issue of how disruptive it must be for children to have two homes rather than one seems to be a concern more of the observing public than of the joint custody families. All of the joint custody fathers set up living space for the children in their homes, with special toys, clothing, etc. The children do not arrive with suitcase in hand. Although the fathers acknowledge as initial period of adjustment on the part of the children, none felt this persisted unduly, or that their children currently felt confused about when they spend time with which parent.

As one father explained:
"There is no shuttling back and forth, my son is shuttled every day to and from school. This is called consistency, scheduling."

Another father pointed out:
"We're a mobile society... some people move constantly during their lives, the rich often live in several homes... what makes a joint living arrangement so different."

Fathers with joint custody are more likely to involve themselves in all aspects of their child's growth and development. The maintenance of such ties can be critical for both father and mother.
Judith Brown Grief, D.S.W., "Fathers, Children, and Joint Custody," Amer. J. Orthopsychiat., Vol. 49, No. 2, April, 1979, pp.317,319

In a traditional custody fight--where one parent wins while the other loses--it is too often overlooked that regardless of whether the father wins or the mother wins, **the children are guaranteed to lose.** This usual approach of awarding only one parent custody is stacked against the children as they can never win; as the custody battle rages on they witness increasing hostility between the two people they love the most and

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when it is over they have lost the care and companionship of one parent. To protect the child from such a devastating loss should be a high priority in any custody determination. Joint custody has been shown to provide just such protection:

> There is no doubt that joint custody yields two psychological parents, and that the children do not suffer the profound sense of loss characteristic of so many children of divorce. The children maintained strong attachments to both parents. Perhaps the security of an ongoing relationship with two psychological parents helps to provide the means to cope successfully with the uprooting effects of switching households.
> **Alice Abarbanel, "Shared Parenting After Separation and Divorce: A Study of Joint Custody", Amer. J. Orthopsychiat., Vol. 49, No. 2, p. 328, April 1979.**

Children have adapted very well to living in two different homes. In an unpublished paper for the Jewish Family and Children's Services in San Francisco, Susan Steinman, M.S.W., D.S.W., Director of the Joint Custody Project and Director of the Center for the Family in Transition for the Jewish Family and Children's Services concluded that "...overall, children's clarity about their schedule and location of their homes was very impressive...the findings certainly suggest that children can live in two homes." Dr. Steinman, in a law review article, noted that joint custody benefitted children in three principle areas:

> Joint custody was beneficial for these children in three major areas. First, they received the clear message that they were loved and wanted by both parents. Second, they add a sense of importance in their family and the knowledge that their parents made great efforts to jointly care for them, both factors of which were important to their self-esteem. Third, they had physical access to both parents, and the psychological permission to love and be with both parents. This protected them from the crippling loyalty conflicts often seen in children who are caught in the crossfire of their parents' ongoing battles.
> **Steinman, S., "Joint Custody: What We Know, What We Have Yet To Learn, and the Judicial and Legislative Implications." 16 U. Calif. D. L. Rev. 739,747 (1983).**

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Dr. Steinman also concluded that there were significant benefits for the mothers and fathers who were involved in a joint custody arrangement and that diminished hostilities between the parents was another fringe benefit:

> The overriding benefit for these parents was the sharing of the burdens and pleasures of childrearing. Most of the working mothers valued time off to pursue their careers and their adult social life. Their sense of identity and self-esteem gained from their paid employment allowed them more easily to relinquish the role of full-time parent. For fathers, the preservation of a close relationship with their children and an important adult role as a parent was paramount. For these parents, shared parenting helped temper the sense of loss, personal failure, and disruption of the adult role and identity that often accompanies divorce. It functioned as an antidote to the diminished self-esteem and guilt over breaking up a family. It allowed them to preserve a sense of family and to avoid the profound sense of loss for themselves and their children. The marital relationship had failed, but joint custody represented a personal and mutual success as parents. This is best illustrated by a joint custody father trying to explain his relationship with his former wife after the marital break-up:
>
> > "I would say we were friendly now, but we are not friends. We don't do the things that friends do. There is contact over Mary, and Mary is what we once were. She is there and the fact that she is really a neat kid is testimony to our individual worth and what we did together."
>
> **Steinman, supra, at 743,744**

Courts are now recognizing the dangers of the traditional approach of awarding sole custody insofar as the importance of encouraging both parents to have frequent and continuing contact with minor children after divorce:

> Coercive judicial intervention perceived to be on the side of one parent against the other will in many instances have the opposite effect; that is, it will discourage the judicially disfavored parent who has lost control from continuing to maintain a

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> meaningful role in upbringing of his or her child.
> **In Re Marriage of Mentry, 190 Cal. Rptr. 843 at 849 (App. 1983)**
> It is of the highest importance that every effort be made to enable a child to develop and enjoy a wholesome relationship with both parents.
> **Com. Ex Rel. Piggins v Kifer, 427 A. 2d 185 at 189 (Pa. Super. 1981)**

In the landmark case of **Beck v. Beck, 432 A. 2d 63 (N.J. 1981)** the New Jersey Supreme Court issued a decision ordering joint custody which is of great significance because of the comprehensive nature of the opinion, its exhaustive treatment of the issues surrounding joint custody, and its value in supplying guidance to this Court as well as other courts. In Beck the court held that trial courts are authorized to decree joint custody of children, that a sua sponte custody determination is properly within the discretion of the trial court provided it is supported by the record and that the trial court gave proper consideration to the preferences of the children to remain with their mother, despite the fact that the court ultimately granted joint custody.

A detailed analysis of the Beck opinion and its application to the case at hand lead to the inescapable conclusions that the legal principles in Beck are controlling, that the instant case factually attracts application of those principle; thus compelling this Court to issue a joint custody order. In Beck the court first looked into the appropriate statute governing custody determinations at that time which provided:

> ...[T]he court may make such order... as to the care, custody, education and maintenance of the children, or any of them, as the circumstances of the case shall render fit, reasonable, and just...**[N.J.S.A. 2a:34-23]**

As the court in Beck noted, while not an explicit authorization for joint custody as is currently stated in the New Jersey Statutes, such language is consistent with the common law policy that "in promoting the child's welfare, the court should strain every effort to attain for the child the affection of both parents rather than one." **Beck, supra, at 65 citing Turney v. Nooney, 68 A. 2d 342 (App. Div. 1959).**

The Virginia Supreme Court has previously endorsed a joint custody arrangement making the following observations:

> The advisability of dividing or alternating the custody of the child has been seriously considered. While there are certain

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> disadvantages and benefits. It gives the child the experience of two separate homes. This child in entitled to the love, advice, and training of both her father and her mother. Frequent associations, contact, and friendly relations with both parents will protect her future welfare if one of her parents should die. It gives recognition to the rights of parents who have performed obligations as parents.
> **Mullen v. Mullen, 188 Va. 259,269 49 S.E. 2d 349,354 (1948)**

In Beck the court noted that joint custody has become more topical in recent years because of the perceived inadequacies of sole custody and in recognition of the modern trend toward shared parenting in marriage. After discussing the disadvantages of sole custody the court stated: "The upshot is that the best interests of the child are disserved by many aspects of sole custody." **Id. at 65. See also Bratt, "Joint Custody",67 Ky.L.J. 271 (1979).**

After discussing the many advantages of a joint custody arrangement the court then addressed the expert testimony presented at the trial.

An expert called on behalf of the mother had testified that after interviewing the children he believed that sole custody should remain with the mother. Since the children in question were girls this particular witness felt that they would be better off with another woman, i.e., the mother while acknowledging that his familiarity with joint custody was limited. **Beck at 67.** However, another expert witness, Dr. Clark, then testified that joint custody would be preferable to the inherent risk of sole custody, namely, the girls' loss of their relationship with their father. Dr. Clark stated that "mere visitation rights granted to a non-custodial "zoo-daddy" would not be conducive to the development of a father-daughter relationship." **Id. at 68**

Dr. Clark also noted that the children's expressed opposition to joint custody was attributed to the fact that "they misunderstood joint custody as something that would deprive them of their mother and their home." The expert predicted that once joint custody went into effect they would "recognize the arrangement not only as retaining what they had before but as adding something more- an additional home." He further opined that "difference in child rearing practices do not necessarily militate against joint custody determinations and that children can understand that different people will set different standards for them." According to Dr. Clark it is inconsistent treatment from one parent that tends to cause problems for children. **Id. at 68.**

Another expert witness that testified at the Beck trial was Dr. Judith Brown Greif. She testified that as long as both parents are fit, "the most important thing is to maintain the child's open and meaningful access to both parents." She further testified that visitation was not "meaningful contact".

> She stressed that the continuity of relationship allowed by alternating physical custody is more important that the discontinuity of physical environment caused by it.
> **Id. at 68.**

Another highly significant piece of evidence adduced at trial was Dr. Greif's testimony that joint custody can work even where the parents are openly hostile toward one another provided both parents care about the children. In her words, " there needs to be good input to the children, there need not be such good input between the parties." **Id. at 68.** This opinion has been borne out in other research and it is valuable to examine the opinion of Dr. Joan B. Kelly, Director of Northern California Mediation Center; Co-Author of **"Surviving the Breakup, How Children and Parents Cope with Divorce", Basic Books, New York, 1980.** Dr. Kelly stated in a law review article:

> ...I am concerned about the position that argues joint custody should not be awarded when parents do not agree. In these cases, it is almost always the woman who is opposed to joint custody. Women do not need to ask for, nor agree to, joint custody. They are presumed by society, lawyers, the courts, and themselves to have a right to keep the children in their care and protection. It is the father who must ask for joint custody and it is often in the mother's power to agree or disagree. The mother's position is particularly enhanced if she knows that a refusal to share parenting with her spouse will preclude a joint custody order regardless of her reasons for denying joint custody. In this context, it would be important to study women who refuse a request for joint custody. Some women legitimately refuse joint physical custody because they have lived with men who have emotionally or physically abused their children. And some seek relief from physical spousal abuse. Others who refuse, however, are angry and rejected women who seek revenge and a reinstatement of self-esteem by using their children to punish a spouse who has

> terminated the marriage. There are also women whose identities are so bound up in their role as full time mother that they can not envision sharing the parenting role with the father without undue anxiety and fear for their own well-being. Further, there are emotionally disturbed women who, due to their own pathology, vigorously fight a father's desire to be involved in the children's lives. Some additional women have been advised by friends or parents not to allow the father anything more than traditional every-other-weekend visitation. In these various instances, there may be no legitimate reasons based on the father's capacity to parent for refusing to consider joint custody. Yet the children of such women would be denied more generous access to their father despite the real possibility that increased contact could be more psychologically beneficial. (Emphasis added). **Kelly, J.,"Further Observations on Joint Custody"' 16, U. Calif. D. L. Rev. 762 at 769 (1983).**

Returning to the analysis of the Beck opinion, the court endorsed the principle that trial courts should encourage the parents to cooperate and instruct them regarding what is expected of them. "Moreover, the potential for cooperation should not be assessed in the "emotional heat" of the divorce." **Beck at 72.**

The two Beck girls had expressed a desire to remain with their mother and have visitation with their father. The language of the opinion is most instructive:

After interviewing them privately, the court stated for the record that the children were sincere and honest in their desire to remain with their mother. However, observing that they expressed love for both parents and wanted to continue visitation with the father, the court concluded that they had been "persuaded" to make their statements of preference and that the defendant's {mother's} negative attitude toward joint custody had "consciously or unconsciously spilled over" to the children. Given this conclusion and the tender years of the children, a determination that did not fully accommodate their express wishes was not unreasonable.
Id. at 73.

The geographical distance which separates the parents should not preclude a joint custody arrangement. See **Smith v. Smith, 453 A.2d 1020 at 1023 (Pa. Super. 1982).** The division of

time in a joint custody arrangement need not be equal physical division:

> There are two basic versions of joint custody: joint legal custody and joint physical custody. The former consists exclusively of the shared decision making function. The latter has the additional component of shared residence. That is, under joint physical custody the children live with each parent on an equal or split time basis. Thus, in a sense, minor as well as major decisions are made by both parents where there is joint physical custody. Example of these minor matters are what and when to eat, when do to chores, and when to go to bed. In joint legal custody, only one parent has physical custody, and that parent makes these day-to-day decisions.
> **In Re Wesley J.K., 445 . A.2d, 1243 at 1247 n. 8 (1982) citing Miller, "Joint Custody", 13 Fam. L.Q. 343, 360 (1979).**

A review of the Constitutional law applicable to children's and parent's rights regarding custody issues create a presumption for the right of joint custody. See **Canacakos, "Joint Custody As a Fundamental Right," 23 Ariz. L. Rev. 785 (1981).** The burden thus rests with the party opposing joint custody to demonstrate that the child would be subject to serious injury, either emotional or physical, in a joint custody arrangement and that the burden of proof has not been met.

The traditional approach to child custody disputes has overlooked the constitutionally mandated presumption of joint custody derived from constitutional rights secured to both children and parents.

The U.S. Supreme Court has made plain beyond any doubt that a parent's desire for and right to "the companionship, care, custody, and management of his or her children" is an interest that is "far more precious" than any property right. See **May v Anderson, 345 U.S. 528, 97 L. Ed. 1221, 73 S. Ct. 840 (1952).**

The nature of a parent's interest in one's children and the relationship of that interest to the Constitution has been eloquently described by Justice Blackmun:

> At stake here is the interest of a parent in the companionship, care, custody, and management of his or her children. **Stanley v. Illinois, 405 U.S. 645, 651, 31 L. Ed. 2d 551, 92 S. Ct. 1208 (1972).** This interest occupies a unique place in our legal culture,

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> given the centrality for family life as the focus for personal meaning and responsibility. "[F]ar more precious... than property rights", **May v. Anderson, 345 U.S. 528, 533, 97 L. Ed. 1221, 73 S. Ct. 840, 52 Ohio Ops 45, 67 Ohio L. Abs. 468 (1953)**, parenteral rights have been deemed to be among those "essential to the orderly pursuit of happiness by free men," **Meyer v. Nebraska, 262 U.S. 390, 399, 67 L. Ed. 1042, 43 S. Ct. 625, 29 ALR 1446 (1923)**, and to be more significant and priceless than "liberties which derive merely from shifting economic arrangements." **Stanley v. Illinois 405 U.S. at 651 quoting Kovacs v. Cooper, 336 U.S. 77, 95, 93 L. Ed. 513, 59 S. Ct. 448, 10 ALR 2d 608 (1949)** (Frankfurter, J., concurring). Accordingly, although the Constitution is verbally silent on the specific subject of families, freedom of personal choice in matters of family life long have been viewed as a fundamental liberty interest worthy of protection under the Fourteenth Amendment. **Smith v. Organization of Foster Families, 431 U.S. 816, 845, 53 L. Ed. 2d 14, 97 S. Ct. 2094 (1977): Moore v. East Cleveland, 431 U.S. 494, 499. 52 L. Ed. 2d 531, 96 S. Ct. 1932 (1977) (plurality opinion) Prince v. Massachusetts, 321 U.S. 158, 166, 88 L.Ed. 645, 63 S. Ct. 571, 39 ALR 468 (1925); Meyer v. Nebreaska, 262 U.S., at 339, 67 L. Ed. 1042, 43 S. Ct. 625, 29 ALR 1446.** Within the general ambit of family integrity, the Court has accorded a high degree of constitutional respect to a natural parents's interest both in controlling the details of the child's upbringing. **Wisconsin v. Yoder, 406 U.S. 205, 232-234, 32 L. Ed. 15, 92 S. Ct. 1526 (1972); Pierce v. Society of Sisters, 268 U.S., at 534-535, 69 L. Ed. 1070, 45 S. Ct. 571, 39 ALR 468**, and in retaining the custody and companionship of the child, **Smith v Organization of Foster Families, 431 U.S., at 842-847, 53 L. Ed. 2d 14, 97 S. Ct. 2094; Stanley v. Illinois, 405 U.S. at 651, 31 L. Ed. 551, 92 S. Ct. 1208.**
>
> **Lassiter v. Dept. of Social Services, 452 U.S. 18, 38, 68 L. Ed. 2d 640, 656-657, 101 S. Ct. 2153 (1981)** (Blackmun, J., dissenting)

Clearly the parenteral interest in question is a formidable one. This interest is not diminished by virtue of the marital

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dissolution. In **Quilloin v. Walcott, 434 U.S. 246, at 255-256, 54 L. Ed. 2d 511, 98 S. Ct. 549 (1978)** the court implied that "a [once] married father who is separated or divorced from the mother and is no longer living with his child" could not constitutionally be treated differently from a currently married father living with his child. See also **Franz v. United States, 707 F. 2d 582 at 595 (1983)**. In **Santosky v. Kramer, 455 U.S. 745, 753 102 S. Ct. 1388, 1394, 71 L. Ed. 2d 599 (1982)** the court held that "freedom of personal choice in matters of family life is a fundamental liberty interest" protected by the Constitution. "Among the most important of the liberties accorded this special treatment is the freedom of a parent and child to maintain, cultivate, and mold their ongoing relationship." **Franz v. United States, supra at 595.**

A California Appellate court decision articulated the importance of this right after marital dissolution:

> The rationale that supports judicial respect for family privacy does not lose its force upon the dissolution of a marriage where, as here, a family relationship - even a disharmonious one - continues between the former spouse in connection with the rearing of minor children. The concept for family privacy embodies not simply a policy of minimum state intervention but also a presumption of parental autonomy. Many of the purposes served by this presumption become more important after dissolution that they were before. One such purpose, for example, is to diminish the uncertainties and discontinuities that can afflict the parent-child relationship whenever third parties (lawyers as well as judges) episodically intrude through an ill-equipped adversarial process in which decisions are subject to reconsideration and eventual appellate review. Such uncertainties and discontinuities are of course more likely and serious dangers after separation or dissolution than before. Another purpose of the presumption that need only be served after separation or dissolution is to advance the public policy of this state to assure minor children of frequent and continuing contact with divorced or separated parents and "to encourage [such] parents to share the rights and responsibilities of child rearing in order to effect this policy."
> **In Re Marriage of Mentry, supra at 848, 849.**

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See also, **Armstrong v. Manzo, 380 U.S. 545, 550, 14 L. Ed. 2d 62, 85 S. Ct. 1187 (1965)** in which the Court acknowledge that a divorced father's interest in preserving visitation rights is a "liberty interest" sufficient to trigger application of procedural due process rights. At this juncture we assert that in addition to the parent's right there exists an equally commanding right of the child to a relationship with each parent. As the court in **Franz, supra**, observed:

> ... a parent's right to the preservation of his relationship with his child derives from the fact that the parent's achievement of a rich and rewarding life is likely to depend significantly on his ability to participate in the rearing of his children. A child's corresponding right to protection from the psychic importance to him of being raised by a loving, responsible, reliable adult. **Id., at 599.**

There is considerable evidence that the emotional stability of children of divorced parents is often tied to the quality of their continuing relationships with both their parents. "We have repeatedly described the dissatisfaction of so many youngsters who felt they were not seeing their fathers often enough. If custody and visiting issues are to be within the realm of the best interests of the child , then such widespread discontent must be taken very seriously." **J. Wallerstein and J. Kelly, "Surviving the Breakup", 142-143 (1980).** See also, **D. Luepnitz, "Child Custody, A Study of Families After Divorce", Lexington Books, (1983).** We thus conclude that the stake in another's companionship in the present context rises to a "fundamental liberty interest" for both the parents and the child.

The fundamental right of parental autonomy cannot be infringed upon absent compelling governmental interests and even then such infringement must take the least restrictive course possible. See, **Dunn v. Blumstein, 405 U.S. 330, 343, 31 L. Ed. 2d 274, 92 S. Ct. 995 (1972).** It is therefore follows that in custody determination cases arising from separation or divorce that 1) the right of each parent must be regarded as equal; and 2) the right in question is not a right to total control but rather a right to share in the control of the upbringing of the child similarly to such sharing as takes place in marriage. See, **Canacakos, supra, at 797.** Additionally, the child possesses a similar fundamental right to each parent. In order to effectively secure these fundamental rights for all interested parties in custody decisions the custody arbiter must begin with a presumption of joint custody in order to preserve as closely as possible the rights and obligations of the parties that exist in intact families. Not only is such an approach constitutionally mandated but is the optimal way to protect the best interests of

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the child.

The traditional reluctance of courts to confront questions of the order coupled with rapidly changing social norms account for the relative paucity of judicial precedence in this area. The proliferation of divorce in our society and concomitant increase in children of divorced parents is unprecedented in the history of our nation. "In short, the institution of the "broken" family is becoming ever more socially important. To rely on the absence of a strong tradition of respect for one of the constituent relationships of that institution in determining its constitutional status seems senseless. Recognition of the need to adjust the meaning of the Constitution to conform to changes in social life requires, in this instance, that we eschew reliance on history." **Franz, supra, at 601.** I implore this Court to recognize these societal forces and give full effect to the constitutional rights of the parties hereto.

CONCLUSION

It is clear beyond the need for further citation that in a custody dispute there shall be no presumption in favor of either parent on the basis of gender. The law in New Jersey is designed to insure children the opportunity to develop and maintain healthy relationships with both parents. Research has established joint custodial arrangements to be the optimal method of fostering parent-child relationships after separation or divorce. Finally, the constitutionally mandated presumption of joint custody has not been rebutted.

Vernon's

TEXAS CODES ANNOTATED

Volume 2

FAMILY CODE

Sections 11.01 to 20

1992
Cumulative Annual Pocket Part

Replacing 1991 Pocket Part in back of volume

For Use In 1991–1992

Includes
Laws through the 1991 Second Called Session
of the 72nd Legislature
Court Constructions through 810 S.W.2d 499

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defined in Section 14.033 of this code, or an order appropriate under the circumstances considering the age of the child. If a standard possession order is not rendered, the court shall also render a prospective order to take effect on the child's third birthday, which presumptively will be the standard possession order.

(c) Factors. In determining the terms of possession of a child, the court shall be guided by the guidelines and may consider, in varying from or following the guidelines:

(1) the age, circumstances, needs, and best interest of the child;

(2) the circumstances of the managing conservator and of the parent named as a possessory conservator; and

(3) any other relevant factor.

(d) Application Without Regard to Sex. The court shall apply the guidelines without regard to the sex of the parents or the child.

(e) Supersede Local Rules. The guidelines supersede any and all local rules that conflict with the guidelines.

(f) Supersede Supreme Court Rules. The guidelines supersede any and all Texas Supreme Court rules that conflict with the guidelines. Notwithstanding Section 22.004, Government Code, or any other law, the guidelines may not be repealed or modified by a rule adopted by the Texas Supreme Court.

Added by Acts 1989, 71st Leg., ch. 617, § 4, eff. Sept. 1, 1989.

Notes of Decisions

Factors determining possession 1
Jurisdiction 2

1. Factors determining possession

Evidence supported order allowing husband only supervised visitation with parties' children; husband had history of alcohol abuse and was currently abusing alcohol. Johnson v. Johnson (App. 1 Dist.1991) 804 S.W.2d 296.

2. Jurisdiction

Trial court's finding of no jurisdiction over mother and child under Texas Uniform Child Custody Jurisdiction Act (UCCJA) did not deny father due process; father chose to dissolve his marriage in state that did not have jurisdiction over child and mother, and that choice deprived him of benefit of litigating postdivorce visitation issues in Texas. Brown v. State on Behalf of Jarvis (App. 3 Dist.1991) 808 S.W.2d 628.

Father was foreclosed from relying on continuing exclusive jurisdiction of Texas divorce court to determine visitation rights where court did not exercise original jurisdiction over child and thus divorce was not a suit affecting parent-child relationship (SAPCR). Brown v. State on Behalf of Jarvis (App. 3 Dist.1991) 808 S.W.2d 628.

§ 14.033. Standard Possession Order

(a) Definitions. In this section:

(1) "School" means the primary or secondary school in which the child is enrolled or, if the child is not enrolled in a primary or secondary school, the public school district in which the child primarily resides.

(2) "Standard order" or "standard possession order" means an order that provides a parent named as a possessory conservator with rights of possession of a child in accordance with the terms and conditions provided by this section.

(b) Mutual Agreement or Specified Terms for Possession. The court shall expressly state in a standard order that the parties may have possession of the child at any and all times mutually agreed to in advance by the parties and, failing mutual agreement, shall have possession of the child under the specified terms set out in the standard order.

(c) Parents Who Reside 100 Miles or Less Apart. Except as otherwise explicitly provided, if the possessory conservator resides 100 miles or less from the primary residence of the child, the possessory conservator shall have the right to possession of the child as follows:

(1) on weekends from 6 p.m. on the first, third, and fifth Friday of each month until 6 p.m. on the following Sunday or, at the possessory conservator's election made before the rendition of the original or modification order, from the time the child's school day ends, if any, until 6 p.m. on the following Sunday; and

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(2) on Wednesdays of each week during the regular school term from 6 p.m. until 8 p.m., or, at the possessory conservator's election made before the rendition of the original or modification order, from the time the child's school day ends, if any, until 8 p.m.

(d) Weekend Possession Extended by Holiday. Except as otherwise explicitly provided, if a weekend period of possession of the possessory conservator coincides with a school holiday during the regular school term or with a federal, state, or local holiday during the summer months in which school is not in session, the weekend possession shall extend until 6 p.m. on a Monday holiday or school holiday or shall begin at 6 p.m. Thursday for a Friday holiday or school holiday, as applicable.

(e) Vacations and Holidays. The following provisions govern possession of the child for vacations and for certain specific holidays and supersede any conflicting weekend or Wednesday periods of possession provided by Subsections (c) and (d) of this section. The possessory conservator and managing conservator shall have rights of possession of the child as follows:

(1) the possessory conservator shall have possession of the child in even-numbered years from 6 p.m. on the last school day before the Christmas school vacation begins until noon on December 26th, and the managing conservator shall have possession for the same period in odd-numbered years;

(2) the possessory conservator shall have possession of the child in odd-numbered years from noon on December 26th until 6 p.m. on the day before school resumes, and the managing conservator shall have possession for the same period in even-numbered years;

(3) the possessory conservator shall have possession of the child in odd-numbered years from 6 p.m. on the Wednesday before Thanksgiving until 6 p.m. on the following Sunday, and the managing conservator shall have possession for the same period in even-numbered years;

(4) the possessory conservator shall have possession of the child in even-numbered years from 6 p.m. on the last school day before the school's spring vacation begins until 6 p.m. on the day before school resumes, and the managing conservator shall have possession for the same period in odd-numbered years;

(5) if the possessory conservator:

(A) gives the managing conservator written notice by May 1 of each year specifying an extended period or periods of summer possession, the possessory conservator shall have possession of the child for 30 days between June 1 and August 31, to be exercised in no more than two separate periods of at least seven consecutive days each; or

(B) does not give the managing conservator written notice by May 1 of each year specifying an extended period or periods of summer possession, the possessory conservator shall have possession of the child for 30 consecutive days beginning at 6 p.m. on July 1 and ending at 6 p.m. on July 31;

(6) if the managing conservator gives the possessory conservator written notice by May 15 of each year or gives the possessory conservator 14 days' written notice on or after May 16 of each year, the managing conservator shall have possession of the child on any one weekend from Friday at 6 p.m. to 6 p.m. on the following Sunday during any one period of possession by the possessory conservator under Subdivision (5) of this subsection, provided that the managing conservator picks up the child from the possessory conservator and returns the child to that same place;

(7) if the managing conservator gives the possessory conservator written notice by May 15 of each year or gives the possessory conservator 14 days' written notice on or after May 16 of each year, the managing conservator may designate one weekend between June 1 and August 31, during which an otherwise scheduled weekend period of possession by the possessory conservator will not take place, provided that the weekend so designated does not interfere with the possessory conservator's period or periods of extended summer possession or with Father's Day if the possessory conservator is the father of the child;

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(8) the parent not in possession of a child on the child's birthday shall have possession of the child from 6 p.m. to 8 p.m. on that day, provided that the parent not in possession picks up the child from the child's residence and returns the child to that same place;

(9) if a conservator, the father shall have possession of the child on Father's Day from 9 a.m. to 6 p.m., provided that, if he is not in possession of the child, he picks up the child from the child's residence and returns the child to that same place; and

(10) if a conservator, the mother shall have possession of the child on Mother's Day from 9 a.m. to 6 p.m., provided that, if she is not in possession of the child, she picks up the child from the child's residence and returns the child to that same place.

(f) Parents Who Reside Over 100 Miles Apart. Except as otherwise explicitly provided, if the possessory conservator resides more than 100 miles from the residence of the child, the possessory conservator shall have the right to possession of the child as follows:

(1) either regular weekend possession beginning on the first, third, and fifth Friday as provided under the terms of Subsection (c)(1) of this section, or not more than one weekend per month of the possessory conservator's choice beginning at 6 p.m. on the day school recesses for the weekend and ending at 6 p.m. on the day before school resumes after the weekend, provided that the possessory conservator gives the managing conservator seven days' written or telephonic notice preceding a designated weekend, and provided that the possessory conservator elects an option for this possession either before the rendition of the original or modification order or by written notice given to the managing conservator within 90 days after the parties begin to reside more than 100 miles apart, as applicable, and provided that the weekend possessions do not conflict with Subsections (e)(1) through (3) and (e)(8) through (10) of this section;

(2) the terms of Subsections (e)(1) through (3) and (e)(8) through (10) of this section are applicable when the possessory conservator resides more than 100 miles from the residence of the child;

(3) every spring school vacation from 6 p.m. on the day school recesses until 6 p.m. on the day before school resumes after that vacation;

(4) if the possessory conservator:

(A) gives the managing conservator written notice by May 1 of each year specifying an extended period or periods of summer possession, the possessory conservator shall have possession of the child for 42 days between June 1 and August 31, to be exercised in no more than two separate periods of at least seven consecutive days each; or

(B) does not give the managing conservator written notice by May 1 of each year specifying an extended period or periods of summer possession, the possessory conservator shall have possession of the child for 42 consecutive days beginning at 6 p.m. on June 15 and ending at 6 p.m. on July 27;

(5) if the managing conservator gives the possessory conservator written notice by May 15 of each year or gives the possessory conservator 14 days' notice on or after May 16 of each year, the managing conservator shall have possession of the child on any one weekend from Friday at 6 p.m. to 6 p.m. on the following Sunday during any one period of possession by the possessory conservator under Subdivision (4) of this subsection, provided that if a period of possession by the possessory conservator exceeds 30 days, the managing conservator may have possession of the child under the terms of this subdivision on any two nonconsecutive weekends during that time period, and further provided that the managing conservator picks up the child from the possessory conservator and returns the child to that same place, and

(6) if the managing conservator gives the possessory conservator written notice by May 15 of each year or gives the possessory conservator 30 days' written notice on or after May 16 of each year, the managing conservator may designate 21 days between June 1 and August 31, to be exercised in no more than two separate periods of at least seven consecutive days each, during which the possessory conservator shall not have possession of the child, provided that the period or periods so designated do not interfere with the possessory conservator's period or periods of extended summer possession or with Father's Day if the possessory conservator is the father of the child.

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(g) General Terms and Conditions. Except as otherwise explicitly provided, terms and conditions of possession of a child that apply irrespective of the distance between the residence of a parent and the child are as follows:

(1) the managing conservator shall surrender the child to the possessory conservator at the beginning of each period of the possessory conservator's possession at the residence of the managing conservator;

(2) the possessory conservator shall be ordered to do one of the following: the possessory conservator shall surrender the child to the managing conservator at the end of each period of possession at the residence of the possessory conservator; or, in the alternative, the possessory conservator shall return the child to the residence of the managing conservator at the end of each period of possession;

(3) each conservator shall return with the child the personal effects that the child brought at the beginning of the period of possession;

(4) either parent may designate any competent adult to pick up and return the child, as applicable; a parent or a designated competent adult shall be present when the child is picked up or returned;

(5) a parent shall give notice to the person in possession of the child on each occasion that the parent will be unable to exercise that parent's right of possession for any specified period; repeated failure of a parent to give notice of an inability to exercise possessory rights may be considered as a factor in a modification of those possessory rights;

(6) written notice shall be deemed to have been timely made if received or postmarked before or at the time that notice is due; and

(7) if a conservator's time of possession of a child ends at the time school resumes and for any reason the child is not or will not be returned to school, the conservator in possession of the child shall immediately notify the school and the other conservator that the child will not be or has not been returned to school.

(h) Means of Travel. In an order providing for the possessory conservatorship of a child the court may restrict the means of travel of the child by a legal mode of transportation only after a showing of good cause contained in the record and a finding by the court that the restriction is in the best interest of the child. Further, the court shall set forth in its order the specific duties of the conservators to provide appropriate transportation to and from the relevant transportation facilities.

(i) Alternative Possession Times. If a child is enrolled in school, the possessory conservator consents, and the court finds that it is in the best interest of the child, the standard order may expressly provide that the possessory conservator's period of possession shall begin or end, or both, at a different time expressly set in the standard order under and within the range of alternative times provided by one or both of the following subdivisions:

(1) instead of a period of possession by a possessory conservator beginning at 6 p.m. on the day school recesses, the period of possession may be set in the standard order to begin at the time school recesses or at any time between the time school recesses and 6 p.m.; and

(2) instead of a period of possession by a possessory conservator ending at 6 p.m. on the day before school resumes, the period of possession may be set in the standard order to end at the time school resumes or at any time between 6 p.m. on the day before school resumes and the time that school resumes.

(j) Application of Alternative Possession Times. The alternative possession times provided by Subsection (i) of this section may be applied to regular weekend possession under Subsections (c)(1) and (f)(1) of this section but may not be applied to Wednesday evening possession under Subsection (c)(2) of this section.

(k) Rebuttable Presumption. In any suit affecting the parent-child relationship, there is a rebuttable presumption that the "standard order" set forth in this section provides reasonable minimum possession of a child for a parent named as a possessory conservator and that the order is in the best interest of the child. A court may determine that the application of these guidelines would be unworkable or inappropriate under the circum-

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2. Visitation

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stances and not in the best interest of the child. Without regard to Rules 296 through 299, Texas Rules of Civil Procedure, in all cases in which possession of a child by a parent is contested and the possession of the child is set by the court in variance with the guidelines, on written request made or filed with the court not later than 10 days after the date of the hearing or on oral request made in open court during the hearing, the court shall state in the order the specific reasons for all deviations from the standard possession order.

(*l*) Temporary Orders. The rebuttable presumption established in this section is applicable to temporary orders for possession of a child by a parent. This subsection does not impair the authority of the court to enter other temporary orders under this code.

(m) Unusual Circumstances. If the work schedule or other special circumstances of the managing conservator, the possessory conservator, or the child make the standard possession order unworkable or inappropriate, the court shall render an order that grants periods of possession of the child as similar as possible to those provided by the standard order.

(n) Agreements. This section does not prohibit the parties from agreeing to periods of possession of a child that vary from the standard order or prohibit court approval of the agreement concerning conservatorship as provided by Section 14.06 of this code.

(*o*) Modification. The court may consider the guidelines to determine if there has been a material and substantial change in circumstances or if the order has become unworkable or inappropriate under Section 14.08(c)(3) of this code in determining whether a modification of the existing order for possession of or access to a child by a parent is in the best interest of the child. If the terms and conditions for possession of a child by a parent contained in the order sought to be modified are not in substantial compliance with a standard possession order, this may warrant a modification of the prior order in accordance with the terms of a standard order if the modification is in the best interest of the child.

(p) Posting Notice. A copy of these guidelines shall be prominently displayed at or near the entrance to the courtroom and on the official bulletin board, if any, in those courts having jurisdiction over the setting of possession of a child.

Added by Acts 1989, 71st Leg., ch. 617, § 4, eff. Sept. 1, 1989.

Notes of Decisions

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Visitation 2

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1. Departure from guidelines

Mother was not deprived of due process by trial court when it entered a visitation order which differed from the guidelines of the district. Matter of Marriage of D—M—B— and R—L—B— (App. 7 Dist.1990) 798 S.W.2d 399.

2. Visitation

Trial court did not abuse its discretion in refusing to modify former husband's visitation schedule with his sons, where visitation schedule set forth in original decree and clarifying order varied only slightly from visitation scheduling guidelines and instances allowing husband more time than under guidelines, original schedule was closer to guidelines than was husband's requested schedule, and there was no evidence that previous visitation order was unworkable or that there had been substantial change in circumstances. MacCallum v. MacCallum (App. 13 Dist.1990) 801 S.W.2d 579, application for writ of error filed.

3. Presumptions and burden of proof

Former husband, seeking to modify periods of possession of his sons, had burden to establish either that previous order was not in compliance with guidelines and that trial court had not specified reasons for deviation or that there was material and substantial change in circumstances and that previous order on visitation had become unworkable, and had burden to establish that granting motion was in best interest of sons. MacCallum v. MacCallum (App. 13 Dist. 1990) 801 S.W.2d 579, application for writ of error filed.

4. Contempt

Language in court order granting former wife weekend custody of children on first and third Friday of each month during husband's extended summer possession of children did not create clear obligation on the part of husband to deliver children to wife's home at beginning of weekend possession, and, thus, the order was not enforceable by contempt; decree and order did not impose clear and unambiguous duty. Ex parte MacCallum (Sup.1991) 807 S.W.2d 729.

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Patricia Nagle
New Jersey State Legislature
Office of Legislative Services
CN-068
Trenton, NJ 08625-0068

August 7, 1994

I have been falsely accused & as a result, I would like to make a few recommendations:)

Dear Patricia:

Enclosed is my list of laws that should be changed or should be better enforced, and also I feel that a person cannot adequately address all of their concerns in just five(5) minutes as in the Ocean County meeting. I feel that all participants should be given at least 8-10 to be able to share their views with committee more acurately, and less rushed. My concerns are the following: My support is pd to date visitation has been denied for 1 yr. & all medical bills ½

X 1) Child Support should be taxed as income for the Custodial/recipient of the Child Support The Father has to pay tax on it, the Mother gets it as a "Gift" tax free at that. We certainly could take the proceeds from this and work on paying off the National Debt with these monies.

— They are used to manipulate the courts financially and so on.

X 2) There should be Mandatory penalties for Judges, Lawyers, and Litigant's for False Allegations, and False Child Abuse and Sexual Abuse Charges. Jail time and Fines should be be imposed for allegations bought forth that were not proven by hard, cold, facts, and evidence. This would deter less Restraining Orders being filed just for the sake of keeping the other party involved out of the home.

X 3) The Child Support Enforcement Unit should also enforce Visitation that should enforce litigant's rights without having to go to trial or a hearing. Warrants should be issued for non-compliant parents for Child Support and Visitation agreements that are not kept. Jail Time is an effective deterrent that will remind parents that they will be jailed if they do not comply with Child Support Payments or Visitation. even though we cannot be jailed for debt - see no

4) If any custodial or joint custodial parent moves out of state and takes/kidnaps their child(ren), The penalty for this action shall be that they give up or forfeit custody to the other non-custodial parent if they were not notified, and in agreement with that action.

X 5) Limits should be set as to how long Therapist's visit's should continue and how frequent they should be in accordance with the means and ability of both parties to pay, with equal weight given to both sides, and supported by current CIS statements, and most recent paystubs and Tax Forms(1040's and or W-2's).

6) There is currently a law that states every three years Child Support be reviewed, and each parent's respective salary whether there is a need to increase support levels due to changed circumstances. This can only really work if both parents incomes is truly and actually considered. If a custodial parent is earning more money, but the non-custodial parent has not, why should he have to pay more just because the guidlines calculate that they are now in a new bracket and have to pay more. Also if one parent is making less or has stayed they same, support should be able to be decreased or have no change at all. The only time a higher award to increase should be allowed, is if a significant change in circumstances would allow such change to come into effect. i.e. If Custodial parent would allow non-custodial parent to have Joint Physical and Joint Legal Custody. Even at that expenses would probably be shared, and there would be no need for money to exchange hands at all.

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7) The following item should be considered very carefully when a judge awards custody, alimony, or any type of monetary support; or any other action such as:

X

By The Non-Custodial Parent

A) In Pascale v. Pascale, A-872-92T5, June, 1994, The Appellate Courts ruled that the tir and money spent for clothing, food, and medical treatment, was considered as paying twice for these expenses. Also support should be reduced based on the fact that a parent who does not have full custody of his children still does pay money for the child(ren) while he has them in his custody.

B) The Child Support Guidelines IS NOT WORKING, and should be aided by the Pressumption c Joint Custody Bill which will give each parent Joint Physical and Joint Legal Custody of their child(ren), and therefore, Child Support will be eliminated, by having each parent care for ALL aspects of the child while in or out of their custody each, respectively.

C) Who is awarded custody the majority of the time and why.

D) Is the judge gender biased in their decision, was it ruled on fact, or solely their Discretionary Powers.

E) Was the evidence weighed equally, and testimony given in a Domestic Violence Hearing.

F) Accountability of ALL judges for upholding all parties Constitutional Rights, and NJ Court Rules, and Statutes.

G) Relief from Ex Parte Agreements made in court that a Judge signs, that there is NO KNOWLEDGE OR CONSENT from either party.

H) The Appeal process and if it is nothing more than a FORMALITY, or if it is an actual chance to overturn a Judges prior decision.

I) Mediation and Consent Orders should be given to all parties, and they should be made a are of them as options to discourage them from lengthy litigation.

J) Determine more on the Motions filed, on the Papers, without Oral Argument, and then Appealed if there is not an Agreement.

X K) If a NON-CUSTODIAL PARENT has a permanent Disability, Prolonged sickness,(3 or more w or any other sickness that would allow him to be incapacitated so that he cannot work, he should AUTOMATICALLY be put on CHARITY STATUS as far as support pymts go and this sho be done IMMEDIATELY, as well as him not be penalized for ARREARAGES.(i.e. $10 wk support

L) If a NON_CUSTODIAL PARENT is JAILED he should not be subject to ARREARS AT ALL for his Supports, EXCEPT that he also be put on CHARITY STATUS for current and past Support that due from him. This way he has a figting chance of coming out and catching up, the other way the vicious cycle continues, Jailed, Fall behind in support, be released, over and o again.

M) IRA'S, 401K's, and Retirement Pensions should be assumed automatically that they are NOT NEGOITIABLE to be Equitabally Distributed, unless objecting spouse can prove that th contributed to the IRA, or financial instrument.

N) Expense for Child Care can be significantly DECREASED if both spouses help each other watch the child while the other is working when possible.

X O) If EX-SPOUSE REMARRIES, and she/he is doing better financially then she was before, and the current financial situation the NON_CUSTODIAL SPOUSE has is the same, his/her support should be REDUCED.

P) NON-CUSTODIAL and CUSTODIAL PARENTS should notify the court within 10 DAYS of getting new JOB.

X Q) The Child Support and Visitation Unit I discussed earlier could withhold support and they NON-COMPLIANT PARENT MUST BE NOTIFIED THAT IT IS the penalty they receive for non compliance, and PAYMENTS WILL RESUME ONCE THEY LET THEIR FORMER SPOUSE HAVE VISITATI

See Fiore v. Fiore 49 N.J. Super, 219(App.Div 1958)

R) There should be term limits on ALL ALIMONY. Rehabilitative and Std. 6 MONTHS MAXIMUM.

X S) Equitable distribution should be decided on who actually paid for what they own, not equal and fair distribution, if they did not earn it or pay for it why should they be entitled to it.

X T) Presumption of Joint and Physical Custody and Emancipation at age 18 should help out much in determining expenses, custody, and future college costs.

X U) College and post College should not be ORDERED BY A JUDGE, but paid for if: The Child(ren) wants to go to College, If both parents can afford to send their children to College, and if BOTH PARENTS want to send their child(ren), not be mandated to do so by the courts.

V) Case law and Evidence submitted should carry more weight when defending False Alegations; instead of the current method which is, I dont care you are guilty until proven innocent.

X W) Currently when a father does NOT have Custody or Joint Physical Custody, and even when he does, he CANNOT have consideration for the Child Support that he pays as an EXPENSE and therefore ends up with LESS assistance. i.e. Food Stamps, Health Care, and any other type of assistance financially. Child Support is always considered as part of his income NOT AN EXPENSE which is wrong and should be corrected. Worked 6 out of the last 18 months

X) Men who do NOT pay their support cannot be jailed according to The New Jersey State Constitution which states: Under Article 1, paragraph 12 amended December 3, 1992 says; Section 13 NO PERSON SHALL BE IMPRISONED FOR DEBT IN ANY ACTION, OR AN ANY JUDGMENT FOUND UPON CONTRACT UNLESS IN CAESES OF FRAUD; NOR SHALL ANY PERSON BE IMPRISONED FOR A MILITIA FINE IN TIME OF PEACE. This is under the NJ State Constituion Individual Rights which are violated and not UPHELD every single day in this state.

Respectfully Submitted,

Matthew A. Mattero

Matthew A Mattero

MAM/ltr

238X

Michael Sylvia
9-20-94

COMMITTEE MEMBERS:

Over the past two and a half years, I have been undergoing a divorce action in Sussex County, under Judge Lorraine Parker. When my wife left me she took the money that I gave her to pay the mortgages on 2 homes and utility bills, about $4,000 and rented a moving van, backed it up to my house and moved my furniture and children from my home in Sparta to my 2 family house in Kearny.

I voluntarily agreed to give my wife what she asked for, $400 per week. I rented out my Sparta home and moved into a furnished room in a boarding house. I tried to catch up on the bills on the Sparta house, while continuing to support my family and pay my living expenses as well as my business expenses.

My wife asked me not to go to a lawyer, then she turned around and sued me for divorce. Because I moved it took the sheriff some time to locate me to serve me with the divorce papers. By that time the date for my court appearance came and went. In my absence the Judge awarded my wife $1,000 per week child support. After hiring an attorney to defend me, I went to court to have the support lowered. The Judge then ruled that my wife should collect the rent from the Sparta house, $1200 per month as well as rent from the Kearny house $700. She also ruled support to be 60% of my net

disposable income, about $1,000 per week while ordering me to pay the mortgage on the Sparta house, $1800 per month.

Child support was awarded through a garnishment of my salary after all deductions I was bringing home $400 per week and was unable to catch up on the mortgage. Subsequently the Judge put out a warrant for my arrest. I voluntarily appeared in court, with my second attorney, and was reprimanded to jail for contempt of court, failure to bring the Sparta house out of foreclosure. While allowing the sheriff to handcuff me, I looked over to my wife and said. "My children will grow up some day." The sheriff decided that my action constituted resisting arrest and along with the deputy, pinned my neck to the table to complete the handcuffing in full view of the Judge.

Since I didn't have the money to bring the house out of foreclosure, I was forced to negotiate my release from jail with a vindictive spouse. In order to meet with my attorney, I was forced to strip naked while the jail guard ordered me to bend over and spread my buttocks while he checked for contraband.

I pleaded with my wife, over the phone, to negotiate with me in good faith in order for me to win my release from jail. I was forced to stay in jail for 7 days. The cost of my release was my income tax refund of $5,000, plus $1200

cash and the ownership of my Kearny property worth $50,000 in equity. The negotiations were completed by Friday but the Judge refused to release me until Monday for purely punitive reasons to teach me a lesson. I was again returned to court, this time in the orange pajamas of a prison inmate, shackled in hand cuffs, where I agreed to the ransom payments to my wife.

While this divorce action was going on, my wife was calling me at work daily and yelling at me to give her more money. Some days she would call up to 5 times in a day with the same scenario, "Give me more money." Finally I got tired of her emotional disturbances and I yelled back at her, over the telephone that I would chop off her head and burn the house down. She finally got the response that she was after and filed a domestic violence complaint against me in Hudson County court. I was convicted and custody of my children was given to my wife. I have been granted 3 hours of weekly visitation with my children.

In 1993 my wife received $40,000 child support from a salary garnishment plus rental income of $30,000 plus a part time salary of $5,000, from her job as a paralegal and $6200 awarded for my release from jail. This amounted to over $80,000. She was able to quit her job and remained unemployed for 6 months. Meanwhile I netted $40,000 from my income as a sales manager for an insurance company. In

order for me to earn this money I had to work 60 hours per week. My business expenses in 1993 were calculated by Judge Parker to be $15,000 which was deducted from the $40,000 net pay that I received.

As a result of this divorce proceeding to date I have lost custody of my children, 2 houses, and 60% of my net pay. in addition to that my car has been repossessed and I have been evicted from my apartment. My wife has contracted for $22,000 of legal fee's, in which she expects me to pay. I have been to court on 16 different occasions in 2 different counties over the past 2 and a half years and there is no end in sight.

I can no longer afford to pay for my own legal defense and am now forced to defend myself in court. Since July 18th, I have had a motion pending with Judge Parker for a reduction in my support payments since there has been a downsizing at work and my income has dropped significantly. Also the Judge has ruled that I have over paid my wife by $3500 since the beginning of 1994.

Despite proof of these hardships and despite the fact that my wife is working again and earning $300 net per week, and despite the fact that she gets $427 from me and $700 a month rent, the last time I was in Judge Parkers court, the Judge ordered me to pay my wife's auto insurance bill $200 and her

gas and electric bill $170 and her cable T.V. bill $70. Although I only net $325 a week in salary, I paid her auto insurance bill in full and I made partial payments on her gas and electric bill, to keep the lights on and her cable T.V. bill to keep the T.V. playing, I have been informed by the sheriff of Sussex county that there is a warrant out for my arrest for failure to pay the balance of my wife's expenses of $185.

There is a double standard in the New Jersey courts today. Women are portrayed as victims and men as victimizers but I proclaim to you that men are victims too. Victims of a court system that puts women rights first and foremost and victims of a system that punishes men for being involved in a divorce action.

Why in the over overwhelming majority of divorce cases do wifes
bring action against husbands? Why are the majority of people imprisoned during a divorce action men? Why are we men thrown out of our homes and forced to pay ransom to our wifes for child visitation? Why do so many men lose faith in a judicial system that awards women for divorcing there husbands? Why do so many men give up and run from there parental responsibilities and leave there families to become burdens on society and become burdens on society themselves?

The system is broken and you, the members of this committee have the responsibility to fix it.

20 September 1994

AJR 26 Commission
State Capitol Building
Trenton NJ 08625

To the Members of the Commission:

I am testifying today on the subject of alimony, which is very much in need of dealing with the realities of present day divorcing couples. The New Jersey statutes relating to divorce law are deficient in many respects, namely:

a. They are vague and leave too much to the discretion of unelected officials. Public policy is not being made by the state legislature where it rightfully belongs.

b. Because of the ambiguity of the statutes, widely varying and inconsistent awards are made for divorcing couples with similiar circumstances. With the same circumstances and disparity in incomes, some divorces result in no alimony, and others the amount awarded leaves the paying party destitute to the point where he cannot pay his reasonable living expenses.

c. The statutes assume a world which has long since passed by, that is, it assumes that the wife cannot earn a reasonable living on her own, which is not the case today. Many women do earn a decent living because equal job opportunities are required by law. The modern workplace is filled with women who do earn a reasonable living. At the time of divorce, many wives are already earning a decent living.

d. The statutes do not provide the same protections to the obligor of a divorce that are accorded to common criminals. The payor does not know when his financial obligation will end, his obligations can and do continue indefintely, even past retirement at the whim of the courts. The payment of alimony is punishment in every sense of the word, that is, it causes both pain and loss to the obligor.

e. Current practises of the family courts together with the statutes as presently written are having a devastating impact on the institution of marriage. The rate of marriage is declining and the rate of divorce is rising. Divorce is now a very attractive alternative to marriage, which is why so many divorces are taking place. See the attached charts to see how bad the situation has become.

It is commonplace for young never-married men to discuss the plight of a divorced friend who was "cleaned out" by the legal system. Marriage is seen as the road to financial suicide by many young bachelors, and the rising incidence of cohabitation and illegimate births is the result of this perception.

245X

To remedy the problems outlined above, I have taken some of the present New Jersey statutes and modified them to overcome the problems outlined above. The newly added provisions are indicated by the underlines. Present provisions which should be left intact are not underlined. Deleted provisions are not included.

The most important change is the creation of a new category of alimony called term alimony. It should be awarded in those cases where the lower income spouse is already making an income to maintain a reasonable standard of living, but is awarded when that income is a specified portion of the other higher income. A cap on the length of this term is set at 4 years. At the time of divorce, the court sets a month and year when this alimony terminates, and automatically goes into effect when the alimony payment is made through the probation department. This gives the obligor the same rights as a common criminal.

Presently, permanent alimony is awarded based on length of the marriage, but the statute does not give any guidance as to what the minimum length should be for this award. Permanent alimony has been awarded for marriages as short as six years, but the usual length seems to be about fifteen or more years. A couple gets married at about age 25 and gets divorced at about age 40. There are teen-age children in the household, and the usual arrangement is that the husband pays both child support and permanent alimony. Very often, alimony payments can last longer than the duration of the marriage being terminated.

This arrangement guarantees that the ex-husband will be financially handicapped for the rest of his life, with reduced chances to enter into a successful second marriage. If he marries a woman who is receiving alimony, she will lose her alimony, but he must keep on paying his. Public policy penalizes the second wife, and favors the defunct marriage. Moreover, the ex-wife has no incentive to get remarried, because she can count on the legal system to guarantee that she will get her alimony payment. Thus, permanent alimony has the practical effect of discouraging both parties from getting remarried, which is poor public policy.

The law gives the second wife no rights at all with respect to the first wife. The first wife can create a lifetime of problems for her ex-husband and his second wife if she elects not to get remarried. If the ex-husband should complain, he is told that his second marriage is "voluntary" and the second wife does not deserve any consideration. This point of view ignores the fact that the first marriage was also "voluntary" and public policy should not give preferential treatment to the first one. If anything, public policy should favor current marriages and not defunct ones.

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An award for permanent or rehabilitative alimony previously stated may be modified based either upon changed circumstances or upon the non-occurrence of circumstances that the court found would occur at the time of the alimony award. An award for term alimony is not modifiable and the date for termination of such shall be set by the court when the award is made.

In all actions where a judgement of divorce or divorce from bed and board is entered, the court may make such award or awards to the parties, in addition to alimony and maintenance, to effectuate an equitable distribution of the property, both real and personal, which was legally and beneficially acquired by them or either of them during the marriage. However, all such property, real, personal, or otherwise, legally or beneficially acquired during the marriage by either party by way of gift, devise, or intestate succession shall not be subject to equitable distribution, except that interspousal gifts shall be subject to equitable distribution.

2. N.J.S. 2A:34-25 is amended to read as follows:

If after the judgement of divorce a former spouse shall remarry, permanent or term alimony shall terminate as of the date of the remarriage except that any arrearages that have accrued prior to the date of remarriage shall not be vacated or annulled. The remarriage of a former spouse receiving rehabilitative alimony shall not be cause for termination of the rehabilitative alimony by the court unless the court finds that the circumstances upon which the award was based have not occurred or unless the payor spouse demonstrates an agreement or good cause to the contrary.

Alimony shall terminate upon the death or retirement of the payor spouse, except that arrearages that have accrued prior to the date of payor spouse's death or retirement shall not be vacated or annulled.

When the income of the payor party ceases or falls below the income of the party receiving alimony, due to involuntary unemployment, the obligation to pay alimony shall be suspended until such time as the payor regains the ability to pay.

3. N.J.S. 2A:34-26 is amended to read as follows:

When a spouse cannot be found within this State to be served with process, the spouse's estate, property and effects within this State and the rents and profits therof may be attached to compel the spouse's appearance and performance of any judgement or order may be made in this action. Where the proceedings are by process of attachment and the defendant does not appear, the judgement shall be enforceable only out of and against the property attached. If the delinquent spouse has remarried, the marital residence may not be attached and is exempt from judgement.

4. This act shall take effect immediately for all alimony and insurance awards made after this date. For alimony agreements already in force, this act shall take effect and shall apply in four months after this act shall become law.

DOMESTIC RELATIONS

Alimony

Amends matrimonial law concerning alimony and arrearages.

SENATE NO. ????? (3/8/94)

STATE OF NEW JERSEY

Introduced by Senator ??????

AN ACT protecting the rights of the alimony obligor and his or her current spouse.

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

1. N.J.S. 2A:34-23 is amended to read as follows:

b. In all actions brought for divorce, divorce from bed and board, or nullity the court may award permanent, rehabilitative, or term alimony to either party, and only in those cases where there is a substantial difference in the incomes of the parties. The following factors shall be considered in determining the type of alimony to be awarded:

(1) Permanent alimony shall be awarded in those cases where the obligee in a long-term marriage has insufficient income to maintain a reasonable standard of living in the foreseeable future due only to physical or mental handicaps, or other provable lack of employability.

(2) Rehabilitative alimony shall be awarded in those cases where the obligee in a short term marriage lacks the work skills to earn an income to provide a reasonable standard of living. The term of alimony shall be determined by the time necessary to acquire education or training, and the time to find appropriate employment.

(3) Term alimony shall be awarded in those cases where the obligee has an income which will provide a reasonable standard of living, but earns two-thirds or less than the income of the obligor.

The term of alimony may vary according to the length of the marriage, but shall not exceed four years.

The amount of alimony awarded shall be determined by the following factors:

(1) The ability of the obligor to pay without impairing the ability of the obligor to pay his or her reasonable living expenses;

(2) The difference in the amount of the incomes of the parties;

(3) The expense necessary to acquire sufficient education or training to enable the party seeking maintenance to find appropriate employment;

(4) The opportunity to acquire future assets and income;

(5) The equitable distribution of the property ordered and any payouts on equitable distribution, directly or indirectly, out of current income, to the extent that this is reasonable, just and fair;

(6) The history of the financial and non-financial contributions to the marriage by each party including those for the care and education of the children;

(7) In the case of mental or physical disability, the court may consider the possible burden upon the State where the obligee is or may be institutionalized;

(8) Any other factors the court may deem relevant.

When a share of a retirement benefit is treated as an asset for purposes of equitable distribution, the court shall not consider income generated thereafter by that share for purposes of determining alimony.

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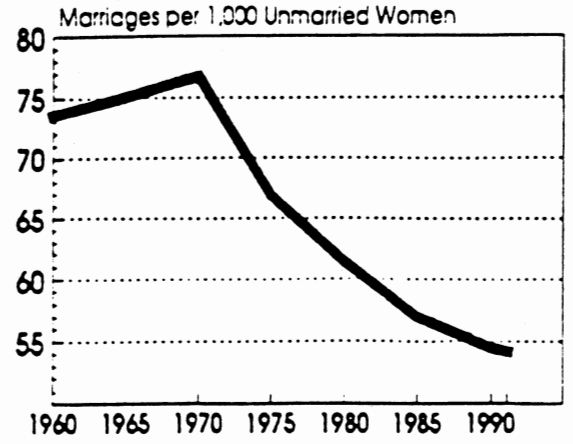
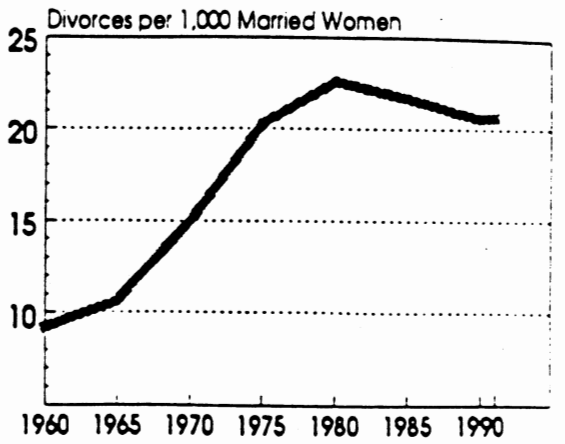
Marriage and Divorce Rates





Sources: National Center for Health Statistics.

Marriage and Divorce Rates

Year	Marriages	Divorces	Marriages per 1,000 unmarried woman	Divorces per 1,000 married woman
1960	1,523,000	393,000	73.5	9.2
1965	1,800,000	479,000	75.0	10.6
1970	2,158,802	708,000	76.7	14.9
1975	2,152,662	1,036,000	66.9	20.3
1980	2,413,000	1,182,000	61.4	22.6
1985	2,425,000	1,187,000	57.0	21.7
1990	2,448,000	1,175,000	54.6	20.9
1991	2,433,000	1,168,000	54.2	20.9

Source: National Center for Health Statistics.

Analysis: The number of divorces in America has increased nearly 200 percent in the last 30 years, while today, the percentage of people marrying is at an all-time low. According to the U.S. Bureau of the Census, in 1960 there were 73.5 marriages for every 1,000 unmarried females and 9.2 divorces for every 1,000 married females. By 1987, there were only 55.7 marriages per 1,000 unmarried women and 21 divorces per thousand married women. In 1960, 70 percent of all marriages were first marriages while today, about 50 percent are first marriages. The divorce rate peaked in the early 1980s, and by 1991 the divorce rate had dropped to its lowest point since 1979.

Permanent alimony is premised on the theory that the ex-wife cannot obtain employment or that she is not capable of increasing her income, both very dubious assumptions. In matter of fact, both partners of a divorce are usually employed with the husband making the larger income, which is the rationale for awarding alimony. Few people would argue that she should not get alimony, but what is disputedd is the length of time that she should get it.

Permanent alimony is justified only if the ex-wife cannot fend for herself and cannot maintain a reasonable standard of living, which is seldom the case. For most divorcing couples, term alimony rather than permanent alimony is the appropriate public policy, and should be capped at some upper limit, like four years. This limit would enable the ex-wife to adjust to her new circumstances and give her an incentive to either increase her income or get remarried or both.

It should be noted that permanent alimony is similiar to permanent welfare. Present draft legislation in the U.S. Congress would outlaw permanent welfare, and proposes to limit welfare to two years, which is more draconian than the attached proposal. Why should a divorced obligor be expected to provide more generous benefits than the goverment is willing to provide? The rationale for this reform is to end the cycle of dependency of welfare beneficiaries. The same reason should also apply to recipients of permanent alimony.

One of the important deletions of current divorce law concerns the standard of living clause, which all too often is applied only to the party receiving financial support with no regard to the impact on the paying party. For that reason, the draft legislationI replaces the standard of living clause with a provision that requires that awards shall not impair the ability of the obligor to pay his or her reasonable living expenses. I am told that current practises are intended to allow the payment of reasonable expenses. My exposure to the male divorced community says that this intention is often violated. If it is the policy, then it should be explicitly stated in the law.

The current requirement to maintain the standard of living attained during marriage is totally unworkable, for several reasons. First, it is impossible to maintain the same standard of living when two incomes which once maintained one household are now required to maintain two households. Second, the standard of living attained during marriage varies drastically with the current circumstances of the marriage. Health problems, job loss, college expenses are just some of the factors which cause living standards to fluctuate drastically during marriage. The standard of living requirement is nothing more than a legal fantasy.

Despite phoney statistics put out by radical feminists, (see the Christina Hoff Sommers book, Who Stole Feminism) the real problem today is the award of unreasonable payments by the courts. The payor is forced into bankruptcy or becomes an unwilling fugitive because he is ordered to pay beyond his ability. He is imprisoned at taxpayer expense for no purpose whatsoever, except to gratify some ideological sense of justice. During imprisonment, the government is deprived of taxing the income of the ex-husband. The phone lines to various men's help groups are loaded with stories of men in this predicament.

From answering telephone calls from divorced men, and also from the mothers, sisters, and second wives of divorced men, it is commonplace for them to provide financial assistence to the divorced male relative so that he can meet his court ordered financial obligation. Something is very wrong with the legal system that allows this kind of circumstance to happen.

Another area in need of reform is that relating to retirement. Current case law provides that alimony may cease upon retirement, however, this requirement is subject to interpretation by the courts, and alimony can awarded beyond retirement if the courts so decide. In my own case, I was ordered to pay permanent alimony and the divorce decree did not provide for termination at retirement even though I had been advised that this would be the case. My divorce decree was written and issued without my review and contained provisions which I had not agreed to. My attorney most certainly did not advise me about my various options, and went out of his way to conceal relevant and important matters from me.

I then consulted another attorney who advised me of this important ommission in the divorce decree. Among other matters (which included a fraudulent pension evaluation), we petitioned the court for relief in these matters. The court denied all requests for relief WITHOUT Finding of Fact and Conclusion of Law. When we requested a reason for the denial of the clause terminating alimony at retirement, the court advised my attorney and me that such a request was "premature". In other words, I was put in a position that I cannot plan my retirement, something which I think I have a constitutional right to. Examination of current NJ divorce law makes no reference to "premature" agreements. I am a victim of "seat-of-the-pants" law by the court.

The remedy in this case and many others is to include a provision in the statutes which mandates unconditional termination of alimony at retirement, along with death and remarriage of the ex-spouse receiving support. Again, limits have to be put on the power of unelected officials to make arbitrary and unreasonable decisions.

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Finally, to set right the injustices that are currently being perpetuated by present statutes and practises of the family court system, a grandfather clause should be included in reform legislation which would modify court orders now in effect to allow changes which are proposed in the area of alimony, retirement, child support, and so on. Perhaps some kind of grace period would be appropriate to allow those parties now receiving support to adjust to the new legal circumstances. The suggested grace period is set at four months after the legislation becomes law.

The suggested draft legislation does not include other necessary reforms which would require changes in the divorce process to mandate more disclosure and curb unethical practises by some divorce attorneys. One very badly needed reform is a requirement that final divorce decrees be signed by the divorcing parties before the decree becomes binding. This would stop many unethical practises.

Another needed reform is the collection of all matters relating to New Jersey divorce into one coherent statute, which is readily available to all interested parties upon request, particularly those engaged in the divorce process. A copy of this statute should be made available through the offices of Legislative Services upon receipt of written or telephone requests. It should not be necessary to obtain a copy of relevant law from third party legal services such as Westlaw or Lexis.

Finally, a standard divorce form should be devised and made available to the divorcing parties well before any courtroom appearances. We should stop treating every divorce like it was a brand new legal situation, when in fact, it is about as cut and dried as a real estate transaction. Not only would a standard divorce form save on unnecessary legal costs, but it would avoid omissions and misunderstanding. Unusual or extraordinary provisions can always be handled as an addendum to the standard form.

I would like to thank the members of the Commission for their time and attention.

Submitted by:

Harry Mogensen
128 Watergate
Maple Shade NJ 08052

The Law of Divorce Must Protect Family Rights

The Law of Divorce is a destructive process designed to terminate a family unit by the removal of one spouse from the life of the other, and the removal of one parent from the lives of the children. It ignores the rights of a child to be loved and cared for by their mother and father.

My previous testimony to the Commission was on DIVORCE REFORM - FOR THE SAKE OF THE CHILDREN, and before the Subcommittee on Jurisdiction and Causes of Action, I presented testimony on REFORMING NO FAULT DIVORCE - FOR THE SAFE OF THE CHILDREN.

At the request of your Mr. Frank Louis, I sent you copies of articles from the Family Advocate, a publication of the American Bar Association, including an article titled, Why Children Need Their Fathers, understanding developmental needs from early childhood and the need for a father well into adulthood.

I also sent you, at Mr. Louis' request, a copy of a letter I received from Valerie L. Brown, Esq. legislative counsel for the NJ State Bar Association, responding to my letter to her in which she expressed concern over the devastating effect of the break-up of the family unit on parents and children.

The Law of Divorce as practiced by attorneys and divorce courts has in fact encouraged the break-up of the family unit and perpetuated the most serious social problem in this country - the degradation of the American Father.

The focus of reforming the Law of Divorce must be to facilitate a reconstruction of the family environment which will assure the rights of a parent to love and care for his or her children, and the rights of the children to love, to learn from and to grow up with a mother and a father, one no less than the other.

The needs of our children must supersede those of their divorcing parent. More often than not, mental health professionals have found that children have been preconditioned to bond with one parent, usually the mother, and taught to degrade the other parent, usually the father. The American Bar Association in its concern over the welfare of children of divorce, has published a book written by mental health professionals titled Children Held Hostage: Dealing with Programmed and Brainwashed Children. The ABA has recommended it as must reading for anyone involved in the divorce process.

Unless you have experienced alienation as a child or as a parent, or as an extended family member, you cannot imagine the excruciating pain it causes, one that will never go away.

Don't make it so easy for a parent to seek a divorce. Make them work for it. We need mandatory pre-judgment family counseling, conciliation and mediation, as opposed to confrontation.

We can no longer tolerate attorneys and courts to act as mental health professional and decide what is "in the best interest of the children".

Make the Interspousal Agreement a meaningful instrument in which family values are preserved; in which neither parent is reduced to a degrading role; in which co-parenting responsibilities are clearly spelled out; and in which the penalty for violations of the co-parenting provisions would be to reduce the parental role of the guilty party.

With such reform, the number of cases of "Dead Beat Dads" will be significantly reduced, once they are restored to their rightful role as a father.

Legislation proposed by Commissions in other states have sometimes failed to be enacted due to lack of support from the legislature or by selfish interests who advocate the rights of an individual to abandon the family unit. I urge you to seek support of all those who believe in family values and who advocate the rights of parents to be parents and the rights of children to both parents.

Mental health professionals will tell you that healthy emotional development depends upon the spirituality/sexuality influences on the lives of children. Look to the New Jersey Bar Association, Children's Rights Groups and the legislators to support you in your proposed legislation.

I know that Divine Guidance will be with you in your challenging efforts to restore the family unit to its rightful role in society.

Respectfully Submitted



September 20, 1994

John P. Talerico

256X

Submitted by Alice Tulanowski
4/20/94

SUGGESTIONS FOR COMMITTEE ON DIVORCE REFORM

1. Clearly define the agencies responsible for investigating allegations of abuse. Keep other agencies and family court judges out of the investigative process.

2. Create a resource book of independent evaluators, their years of experience, their qualifications, fees and specialty areas. This resource should be accessible to judges, lawyers and clients.

3. Prior to entering resources in the book (#2) confirm approval by the person/governing agency of their specialty such as New Jersey Psychological Association, New Jersey Psychiatric Association, etc. to assure current licensure, certification and expertise (resumes can be misleading).

4. Do not allow unlicensed, uncertified therapists (such as are employed by Community Mental Health Centers) to become involved in sensitive custody cases which affect people's lives and children's futures.

5. Remove the gender bias from resource centers. Women's resource centers should be changed to People's Resource Centers. Presently these centers are gender biased. Violence occurs by all genders and is directed at all genders. Children and elderly parents are often abused by female counterparts. Where do they go for assistance?

6. Intake coordinators/interviewers at resource centers should be free of a personal history of abuse. Having been abused themselves lends itself to subjective appraisal and over involvement which may not protect the alleged abusers rights or reveal pathological lying by the accuser.

7. Interviewers should have courses in true vs. fabricated abuse and how to determine the difference.

8. Interviewers need <u>extensive</u> training and certification especially related to such accusations in context of divorce/custody litigation and the detection of a history of visitation interference prior to the accusations. Questionaire should address such facts and issues.

9. Create clear-cut guidelines for investigating accusations <u>at the time they are made.</u> Put a time frame for the investigation. Cases should not be allowed to languish in civil court for years.

10. Persons accused should be entitled to due process (in a timely manner) and a trial by jury (if indicated). They should be given a pro bono lawyer if they qualify.

11. Put a time limit on finishing divorce actions. Prolongation of litigation runs costs up and makes cases more complex. It is in the self interest of lawyers and mental health professionals because it runs their bills up.

12. Use mediators in cases where solutions can't be worked out. Award custody to the parent who cooperates the most and is most willing to share the child with the other parent (California example).

13. When judges designate supervisors for child visitation they should first get permission from the designated supervisor. Supervisors should get a list of expectations and responsibilities of that role -- such as do they need to sit on top of the person or can they observe from across the room. In our case our daughter-in-law requested us to supervise (her request was made in our absence) and 18 months later she accused our son of abuse in our presence. We feel we were set up by her.

14. Study the statistics in New Jersey -- 95% of custody goes to the mother. Why? Intact families share family responsibilities. Are judges in a generation gap and living in the past where Mom stayed home and Dad went out and earned the living?

15. Spouses who interfere with visitation should be sanctioned in the same manner as non-supportive spouses. Big issues are made out of monetary support needed and little is said about the need for emotional support by the non-custodial parent.

16. Family court workers should be required to read studies on the effects of divorce on families and the effects of fatherless families on juveniles. There is a need for prevention of future chaos -- education is needed of those dealing with families.

17. Require parenting classes for both parents in custody cases --to be completed prior to custody hearing. Gear classes towards divorce and its effect on children, especially the long-term effects which research has revealed.

18. In cases where brainwashing/programming is evident award more time to the opposite parent to compensate for loss.

19. Monitor closely family courts where complaints keep consistently coming up about mistreatment and/or gender bias.

20. Create a consumer-oriented volunteer committee to monitor and assist the courts. Committee should consist of balance of males, females, divorced, non divorced and varied ethnic diversities.

21. Use more family-oriented mental health professionals for mediation and family court appointments (certified family therapists).

22. Offer solution-oriented problem solving to replace litigation in problem cases. Work with the partners instead of encouraging adversity and separation.

23. Consider extended families of both partners as sources of support to the children. If treated properly this can be a great resource.

24. Require the courts to use the Children's Rights they hand out to parents such as "A child is entitled to the love and affection of both parents." Courts more often support blocked visitation than not which gives a different message than the one on that handout.

25. We don't need more laws. We need proper interpretation of the laws on the books and enforcement of those laws to fathers and mothers alike.

PAUL, HENRY and ALICE TULANOWSKI

To Members and Assemblyman Kavanaugh

Facts given to committee on divorce reform (Toms River, NJ)
July 28, 1994

What false accusations have cost us

Divorce Lawyer	$19,000 +	for son
Criminal Defense Lawyer	10,500	for son
Civil Defense Lawyer	10,000	for us
Independent Psychologist	19,000 +	
Guardian ad litem	9,000 +	
	$67,500	and growing
Given to Independent Evaluator	8,000	
	$75,500	

Growth between testimony

3/94 - Cost of false accusations by March, 1994	$10,500
7/94 - Cost incurred since	$30,000
	$40,500

All because we requested Grandparents visits which were taken away, because we maintained our innocence and stood up for our civil rights.

FACTS: There still is no divorce - it's the oldest case in that courthouse.

Paul doesn't see his daughter

We don't see our granddaughter

Paul pays excess child support

Judge has refused to believe:

DYFS report unfounded)
Prosecutors report unsubstantiated) 1992
MD negative report)

END RESULT:

Child refers to her father and grandmother as bad.
Child supposedly has PTSD (post traumatic stress disorder) at age 4.
Child reportedly has deteriorated, regressed, has nightmares and terror attacks.

ALL THIS "IN THE BEST INTEREST OF THE CHILD"

Alysses behavior when we last saw her prior to false accusations

-Spontaneous
-Smiling and laughing
-Affectionate
-Happy
-Crawled up on Grandpa or Dad - put her head on their shoulder; while he read to her
-Carefree

Alysses behavior now:

-Fears her father and grandmother
-Punches her grandfather
-Has a flat affect and blank stare
-Alienated from all paternal relatives
-Shows signs of obvious emotional disturbance

Surely one cannot blame this change on those of us who have not been allowed to see her.

Requests of this committee:

1. Please listen to complaints - we sent them to Wilentz, Kavanaugh and Whitman.

2. Pay attention to problem areas - our judge was mentioned twice already at this hearing.

3. Please consider the damage being done to non custodial families.

4. Set up a system of time frames or limitations that a judge can drag out a case.

Thank you for your attention!

3/31/94

TESTIMONY OF ALICE TULANOWSKI

Three years ago we viewed our family as normal, average Americans; middle class. We have three married sons and four granddaughters. Both husbands and wives in our families are gainfully employed. We celebrated holidays and birthdays at our home because we had the space. Aunts, Uncles and Cousins are a part of such celebrations.

In May, 1991 our son separated from his wife of 2½ years and the world of this entire family turned topsy turvy. It began with false domestic violence charges against our son. These charges were brought because he went back to the marital home for his clothes (which his wife refused to give him). His wife was hundreds of miles away when he did this. How could domestic violence occur when someone is absent from the premises? Nonetheless, our son was found guilty by the municipal judge thanks to his clever wife and photographs of a bruised arm (no head on photo) produced by her male friend. The photograph was taken 8 months prior to the domestic violence charge. This was the beginning of a nightmare and set the stage for the negative view of our son which I am sure was his spouse's intent. Despite the fact that our son had no record of violence prior to the marriage and has had no incidences since leaving the marital home, he has a label he cannot shake in the courts thanks to an angry, vengeful spouse.

Because the stage was set any and all subsequent accusations made by his wife have been considered to be valid when in fact they are not.

In December, 1992, four days prior to a final divorce hearing, his wife charged him with sexual abuse of his daughter. What is really ludicrous is that if such abuse had occurred it had to happen in our presence, since we supervised all his visits. By December 31, 1992, I was informed that DYFS found no evidence abuse had occurred and that the allegations were unfounded. Concurrently the prosecutor's office claimed the accusations were unsubstantiated and the case should be closed. Documented reports stating this are in the file.

It is now 16 months later. The judge has denied the father parental visits for all those months. These false allegations have cost the family in excess of $10,500.00. We are constantly bombarded with questions from our granddaughter's cousins, "Where's Alysse?" "Why can't she come to my party?"

The real damage has been to a three-year-old child. Because of her mother's angry, vengeful actions to get back at a spouse and his parents, this sweet little girl has gone from happy and carefree to regressed, clingy, insecure, deteriorated and unable

to sleep. I might add these behaviors were described by the mental health professionals evaluating her. We have observed major changes in Alysse's behavior for the worse and she is now alienated from a whole network of supportive relationships she previously enjoyed. Her mental health and well being have been desperately jeopardized and compromised.

What has really troubled us is the obvious gender bias of the court system, the discounting of fathers as valuable in their children's lives, the complete ignoring of the paternal extended family, and the lack of investigation of the famale parent. Example: Two years ago Family Case Management recommeded both parents be given psychological testing. The court only pushed for the father's evaluation until recently. Another example: One year ago our son's lawyer suggested that the real problem was Parental Alienation Syndrom (PAS) - the court ordered an independent evaluator who specialized in sexual abuse (after it had been decided there was no sexual abuse) instead of ordering someone like Dr. Gardner, who specializes in PAS. Example 3: Our daughter-in-law took our granddaughter to an unlicensed, uncertified student of psychology for therapy, without her father's consent. This cost the state money when in fact her father carries insurance on Alysse and she should have been seen by an appropriate expert. When we asked the judge about this novice his remark was "so what?" Our response was "when a person is dealing with a child's future and people's lives, the therapist should be experienced." The judge continued to let this novice see our granddaughter and the therapists reports do not show improvement but rather deterioration of our granddaughter.

The prosecutor's office stated Alysse pointed to a juvenile doll as the perpetrator. Our lawyer requested an investigation of both parties (mother and father). To our knowledge the mother was never investigated nor the half-brother nor cousins who are frequently present with Alysse and are juveniles. Real abuse could be occurring even today, if someone else was the abuser. The court has chosen to ignore this possibility. A year ago (see written testimony April 16, 1993) it was pointed out that Alysse's mother sleeps with a knife under her pillow. When Alysse reported that someone touched her privates with a knife, in June, 1993 (see prosecutor's report), the person implicated was her father who had not been seeing her for months. Further proof that the courts refuse to be neutral and investigate all parties.

I am a masters prepared, certified, licensed mental health professional. My experience with this case has made me ashamed

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of other professionals in my field. My experience with this case has destroyed my faith in the criminal justice system and negated any ideas I had of equal justice for all. The travesty of justice we have encountered in the name of family law I would not wish on any human being.

We hope this panel will truly look at the gross injustices and inertia in the system. Yale law experts stated on National TV that in custody cases eight out of nine abuse allegations are proven false. There is a need for the family court system to consider this. There is a need for the family court system to learn about Parental Alienation Syndrom. There is a need for the family court system to evaluate the credentials of the "court appointed experts" and to develop a referral system of qualified experts. This would not include beginning practitioners in a community mental health system setting who are not required to be qualified. There is a need to "take such cases" out of the adversarial, money producing system and place them in the more just system of mediation such as the state of California embraces. There is a need to consider that some females are not the picture we have of motherhood and apple pie but in fact some mothers can be quite destructive to their children when they are unable to deal with the consequences of divorce, especially when that divorce is not the first. There is a need to recruit family therapists into the mediation rolls.

If Congress truly wants to uphold the concepts of the Family Preservation Act, then courts need to look at the entire family system, and not just the maternal or female role.

3/31/94

TESTIMONY OF PAUL TULANOWSKI

My name is Paul Tulanowski. I am the father of a beautiful four-year-old daughter, Alysse. I love my daughter immensely. I want to be responsible to her and to be there in her time of need. I already support her financially.

I filed for divorce three years ago. In my complaint for divorce I stated what my wife had said many times, "If you leave you'll never see your daughter again." In those three years I have had numerous times of interference with visitation. On one occassion my wife on her own, withheld visits for seven weeks. Most recently the judge denied my visits for 16 months based on false allegations by my wife.

I ask you this - if a father cannot see his child and is denied access to her during a critical growth and developemental period how can he effectively parent when that child gets older. Of course the mother will be at an advantage because she has been afforded the time and contact to bond psychologically with the child.

The court needs to look at the gender bias in its system. It needs to consider the non-neutral stance of some judges. Where are the men's resouce centers? Where are the male advocates? Who is touting the child's need for access to both parents? Surely, the cases I know of have leaned in favor of the mother.

I am not divorced yet. My weekly visits have been reduced to two hours. I pay excess child support. My former lawyer, who I can no longer afford, has stated, "This case is hopelessly land locked in the Somerset County Court System."

Whatever the panel can do to alleviate the pain and agony that some of us have experienced will be gratiously appreciated. I commend you for taking on the challenges of this commission and pray that your work will benefit those of us who have experienced a gender biased system which is far from neutral and not timely in its decisions. The delays in process also create a whole other set of problems, add much unneeded expense and create havoc with people's emotional lives.

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