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

before the

Assembly Judiciary, Law, Public Safety and Defense Committee

on

ASSEMBLY, No. 1899
(An Act to establish a Family Division in the Superior Court.)

and

ASSEMBLY CONCURRENT RESOLUTION No. 166
(A Concurrent Resolution to amend Article VI, Section III, paragraph 3, of the Constitution of the State of New Jersey.)

Held:
Assembly Chamber
State House
Trenton, New Jersey
November 4, 1974

Committee Members Present:

Assemblyman Eldridge Hawkins (Committee Chairman)

Assemblyman William J. Bate (Acting Chairman of Hearing)

Assemblywoman Gertrude Berman

Assemblyman Richard Codey

I N D E X

I N D E X (Continued)

ASSEMBLY, No. 1899

STATE OF NEW JERSEY

INTRODUCED JULY 8, 1974

By Assemblymen BATE and RIZZOLO

Referred to Committee on Judiciary, Law, Public Safety and Defense

AN ACT to establish a Family Division in the Superior Court, prescribing its jurisdiction, powers, and duties, and regulating certain procedures therein, providing for the transfer of jurisdiction and employees of the several juvenile and domestic relations courts and the Matrimonial Part of the Superior Court, Chancery Division and supplementing 2A of the New Jersey Statutes.

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

1. This act shall be known and may be cited as the "Family Court Act."

2. This act shall be liberally construed to the end that families whose unity or well-being is threatened shall be assisted and protected, and restored if possible as secure units of law-abiding members; and that each child coming within the jurisdiction of the court shall receive, preferably in his own home, the care, guidance, and control that will conduce to his welfare and the bests interests of the State, and that when he is removed from the control of his parents the court shall secure for him care as nearly as possible equivalent to that which they should have given him.

The act provides for an elimination of the judgmental, punitive processes of the law and the abrogation of the old theories of guilt and punishment in favor of a therapeutic approach. It attempts to bring about a merging of the legal and social sciences to establish a court of law with sociological orientation.

3. As used in this act, unless the context otherwise requires:

a. "Court" means the Superior Court, Family Division.

b. "Family court" means the Superior Court, Family Division.

c. "Judge" means a judge of the superior court, Family Division or of the family court.

d. "Juvenile" or "child" means an individual who is under the age of 18 years.

e. "Adult" means an individual 18 years of age or older.

f. "Guardian" means a person, other than a parent, to whom legal custody of a child has been given by court order or who is acting in the place of the parent.

4. A Family Division is hereby established as a division of the Superior Court, pursuant to Article VI, Section III, paragraph 3 of the New Jersey Constitution.

5. The Superior Court, Family Division shall consist of such additional judges of the superior court as shall be determined by law and all current judges of the juvenile and domestic relations court who after nomination by the Governor, with the advice and consent of the Senate shall be elevated to the Superior Court for the duration of their respective terms. All further appointments to the Family Division shall be in the same manner as provided for the appointment of judges to other divisions of the superior court.

6. The Family Division shall have exclusive jurisdiction to hear and determine the following:

a. All cases where it is charged that a juvenile has committed an act of delinquency and wherein exclusive jurisdiction was granted to the juvenile and domestic relations court pursuant to section 5 of P. L. 1973, c. 306 (C. 2A:4–46).

b. All matters wherein concurrent jurisdiction was granted to the juvenile and domestic relations court pursuant to N. J. S. 2A:4–18.

c. All "matrimonial actions" which shall be construed broadly to include all actions brought under N. J. S. 2A:34–1 to 27, inclusive, and R. S. 9:2–1 to 11, inclusive; all actions brought for the nullity of marriage, for the protection of the status of marriage by injunction or otherwise, and for the confirmation or otherwise of the validity of marriage by declaratory judgment; all actions brought under the parens patriae jurisdiction for the custody of infants; all actions for the enforcement, modification or vacation of agreements for support and maintenance; and in general, all actions directly involving the status of marriage, awards to and support of spouses and former spouses, the custody and support of children; and claims between spouses and former spouses as to property claimed to be owned by them; and shall include all non-matrimonial actions joined with matrimonial actions.

d. All actions for the adoption of children or adults.

e. All paternity actions, legitimacy proceedings, and actions for termination of parental rights.

f. Any offense, other than a misdemeanor or high misdemeanor, committed by an adult against a member of his immediate family.

g. Support proceedings against or on behalf of nonresidents pursuant to P. L. 1952, c. 197.

7. Subject to the rules of the Supreme Court, the Family Division shall exercise the powers and the function of the Law Division and the Chancery Division when the ends of justice so require, and legal and equitable relief shall be granted in any cause so that all matters in controversy between the parties may be completely determined.

8. The Chief Justice of the Supreme Court shall appoint a chief administrative officer of the Family Division, hereinafter referred to as the Director of the Family Division. The director, with the approval of the Chief Justice shall appoint a sufficient number of assistants and other employees, and may appoint physicians, psychologists, and psychiatrists, to carry on the professional, clerical and other work of the court.

Under supervision of the Chief Justice, the director shall:

a. Prepare an annual budget for the court;

b. Formulate procedures governing the administration of court services;

c. Appoint supervisory, consultant, and necessary clerical personnel;

d. Collect necessary statistics and prepare an annual report of the work of the court;

e. Establish and maintain a centralized record keeping and retrieval system pertaining to proceedings in the Family Division;

f. Perform such other duties as the Chief Justice shall specify.

9. All employees of the Family Division, with the exception of the director, shall be selected, appointed and promoted pursuant to Title 11, Civil Service. No member of the staff may be discharged except for cause and after a hearing before the appointing authority. An employee may be suspended pending such hearing. Discharge of an employee shall be subject to approval by the Chief Justice.

10. The compensation and expenses of all employees of the Family Division shall be paid by the State Treasurer in the same manner as the compensation and expenses of the employees of the other divisions of the Superior Court are paid.

11. The Chief Justice may appoint suitable persons trained in the law, to act as referees, who shall hold office during his pleasure. The Chief Justice may direct that any case, or all cases of a class or within a district to be designated by him, shall be heard in the first instance by a referee in the manner provided for the hearing of cases by the court, but any party may, upon request, have a hearing before the court in the first instance. At the conclusion of a hearing the referee shall transmit promptly to the court all papers relating to the case, together with his findings and recommendations in writing.

Written notice of the referee's findings and recommendations shall be given to the parent, guardian, or custodian of any child whose case has been heard by a referee, or to all parties in a family case. A hearing by the court shall be allowed if any of them files with the court a request for review, provided that the request is filed within 3 days after the referee's written notice. If a hearing de novo is not requested by any party or ordered by the court, the hearing shall be upon the same evidence heard by the referee, provided that new evidence may be admitted in the discretion of the court. If a hearing before the court is not requested or the right to the review is waived, the findings and recommendations of the referee, when confirmed by an order of the court shall become the decree of the court.

12. If, during the pendency of a criminal or quasi-criminal charge against a minor in another court, it shall be ascertained that he was less than 18 years old when he allegedly committed the offense, that court shall forthwith transfer the case to the Family Division, together with all the papers, documents, and transcripts of any testimony connected with it. If he is under 18 years of age, the court making the transfer shall order that he be taken forthwith to the place of detention designated by the family court or to that court itself, or shall release him to the custody of his parent or guardian or other person legally responsible for him, to be brought before the court at a time designated by it. The court shall then proceed as provided in this act.

13. a. Except as provided in paragraph b. whenever the court is informed by any person that a child is within the purview of this act, it shall make a preliminary investigation to determine whether the interests of the public or of the child require that further action be taken. If so, the court may authorize the filing of a petition; or may make whatever informal adjustment is practicable without a petition, provided that the facts appear to establish prima facie jurisdiction and are admitted, and provided

that consent is obtained from the parents and also from the child if he is of sufficient age and understanding. Efforts to effect informal adjustment may be continued not longer than 3 months without review by the judge.

b. In cases of violation of a law or an ordinance relating to operation of a motor vehicle by a child, preliminary investigation and petition shall not be required, and the issuance of a traffic citation or summons shall be sufficient to invoke the jurisdiction of the court.

c. When a complaint or petition is made against a member of the complainant's family, the court's staff shall inquire into the interpersonal relationships of the members of the family to ascertain the causes of the conflict. They shall assist the family by extending or securing suitable measures of help and conciliation, and this aid may be extended to persons seeking it prior to the filing of formal proceedings. They shall endeavor to make whatever informal adjustment is practicable without the filing of a petition, but no person in such cases shall be deprived of the right to file a petition or complaint.

d. In children's cases the petition and all subsequent court documents shall be entitled "In the interest of ....., a child under 18 years of age." The petition shall be verified and the statements may be made upon information and belief. It shall set forth plainly (1) the facts which bring the child within the purview of this act; (2) the name, age, and residence of the child; (3) the names and residences of his parents; (4) the name and residence of his legal guardian if there be one, of the person or persons having custody or control of the child, or of the nearest known relative if no parent or guardian can be found. If any of the facts herein required are not known by the petitioner the petition shall so state.

14. After a petition is filed in the interest of a child, and after investigation as the court may direct, the court shall issue a summons, unless the parties hereinafter named shall appear voluntarily, requiring the person or persons who have the custody or control of the child to appear personally and bring the child before the court at a time and place stated. If the person so summoned is not the parent or guardian of the child, then the parent or guardian or both shall also be notified, by personal service before the hearing except as hereinafter provided, of the pendency of the case and of the time and place appointed. Summons may be issued requiring the appearance of any other person whose presence, in the opinion of the judge, is necessary. If it appears that the child is in such

condition or surroundings that his welfare requires taking him into custody, the judge may order, by endorsement upon the summons, that the person serving the summons shall take the child into custody at once. A parent or guardian shall be entitled to the issuance of compulsory process for the attendance of witnesses on his own behalf or on behalf of the child.

Service of summons shall be made personally by the delivery of an attested copy thereof to the person summoned, except that if the judge is satisfied that personal service of the summons or the notice provided for in the preceding section is impracticable, he may order service by registered mail addressed to the last known address, or by publication, or both. Service effected not less than 48 hours before the time fixed in the summons for the return thereof shall be sufficient to confer jurisdiction.

Service of summons, process, or notice required by this act may be made by any suitable person under the direction of the court and upon request of the court shall be made by any peace officer. The judge may authorize the payment of necessary travel expenses incurred by persons summoned or otherwise required to appear at the hearing of a case coming within the purview of this act.

15. Any person summoned as herein provided who, without reasonable cause, fails to appear, may be proceeded against for contempt of court. If the summons cannot be served, or if the parties served fail to obey the summons, or if it is made to appear to the judge that serving the summons will be ineffectual or that the welfare of the child requires that he be brought forthwith into the custody of the court, a warrant or capias may be issued for the parent, the guardian, or the child.

If, after being summoned or notified to appear, a parent fails to do so, a warrant shall be issued for his appearance, and the hearing shall not take place without the presence of one or both of the parents or the guardian, or, if none is present, a guardian ad litem appointed by the court to protect the interests of the child. The court may also appoint a guardian ad litem, whenever this is necessary for the welfare of the child, whether or not a parent or guardian is present.

16. The court may order that a child concerning whom a petition has been filed shall be examined by a physician, surgeon, psychiatrist, or psychologist; and it may order treatment, by them, of a child who has been adjudicated by the court. For either such

examination or treatment, the court may place the child in a hospital or other suitable facility. The court, after hearing, may order examination by a physician, surgeon, psychiatrist, or psychologist, of a parent or guardian whose ability to care for a child before the court is at issue.

17. Except where the requirement is waived by the judge, no decree other than discharge shall be entered until a written report of the social investigation by an officer of the court has been presented to and considered by the judge. Where the allegations of the petition are denied, the investigation shall not be made until after the allegations have been established at the hearing. The investigation shall cover the circumstances of the offense or complaint, the social history and present condition of the child or litigants and family, and plans for the child's immediate care, as related to the decree; in cases of support, it shall include such matters as earnings, financial obligations, and employment.

18. Whenever legal custody of a child is given by the court to someone other than his parents, or when a child is given medical, psychological, or psychiatric study or treatment under order of the court, and no provision is otherwise made by law for the support of the child or for payment for such treatment, compensation for the study and treatment of the child, when approved by order of the court, shall be charged upon the county where the child has legal settlement. After giving the parent a reasonable opportunity to be heard, the court may order and decree that the parent shall pay, in such manner as the court may direct, a reasonable sum that will cover in whole or in part the support and treatment of the child given after the decree is entered. If the parent willfully fails or refuses to pay such sum, the court may proceed against him as for contempt, or the order may be filed and shall have the effect of a civil judgment.

Compensation may be made to a nongovernmental agency provided that it shall make periodic reports to the court or to an agency designated by the court concerning the care and treatment the child is receiving and his response to such treatment. These reports shall be made as frequently as the court deems necessary and shall be made with respect to every such child at intervals not exceeding 6 months. The agency shall also afford an opportunity for a representative of the court or of an agency designated by the court to visit, examine, or consult with the child as frequently as the court deems necessary.

19. An interested party aggrieved by any order or decree of the court may appeal to the Appellate Division for review of questions of law and fact. The procedure of such an appeal shall be governed by the same provisions applicable to appeals from the Law Division or Chancery Division except that where the decree or order affects the custody of a child, the appeal shall be heard at the earliest practicable time. In children's cases the record on appeal shall be given a fictitious title, to safeguard against publication of the names of children.

The pendency of an appeal or application therefor shall not suspend the order of the court regarding a child, and it shall not discharge the child from the custody of the court or of the person, institution, or agency to whose care he has been committed, unless otherwise ordered by the Appellate Division on application of appellant. If the Appellate Division does not dismiss the proceedings and discharge the child, it shall affirm or modify the order of the Family Division and remand the child to the jurisdiction of the court for disposition not inconsistent with the Appellate Court's finding on the appeal.

20. All present employees of the Matrimonial Part of the the Superior Court, Chancery Division and of the several juvenile and domestic relations courts shall be transferred to the Superior Court, Family Division, and all such employees shall retain their present civil service status.

21. All causes and proceedings pending in any court which has been made a matter of the exclusive jurisdiction of the Family Division pursuant to this act, shall be transferred to the Family Division, together with all existing files and records.

22. All practices, procedures, rules and laws not inconsistent with this act, shall be applicable to all matters within the jurisdiction of the Family Division, and any reference to any court concerning a matter by this act made the exclusive jurisdiction of the Family Division, shall be understood to refer to the Family Division. The several juvenile and domestic relations courts, and the Matrimonial Part of the Superior Court, Chancery Division are abolished. All acts and parts of acts inconsistent with this act are repealed.

23. The Supreme Court, pursuant to Article VI, Section II, paragraph 3 of the New Jersey Constitution shall, subject to the law, make such rules as it considers necessary governing practice and procedure in and the administration of the Superior Court, Family Division.

24. If any section, subsection, or clause of this act shall be held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of the act.

25. This act shall take effect July 1 next following the approval of the constitutional amendment establishing a Family Division in the Superior Court, except any appointment, any confirmation of any appointment, and any action permitted or required by this act and necessary to effectuate this act as of such date may be made or undertaken prior to such date.

STATEMENT

This bill establishes a Family Division in the Superior Court. It will not take effect unless an amendment to the Constitution to permit a Family Division is approved at a general election.

The need to combine all matters relating to family life under one jurisdiction has been recognized for quite some time. Since 1959 there has been a Standard Family Court Act in existence. Several states have enacted Family Court Acts based on the Standard Act. The present bill is influenced by the Standard Act and the recommendations contained in the report of the New Jersey Family Court Study Commission dated March 23, 1972. Recommendations of the New Jersey Bar Association and various attorneys and judges with extensive experience in the practice of family law have been followed where possible.

ASSEMBLY CONCURRENT RESOLUTION No. 166

STATE OF NEW JERSEY

INTRODUCED JUNE 24, 1974

By Assemblyman BATE

Referred to Committee on Judiciary, Law, Public Safety and Defense

A CONCURRENT RESOLUTION to amend Article VI, Section III, paragraph 3, of the Constitution of the State of New Jersey.

BE IT RESOLVED *by the General Assembly of the State of New Jersey (the Senate concurring):*

1. The following proposed amendment to the Constitution of the State of New Jersey is hereby agreed to:

PROPOSED AMENDMENT

Amend Article VI, Section III, paragraph 3, to read as follows:

3. The Superior Court shall be divided into an Appellate Division, a Law Division, **[**and**]** a Chancery Division, *and a Family Division.* Each division shall have such parts, consist of such number of judges, and hear such causes, as may be provided by rules of the Supreme Court *or by law.*

2. When this proposed amendment to the Constitution is finally agreed to, pursuant to Article IX, paragraph 1 of the Constitution, it shall be submitted to the people at the next general election occurring more than 3 months after such final agreement and shall be published at least once in at least one newspaper of each county designated by the President of the Senate and the Speaker of the General Assembly and the Secretary of State, not less than 3 months prior to said general election.

3. This proposed amendment to the Constitution shall be submitted to the people at said election in the following manner and form:

There shall be printed on each official ballot to be used at such general election, the following:

1. In every municipality in which voting machines are not used, a legend which shall immediately precede the question, as follows:

If you favor the proposition printed below make a cross (×),

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

plus (+) or check (√) in the square opposite the word "Yes." If you are opposed thereto make a cross (×), plus (+) or check (√) in the square opposite the word "No."

2. In every municipality the following question:

	Yes.	SUPERIOR COURT, FAMILY DIVISION Shall the amendment, agreed to by the Legislature, to amend paragraph 3 of Section III of Article VI of the New Jersey Constitution to provide that there be a Family Division in the Superior Court be adopted?
	No.	

STATEMENT

This resolution proposes to amend the Constitution so as to add a Family Division to the Superior Court. The court is presently composed of an Appellate Division, a Law Division and a Chancery Division.

ASSEMBLYMAN WILLIAM J. BATE (Vice Chairman): This public hearing on Assembly bill 1899 and Assembly Concurrent Resolution 166 is being held by the Assembly Judiciary, Law, Public Safety and Defense Committee in order to obtain the views of interested citizens, groups and organizations.

ACR 166 proposes an amendment to the State Constitution. This hearing, therefore, is being held by direction of the General Assembly in accordance with the procedure for consideration of proposed amendments to the Constitution, directed by the Constitution and rules of the General Assembly. It would add to the Superior Court a Family Division.

A-1899 would establish a Family Division in the Superior Court. The proposed Family Division would have jurisdiction over matters now in the jurisdiction of the Juvenile and Domestic Relations Court and the Matrimonial Part of the Superior Court, Chancery Division.

Two of the committee members are present today, Eldridge Hawkins of Essex County who is the Chairman of the Judiciary Committee and myself, William J. Bate, who is the Vice Chairman. Assemblyman Hawkins has kindly suggested that I chair this particular hearing.

The first person on the agenda, by pure coincidence, happens to be Assemblyman William J. Bate.

A S S E M B L Y M A N W I L L I A M J. B A T E:

Forty percent of broken marriages involve couples united for more than 10 years. Thirteen percent have observed their 20th anniversary. Perhaps surprisingly, the median age for divorce in the United States is 45 - a time in life hardly associated with immaturity.

Paul W. Alexander, a Toledo, Ohio, judge, emerged after World War II as the pioneer in an ever-so-slowly emerging field of family law as an integrated concept.

To demonstrate the pace, it is significant to relate that the index to legal periodicals did not list family law as a separate category until 1957. It took Japan, devastated by nuclear bombs, just four years to establish a Family Court in every prefecture while its conqueror in combat, despite rosy rhetoric and professional prodding, could not point to one State which had adopted a state-wide system of uniform Family Courts prior to 1961. The rest of the English-speaking world is trudging behind us.

It was Judge Alexander who advocated the alternative of marriage mending in Family Courts to marriage rending in divorce tribunals.

In many of his works, Judge Alexander sets forth what amounts to seven postulates which somewhat edited are: first, intra-family contestants generally need guidance and aid beyond the impersonal, judgmental and punitive processes of the law; second, such persons are usually unaware of the varieties of aid available; third, out of court resolution is far better than court-room strife; fourth, additional adversary procedures intensify antagonisms and should be displaced by conference type procedures; fifth, prevention is preferable to punishment; sixth, no one should profit by his own wrong; and seventh, the door to professional help should not be shut because of litigation.

Back in 1948, there was held at the request of President Truman a national conference on family life. At that time, Judge Alexander told the assemblage, "We would abrogate the old theories of guilt and punishment and antagonistic divorce and offer, in lieu of them, the modern philosophy and therapy designed to accomplish, in each case, what is best for the family and, consequently, best for society. To replace the antiquated machinery, we offer the modern procedures of a Family Court operating within the framework of and administering law adapted to social uses."

A Family Court is designed to promote family stability by preventing divorce where it is not warranted and by reducing its harmful effects where it becomes necessary. The experts remind us that divorce is not the cause but the end product of marital discord. Under the normal practice, a dispute reaches the Court when at least one of the parties chooses to endure the trauma no longer. The evidence is documented that a bad marriage is frequently incalculably worse than a maturely achieved divorce.

Juvenile Court judges and other family law proponents appalled at the defects and inadequacies of the present system have advocated the establishment of a Family Court Division in the Court of highest general trial jurisdiction permitting what Judge Alexander labels, "three distinguishing characteristics" - integration, a therapeutic approach and a specially trained staff involving a wedding of the legal and social sciences.

The Standard Family Court Act calls for a single autonomous Family Division in the Court of general trial jurisdiction with its judges especially selected for Family Court assignments. The Court would have a state-supervised structure of court services including probation officers, marriage counselors and, perhaps, clinic services.

The Standard Family Court Act is the model on which, in varying degrees and with countless changes, the respective statutes in Rhode Island, New York and Hawaii are based. It was promulgated in recognition of the problems which, in a real sense, have increasingly corroded juvenile and intra-family justice. Among these are the lack of sufficient numbers of trained probation officers and competent specialized judges, the limitation of dispositional alternatives because of the community inadequacies, overburdened probation departments, prolonged detention of children, lax treatment of procedural rights,

multiplicity of Courts and overlapping jurisdictions and the absence of a central filing system.

Almost 10 years ago, New Jersey Governor Richard J. Hughes - now the Chief Justice - in an address before the Family Law Section of the American Bar Association urged the creation of a state-wide Family Court system. His two successors have expressed themselves in favor of this view.

Currently involved in a patchwork of overlapping jurisdictions are five Courts - Municipal, Juvenile, Domestic Relations, County and Chancery-Matrimonial.

There are those who are critical of Municipal Courts for their episodic treatment of deeply-rooted problems of family breakdown.

On March 25, 1972, the New Jersey Family Court Study Commission presented the first phase of its final report to the Governor, the Chief Justice, the Senate President and the Assembly Speaker. To summarize, the Commission made eight basic recommendations for drastic overhaul of the present cumbersome procedures for dealing with families in distress: 1) The establishment of a "properly structured Family Court with all necessary supportive services and appropriate jurisdictional sweep." 2) Such Family Courts should be "a separate and distinct Division of the Superior Court of New Jersey." 3) The Family Court should be invested with full jurisdiction over all matters now in the Matrimonial Part of the Chancery Division of the Superior Court, the Juvenile and Domestic Relations Courts and, in addition, some of the cases that are being heard in the County and Municipal Courts. 4) The Matrimonial Part of the Chancery Division and the Domestic Relations Court should be abolished with all judicial and supporting personnel transferred to the Family Court. 5) The new Family Court would have broad and sweeping jurisdiction over all matrimonial complaints including divorce, separate maintenance, nullity, alimony,

child support, child custody, all juvenile matters, non-support, paternity legitimacy, adoption and parental termination, child abuse and contributing to the delinquency of a minor. 6) The most centralized record-keeping system possible should be instituted. 7) The new Court should be staffed with an adequate number of judges and properly trained non-judicial personnel. 8) Proper intake and counseling services supplemented by enforcement or "follow up phase" should be provided in such a way that intra-family controversies may come to the attention of and be dealt with by the Family Court system before they are formalized into court proceedings.

The Commission chose not to concur in the proposal of the former Administrative Director of the Courts that specialized judges of broad expertise in family law be directly appointed to the Family Court and not be reassigned to other Divisions.

A juvenile judge in another State shared this thinking of the Family Court Study Commission in insisting that the Family Court not be an "inferior" Court and that assignment to the Family Court not be for life.

Our judges certainly rate favorably with any of the other 49 States. A unique system in which judges are appointed on a bipartisan basis but cease to function as partisans upon appointment has been the rock of achievement for the last quarter century. Our former Chief Justices have fashioned an incomparable judicial regimentation. The Chief Justice - whoever he may be - has an Administrative Director of the Courts as his alter ego. Either or both of them is a safe repository for administrative jurisdiction of a uniform state-wide Family Court.

Civil Service must be maintained in a State as heavily urban as New Jersey. The Family Court could make

good use of referees who would handle a substantial portion of adjudication. Since - up to now - judges are subject to mandatory retirement at 70, some of the judicial pensions could function effectively on a per diem basis.

Family courtrooms must be stationed in the main courthouse to demonstrate equal partnership in the court structure. Too often Juvenile Courts in New Jersey are relegated to the basement or auxiliary buildings.

A New Jersey Family Court Act should extend to children the same Constitutional safeguards that are called for by the U.S. Supreme Court in regard to adults. An attorney, whether retained or appointed, should represent parties in every phase of the Family Court proceeding.

New Jersey should follow Hawaii's example by making the wearing of robes discretionary with the individual jurist.

Criminal trials should be allowed in Family Courts unless a jury is demanded. Where institutionalization of a child is a possibility, parents should be confronted with the reports. To achieve the maximum benefit of the therapeutic relationship, the social worker-client privilege cannot be extended to every aspect of their communication.

Relying on our New Jersey experience, it is probably inadvisable that judges' direct appointments to the Family Court be mandated. As a matter of practice, those who sit in the Matrimonial Part of the Chancery Division arrived there after usually brief service in the General Trial Division. Most of these judges, despite the daily unhappiness of litigants, prefer to remain as matrimonial judges. No doubt this is how the Family Court judiciary will evolve.

ASSEMBLYMAN BATE: I also want to recognize Assemblywoman Gertrude Berman who has just arrived.

I will first call on Judge Arthur J. Simpson, Acting Director of the Administrative Office of the Courts.

J U D G E A R T H U R J. S I M P S O N:

Mr. Chairman, Assemblyman Bate, Assemblywoman Berman: I greatly appreciate the opportunity to appear here before you and say a few words concerning the Supreme Court's position and recommendation on Assembly bill 1899 and ACR 166.

I would like to, if I may, recall my testimony before this committee on May 23, 1974, when, at that time, you considered ACR 7 and 90 which, in a nutshell, provided for assimilation in the Superior Court system of the County Courts. At that time, with the permission of the Chairman and the Vice Chairman, I explained in detail the whole-hearted support by the Supreme Court of the proposals publicly expressed by the Governor and the Chief Justice to the effect that most desirable for the New Jersey judicial system would be attainment of a fully unified court system and state funded court system - these being almost universally recognized objectives that have been proposed by the American Bar Association, Judicial Administration Standards, first volume thereof, concerning court organization, as well as the National Advisory Commission on Criminal Justice Standards and Goals.

I realize that there are many people here today to be heard on the specific resolution and bill being considered in connection with the proposed creation of a Family Court as a Division of the Superior Court. So, unless the Chairman or Vice Chairman or anybody else feels I should go into detail with respect to what I said on May 23, I will not do so. I will have to refer blithely thereto to make the position of the Court reasonably clear - I hope.

You have noted, Assemblyman Bate, that Chief Justice Hughes, when he was Governor, in 1964, in an

address before the American Bar Association, supported the Family Court concept. The Supreme Court, likewise, supports that concept. However, they do not support the particular proposal under consideration today for a number of reasons. There are some technical problems with respect to A-1899; but fundamentally, I believe, the concept is that the Family Court, generically, should be a part of the Superior Court Chancery Division as presently constituted.

There are funding problems - serious funding problems - which are not addressed by this resolution or this bill. The inequities that presently exist throughout the State must be taken into account, and it cuts across the whole system - not simply the Juvenile and Domestic Relations Courts. For example, the State pays the salaries of the Superior Court judges - all of them. The Counties pay the salaries of the District Court judges and the Juvenile and Domestic Relations Court judges in toto. With respect to the County Court judges, the State pays 40 percent of their salaries; and the Counties only pay 60 percent. Now, there are 21 Counties in this State. Only 10 of them have Juvenile and Domestic Relations Court judges. There are 21 County District Courts in the State; only nine of those Counties have District Court judges. In the other 11 Counties in the case of the Juvenile and Domestic Relations Courts, and in the other 12 Counties in the case of the District Courts, the State is actually paying the bill because those Counties have seen fit not to fill the judgeships of the District Courts and the Juvenile and Domestic Relations Courts. Either they don't have legislative authority to do so - and I believe that not to be the case--- For example, Monmouth County is a 5th class County, and it has Juvenile judges and District Court judges; so I see no reason why other 5th class Counties or 4th or 3th class Counties should not likewise,

under the current system, have such positions and pay the bill. All the rest of the Counties that actually have the positions are 1st and 2nd class Counties except Mercer County which had a Juvenile judge and District Court judge, saw fit to promote them to the County Court and leave the Juvenile and District Court vacancies open; and they are still open.

This means that Superior Court and County Court judges in all these other Counties that I have heretofore referred to - 11 in the case of Juvenile and 12 in the case of District - are not paying for that service. The State is. I say this is unfair to all the other Counties like Bergen, Hudson, Essex, Middlesex, Camden, and Monmouth that are paying their expense of the judgeships for Juvenile and District Court service. This is an example of the problems that develop when you have a piece-meal approach to a broader problem.

The solution is to have a unified court system. This is not novel with myself or the present Supreme Court. It has been recommended since 1948. Back in 1948, it is my understanding that there was a political kind of problem. This, after all, constituted a complete change in some 150 years of experience with the judicial system. Prior thereto, there had been virtually autonomous, independent operating courts.

New Jersey was the leader under Chief Justice Vanderbilt and the Administrative Directors that were appointed by him and his successor, Chief Justice Weintraub. The same leadership has been continued, very briefly, by Chief Justice Garvin and, of course, currently by Chief Justice Hughes. New Jersey was the leader in modern judicial administration. Other States, however, have caught up and are beginning to surpass us. The American Judicature Society has noted that we are fast losing our position of preeminence in modern judicial administration.

Hawaii, for example, which you have referred to, has a unified state-funded court system. Colorado - the same thing. New York State is behind us, but they are rapidly catching up. Chief Judge Breitel - and he is the equivalent of Chief Justice Hughes in New York State - has stated that the linchpin of effective judicial administration is central fiscal control, and he has advanced that concept in New York. They have not implemented all the plans and suggestions; but they are, at least, starting.

Now, we are in a position of needing to finalize and dot the "I's" and cross the "T's" so to speak with respect to full unification of our court system and full state funding of the system.

The Governor and, I believe, the Assembly and Senate had this in mind when the tax package came along. For other reasons, the tax package - the income tax package - ultimately failed to pass. In any case, I don't believe there was any dispute about that portion in those bills that would have provided state funding of the whole system to get the expense off the backs of the Counties and which would, indirectly, cure the kind of financial hodge-podge I have already referred to this morning which is unfair on a county-to-county basis.

The unification of the court system is more important. It is not just a matter of changing the terminology or tinkering with the mechanism. The unification of the court system - full unification - is an absolute necessity if we are to continue to improve the administration of the system overall - not only in effectiveness but in economy.

As I noted on May 23 and as I am sure everyone in this room is aware, we are moving down the path of computerization - automatic data processing of records. We are, in large part, stymied by having four separate trial Courts - Superior Court, County Court, Juvenile

Court and District Court - which, in effect, in summary, means four sets of records - four kinds of records. When you try to put computers together on a county-by-county basis and when you are saddled with this kind of a superstructure that is unnecessary, you can not effectuate the budget savings that I believe are an absolute requirement in times of economic crisis such as we are faced with today.

A small fortune has been spent in nine Counties - $1.6 million - in starting to computerize their records. They are in various stages of computerization. Some of them are in the system design stage; some are in the requirements and analysis stage; some of them are partially operational - either criminal or civil. One is partially operational in both civil and criminal, but they are only scratching the surface.

This has not really been the fault of anyone in New Jersey. The Law Enforcement Assistance Administration Law has previously required and still does, as a matter of fact, that some monies go directly to the Counties rather than be channeled through the State. This has, in effect, required that the development be on a county-by-county basis resulting, in some cases, in incompatible hardware and, in other cases, in the reinventing of the wheel as we go down the line in automatic data processing.

I know you don't want me to get into heavy detail on that because it is not necessary for purposes of a public hearing except to try to, at least, give some foundation for the concept that efficiency and economy, in our judgment, indicate that the correct path by which to attack these problems and, at the same time, handle the problems that you are directing yourselves to; to wit, the problem of family units and how they are judicially approached, is a unified and central state-funded total judicial system.

Beyond that, we believe that to simply legislate a new Court or attempt to get the Constitution amended to provide a separate Division of the Superior Court as ACR 166 calls for is really ill-advised. You must proceed by taking baby steps before you take giant steps, in our judgment. In addition, you have the financing aspect which I want to refer to further in connection with LEAA.

The Chief Justice, as you know, at least since 1964, has favored this concept. The Supreme Court favors the Family Court concept, but it believes that it should be done within the present mechanism that should only be adjusted by way of a unified and state-funded system.

In Morris Courty, as you probably are aware, we have a de facto Family Court because we only have one judge handling Juvenile and Domestic Relations Court matters; and that same judge, temporarily assigned to Superior Court, Chancery Division, Matrimonial Part, also handles all chancery-matrimonial matters. He, in effect--- It is Judge MacKenzie now and it was Judge Bert Polow who, incidentally, was one of the founders of this concept along with Judge Belfatto many, many years ago; and they have been fighting for it ever since. It has been a great success in Morris County.

In other Counties, it is not as simple as that because you have larger calendars and you have a number of judges handling matrimonial matters and a number of judges handling juvenile matters. It is a matter of integrating the calendars and having the full authority, having funding and having a uniform court system to attack these problems in a pragmatic manner.

One other point of crucial importance with respect to funding is this: In addition to the absence of any provision for funding in A-1899 or ACR 166, which would not require funding, we have great fear that we may lose

some of the LEAA and SLEPA funds that we are presently receiving to advance the overall concept of a Family Court in the manner we have done, for example, in Morris County.

You need a structure of administrative personnel to assist. One of the key elements - I don't think you referred to it, Assemblyman Bate, in your opening remarks - in connection with the juvenile portion of a Family Court approach to these problems is the Model Juvenile Intake approach which was pioneered by Judge Polow in Morris County and which he has recently implemented successfully in Essex County. In both cases, huge amounts of funds were required to implement the concepts; and we were successful in getting these funds from SLEPA - State Law Enforcement Planning Agency - and some direct discretionary grants from Washington out of LEAA. We are very fearful and believe that the federal statutes and implementing regulations will not permit monies to support a court of the type described. In other words, LEAA and SLEPA, which is really LEAA money channeled into Counties at state and municipal levels, are designed as seed money so to speak - to get projects off the ground and get them started. Once demonstrated, the State has to pick up the bill.

We believe, as I have indicated, that the way to do it would be a unified court system and a state-funded system. There are two different approaches. One approach, which I cited the last time I was before the committee, was by Judge Clapp. At that time, as you know, you were considering whether or not there should be an amendment to the Constitution to, in effect, merge the County Courts with the Superior Court. Of course, we agree with that. There are two possible ways of accomplishing a fully unified court system. The simplest and quickest way, which would not require a Consitutional amendment, would be to simply transfer by legislation the

jurisdiction of the present Juvenile Court and District Court to the Superior Court by way of eliminating those so-called inferior Courts and providing that the judges presently thereon and the judgeships, which may not be filled, become Superior Court judgeships. The only thing remaining would be the County Courts; and the County Courts, of course, cannot be eliminated except by amendment of the Constitution since they are provided for by the Constitution.

The other way, which Judge Clapp had suggested, and, maybe, others did too, and I cited it in my testimony in May, would be to transfer the District Court jurisdiction to the County Courts at the present time and then provide for sufficient Superior Court judgeships to pick up all the present County Court judgeships and Juvenile and Domestic Relations Courts judgeships.

Either way will accomplish the goal which is a fully unified system. This would also eliminate the one unfair remaining problem with respect to salaries and pensions in our full-time court system. The District Court judges are presently receiving $3000 less in salary than all the other judges. As you know, back with the last pay raise, the Juvenile judges were advanced to the same level as the Superior and County Courts. As a result of the judicial retirement system bill in May 1973, all judges - Juvenile, District, County and Superior - are under the same pension law so all those old inequities are already eliminated.

For these reasons, in general, as I said, the Supreme Court position is to support the concept of a Family Court but to suggest that the better approach would be to permit it to develop as in the manner that it has been and go forward on a trial basis in various areas and, ultimately, to be a part of the Chancery Division of the Superior Court.

The Constitution provides for a Supreme Court; it provides for a Superior Court with three Divisions - Appellate Division, Law Division and Chancery Division. The Court has taken the Chancery Division and provided for two parts - General Equity Part and Matrimonial Part - so it has the inherent power to do this. It can assimilate, as it has de facto, the jurisdiction of the Juvenile and Domestic Relations Court by way of assignment, and that is the preferred approach.

Specifically, with respect to 1899, we are not certain - it does not appear as though - the presently drafted bill integrates completely with the Juveniles in Need of Supervision legislation which became effective March 1, 1974. We question in section 8 the provision of "a chief administrative officer of the Family Division." We believe that the present administrative mechanism is sufficient to accomplish the goals of administration of a de facto unified court system. That we do have by way of the powers of the Supreme Court and the Chief Justice and, through them, the Administrative Director of the Courts and the Administrative Office of the Courts as provided for in the Constitution. As you know, by virtue of the rules, the Supreme Court and the Chief Justice have procedural and administrative authority over all judges in the State.

It also appears that a rather cumbersome procedure is set forth in the bill with respect to the handling of cases. We feel that the most effective approach is the screening out in advance by way of Juvenile Intake of matters that should not be in Court. I think what probably has happened--- This is not really to be critical of the bill itself because I realize that it is based upon, as Assemblyman Bate has indicated, the Standard Family Court Act; but the Standard Family Court Act was not designed on a national basis with the effective

New Jersey system that presently exists. It really was designed and drafted based upon what is generally applicable throughout the United States; to wit, a complete lack of a centrally funded system with no supervisory control in administration and procedure to any reasonable or serious extent in a Chief Justice or Supreme Court.

I will withhold any specific comments unless there are particular questions as to various subsections of the bill because, as I have indicated, it is really a question of approach and overall concept; and by no means, would I like the committee to feel that the Court does not support the concept of a Family Court because it does; but it simply doesn't think that you have the proper mechanical approach here in the present proposed ACR and A-1899.

Thank you very much.

ASSEMBLYMAN BATE: Thank you, Judge. As I understand it, in your opposition to A-1899, you really want to achieve the same goal in a number of other steps - correct me if I'm wrong - first, for the Legislature to pass ACR 90 or ACR 7; to adopt one of the two alternatives proposed by Judge Clapp; third, to eventually set up a Family Part within the Chancery Division; and fourth, to provide the necessary funding.

JUDGE SIMPSON: We would set up the so-called Family Part in the Chancery Division. Incidentally, we would be happy to assist in any drafting you might require if the committee or subcommittee would like to address itself to the overall problem I referred to on May 23 and again today; to wit, a fully unified and state-funded system. You already have the bills in connection with the tax package. I suppose there is no serious thought to activating them now, but you have them with respect to funding but not with respect to unification.

ASSEMBLYMAN BATE: Do I also take it from your remarks that you believe it is premature in many areas of the State to project this Family Court concept?

JUDGE SIMPSON: No; not premature except, as I say, we would suggest that you simply, at this point, funding being the problem that it is under the current economic situation, introduce legislation to transfer the jurisdiction of the Juvenile and District Courts to the Superior Court - you would have to provide funding because they are currently funded by the Counties - and, at the same time, proceed with ACR 7 or 90 with respect to the County Courts. Either do that or go the other route that Judge Clapp suggested which would be to transfer the jurisdiction of the District Court to the County Court at this time and transfer, in effect, the County Court jurisdiction - you cannot technically but you can in effect - as well as the Juvenile Court by way of providing additional Superior Court judgeships to replace all the County Court judgeships and the Juvenile judgeships. There are 103 County Court judgeships and 29 Juvenile Court judgeships, so you are talking about 132. If you go the other way, you would only be transferring, at the moment, Juvenile and District Court - 34 District Court and 29 Juvenile - judgeships for a total of 63. Then, complete the job with an amendment to the Constitution which simply is a transfer or replacement of the County Court jurisdiction by Superior Court. But, you do have the funding question. I would not want to suggest that it is not a real issue because you are talking about millions of dollars, but it is not net additional cost to the taxpayers of New Jersey. It is simply a matter of transferring the costs from the Counties to the State which is what the Governor suggested in the first place in the tax package and which, for reasons I think I have suggested here, is fair and equitable.

In other words, the mish-mash of funding at the present time, particularly in Juvenile and District Court, works unfairly with respect to half the Counties in the State.

There are other problems, but we get into details with respect to funding. For example, the State funds at the present time the staffs of the Appellate Division and the Chancery Division but not the Law Division. The Counties pay for that as they pay fully for the staffs of the Juvenile and District Courts.

When you have cases tranferred from one County to another as may be required because of overloads in the particular jurisdiction, you have a certain amount of reimbursement of one County to another which is not realistic. The amounts do not cover the actual costs. So, a County which does not have enough courtrooms or does not have its judgeships filled or does not have enough judgeships at all to handle its caseload is not paying its fair share. If we have to transfer cases from that County to some other County to get reasonably prompt attention, despite the reimbursement, it is not sufficient reimbursement. The calculation is always based upon legislation; I believe it is $150 per day per case now. It is always based on the past expenses. You never catch up. It's like inventory; LIFO FIFO, you're always behind yourself. The answer to all these problems, as I say, is a unified state-funded judicial system.

I'm probably taking too much time, Assemblyman. Are there any other questions?

ASSEMBLYMAN HAWKINS: I think you commented before at one of the other hearings that you would be interested in assisting us in drafting legislation for a unified court system.

JUDGE SIMPSON: I thought you'd never ask. We would be delighted at any time at all.

ASSEMBLYMAN HAWKINS: I thought we had that understanding. I am waiting to see something.

JUDGE SIMPSON: I thought you and I were going to meet, and we didn't meet except in judicial conference and we haven't had a chance to talk. I know you have been busy. We'd be delighted to meet with you any time if you really want us to.

ASSEMBLYMAN HAWKINS: I thought I heard your comment that all you had to do was cross some "T's" and dot some "I's."

JUDGE SIMPSON: Well, that is true; but in comes 1899 which is not what I suggested. Of course, I realize that you may or may not agree with me on all this; but we will be delighted to draft it for you.

ASSEMBLYMAN HAWKINS: We would be very interested in seeing what you have to draft.

JUDGE SIMPSON: I certainly will do it.

ASSEMBLYMAN HAWKINS: Thank you very much.

ASSEMBLYMAN BATE: Are there any other questions?

ASSEMBLYWOMAN BERMAN: Somewhere along the line in your comments, you talked about baby steps before giant steps and you seemed to indicate that such a Family Court, in concept, would be desirable. Am I correct in concluding that if the Legislature does not move promptly in the direction of the unified court which you suggested, you would see no benefit at all in moving in the direction in which this bill does move?

JUDGE SIMPSON: We see dangers - not only no benefit. We think we are in a better position to actually implement the concepts from a financial viewpoint on the present basis even though we believe in the concept. In other words, we have federal funding for Model Juvenile Intake which has been implemented in Morris County; and we have federal funding, similarly, already for the implementation thereof in Essex County.

As far as integrating the calendars is concerned, there are all kinds of mechanical problems where you have more than one judge in the County handling both juvenile and matrimonial matters. We don't think that mere passage of this legislation which requires a Constitutional amendment first--- You are talking about considerable time - at least a year and probably longer - and we think that time can be better utilized by going down the path of a unified and state-funded judiciary and by permitting us to proceed with a de facto Family Court as we are doing. In other words, we have it in Morris; and we have one of the major goals, Model Juvenile Intake, in Essex County operational now. We are planning to implement these concepts in the other Counties even now without 1899 and without a unified judiciary as money becomes available. We will be applying for LEAA discretionary funds to implement the concept in the other Counties even without any legislation. We fear that there will be some danger to those applications and programs by mere passage of this bill and this resolution at this time. It will not aid the overall cause, and it may well cost us in terms of a de facto Family Court concept implementation that we are already engaged in.

The same overall problem pertains to pre-trial intervention - our rule 328 programs, for example. We are planning to have that going in Bergen and in Essex. Camden is going to come on board shortly. We have it going in Hudson County - all federally funded to get these things going. We are going to do the same thing in the other Counties. We hate to see those programs jeopardized by well-intended legislation and Constitutional amendments that do not solve the big problem. That is the sum and substance of it.

ASSEMBLYWOMAN BERMAN: The big problem, very basically, is funding?

JUDGE SIMPSON: Unification and state funding - right.

ASSEMBLYMAN BATE: We have been joined by Assemblyman Codey of Essex. Do you have any questions?

ASSEMBLYMAN CODEY: No, Mr. Chairman.

ASSEMBLYMAN BATE: Thank you very much, Judge Simpson.

J'JDGE SIMPSON: Thank you very much.

ASSEMBLYMAN HAWKINS: Before we proceed, I have asked the Acting Chairman to give me permission to make one statement. In the interest of time, I would hope you listened to what those who have gone before you had to say because we are interested in hearing everybody's views but not necessarily duplicate testimony. If you have something different to say, we would be glad to hear it; but we would appreciate, in the interest of time and in the interest of allowing everybody to give us new testimony, your not reading from a prepared statement if it is going to give the same testimony that has already been heard. Please do not rehash something that has already been said. You may give us your opinion that you agree with the concepts of someone who has preceded you. We are trying to give everyone an opportunity to present h i s testimony, and we would like to hear anything that is new; but we don't have to hear something that has already been said. With that in mind, we would appreciate your giving us that consideration.

ASSEMBLYMAN BATE: The next speaker will be Marcia Richman representing the Public Defender.

M A R C I A R I C H M A N:

Good morning Mr. Chairman and members of the committee. My name is Marcia Richman. I am an assistant in the Department of the Public Advocate and have for the past six years been in charge of the state-wide juvenile program. I am a member and past Chairman of the New

Jersey State Bar Association Delinquency Committee and a member of the New Jersey Supreme Court Committee on the Juvenile and Domestic Relations Court. I want to thank the committee for allowing me this opportunity to appear before you and share our particular views on the urgent need for the establishment of a Family Court.

In keeping with the suggestions of Assemblyman Hawkins, I certainly understand and agree with some of the vaster funding problems as presented by Judge Simpson.

In our experience - of course, our experience is limited to one specific aspect of the family law process - over the past six years, we have been called in to represent those children in trouble both in delinquency matters and in matters involving Juveniles in Need of Supervision. Over the past year, we have found that while children are involved in all kinds of criminal and quasi-criminal conduct, we have also had to defend children in some 1600 incorrigibility petitions and 400 truancy petitions. It is in this latter category of cases where we see the extreme disadvantage in a splintered, compartmentalized system.

What is incorrigibility or ungovernability? In general, these are petitions involving families in trouble - parents who claim their children won't listen and children who run away from abusive parents. We find out that one parent is known to Probation because a support order is not being paid. A second probation officer may be coming into this same family because a child is on probation because of incorrigibility. A separation or a divorce may be in progress in yet another Court. We discover day after day that these children in trouble very well signify families in trouble.

Yet, currently, the duplication of court services is unavoidable. The theory and promise of this Family Court is that one separate Division of the Court,

as you have pointed out, adequately staffed, would give an all-out effort to attempt to solve some of these family problems.

Obviously, the jurisdiction of the Court must be extensive; and all the matters of the family unit must be involved. Frankly, it is very easy for me to testify and say, Assembly Concurrent Resolution 166, as it currently stands, would, in fact, accomplish, at the highest level, a unification of all problems as they affect children and families in trouble because I can say this with rather a layman's concern as to who is going to pay for it.

I appreciate Judge Simpson's very practical problems in working it out. However, I would like to commend the committee because as we have heard time and time again, everybody wants a Family Court; everybody knows it ought happen. Yet, for many, many years, there has really been very little impetus.

Even though if you find through further deliberations that the funding problems are insurmountable, I hope that at the very least, this approach of the Constitutional amendment and the companion legislation will force continuing experimentation.

We have heard of the de facto Family Court that exists in Morris County. Recently, in fact, just last week, as Judge Simpson pointed out, the State Law Enforcement Planning Agency has given a sizable grant to Essex County. I think the timing certainly is now and immediate for a Family Court to start on a pilot or experimental basis in Essex County. The next question is: Can this be done right now? In our judgment, with matrimonial matters assigned to the Chancery Division of the Superior Court and a somewhat illusive creation of a Matrimonial Part, you will not see this in any Constitutional amendment. It would appear that

the Supreme Court, at any time, could, in fact, establish a Family Part under Chancery Division right now.

I, again, must commend the committee because we do tend in government - general state government - to have lots of public hearings and lots of well-intentioned inclinations to force something forward; but yet, I consider your approach of amendment and companion legislation something that will, again, crystalize the situation and, perhaps, force continuing experimenting until we get to the time where there is available proper funding to handle a Family Court.

With respect to the Assembly Concurrent Resolution 166, I think what we must realize is that we do not want to have a New Jersey Family Court which is a poor man's tribunal. As Professor Sanford Fox had pointed out in talking about the New York experience, if you speak just of childrens' cases in court without adults' cases - the matrimonial kinds of cases - the clear impression, and what happens in New York in fact, is that the cases heard are only those of a poor man. In New York, the entire Family Court has a distinctly proletarian flavor. It is the daughters of the poor who tend to bring filiation proceedings. Middle-class people do not deign to spice their marital arguments with minor assaults. They do not generally appear in the family offenses part. Support orders not entered in connection with matrimonial actions, annulment or divorce actions, which are heard in the Supreme Court in New York and not in the Family Court, are infrequently sought by persons of means.

There is an interesting situation in New York where the Family Court and the Surrogate's Court have concurrent jurisdiction over adoptions. According to the original plan, the scheme was to end after some two years or September 1964. From that date

forward, exclusive jurisdiction was to be lodged in the Family Court. The effective date for ending concurrent jurisdiction has been moved ahead from year to year, and several factors have been responsible for failure to place adoptions in a Family Court. The reason, some persons have argued, is that the Family Court is overloaded.

In the background, there was yet another matter - a feeling that adoptive parents, perhaps, should not find it necessary to "rub elbows" with those who normally occupy the waiting room benches. Indeed, partly in order to meet this need, very recently the New York Family Court started an adoption term presently housed in a building quite apart from any part of the Court. We would like, at all costs, to avoid this kind of situation in New Jersey.

It is a common belief, further, among New York social workers that the Family Court does not possess annulment, separate or divorce jurisdiction because of notions related to class divisions. How would it be possible, they say, for judges to preside over the delinquent, the neglected and husbands who refuse to pay small support orders and handle intelligently the complex separation agreements of the well-to-do? Let us be cautious, through any legislative enactment or potential Constitutional amendment, that this situation will not occur in New Jersey.

At first glance, it would appear that you have seemed to cover that ground; but I do find in Assembly Concurrent Resolution 166 the addition of the three words, "or by law." If we can be absolutely sure that companion legislation will pass and pass immediately, I think we have solved the problem; but recognize that it does open up the potential that various interested groups can continue or attempt to

lobby so that their substantive claims may be handled in yet another part of the Court. In other words, I would just want the committee to be aware of that potential if the companion legislation, which is all encompassing, does not pass immediately. You can see a potential for people wanting certain actions still retained in the Chancery Division because you permitted a situation where, by legislative fiat, there will be an ability to assign certain causes of action. That is the only thing I would like to point out in terms of that resolution.

Obviously, as Judge Simpson has indicated, at present all the matrimonial actions are captioned in Chancery. The Supreme Court has the flexibility, through its existing Constitutional mandate, to assign any judge to sit in any part of the Superior Court and to control both the assignment of the manpower and the causes of action as it sees fit. As I was going to indicate, I was sure that the Administrative Office of the Court would have comment on that.

Again, it would be possible in the future, perhaps - and this is what we must watch - to have unhappy litigants lobby for their actions to be lock-stepped into a specific Division of the Superior Court. I think it is critical that any kind of jurisdictional legislation be passed and be passed very quickly as part of a Constitutional amendment.

In terms of our comments on A-1899, I think it has been stated before that the Standard Family Court Act was, in fact, passed in 1959 and has not been updated. Very recently, right within our State, we have had quite a bit of legislative activity in the area of juvenile law and child abuse law.

I do not have the expertise to comment on how any parts of 1899 may affect the substantive law of Family Court actions other than those involving juvenile

delinquency actions or actions involving child abuse; but I would be more than happy to meet with the staff of the committee because there are some serious problems in 1899 as it is when you compare it with the new March 1 juvenile delinquency legislation. Generally, I would point out that there is some duplication which I am sure we could handle quite easily. The purposes section can be found in NJS2A:4-42 effective March 1. Definitional sections appear at NJS2A:4-43, a, b and f.

In terms of jurisdictional areas, the areas needing transfer are particularly your 6f and 13b because those are areas where the Municipal Court now has jurisdiction and any attempt to transfer or--- Even were we to go into an era of experimentation on the part of the Supreme Court, I think we would need immediate legislation to make sure that certain parts of the Municipal Court jurisdiction are, in fact, included if we are going to take a first step.

Specifically, at 13b, the recent amendment to the New Jersey Juvenile Code had given that jurisdiction to the Municipal Court because a legislative judgment was made that any 17 year old involved in a motor vehicle offense should, in fact, be treated as an adult. This would be a matter that we would have to discuss further.

Section 12 was enacted in 2A:4-47, and section 13 does reflect a rather pre-Gault approach where there is some question as to the Court investigating matters, filing complaints, hearing causes and disposing of the matters all in one. I think it is an attempt to talk in terms of professional intake; but it is, however, couched in language of the Court.

Section 13d is enacted in NJS2A:4-53 and supplemented by the Rules of Court.

Section 14 has been enacted in NJS2A:4-54 through 58 in delinquency matters, and in child abuse

matters, the definition of a welfare removal is much more specifically given in S-1217 which was signed into law on October 10 of this year.

Section 15 is already enacted in the Court Rules, and I would have some comment on section 16 which does not appear to be consistent with existing laws and Rules of Court for a delinquency matter. Specifically 2A:4-61 and 62, detailing the possible dispositions in delinquency and JINS matters, seems to cover that area.

Again, the relatively new S-1217 just signed, child abuse law, has other standards in child abuse matters.

With respect to section 16, I am talking about the placement of children in mental health facilities. In the delinquency area, this has been very strongly tied in to the use of the adult standard for any kind of a commitment to a facility of this type.

I point out that the problems that our office would have with A-1899 are certainly far from insurmountable, and it is a matter of things happening so quickly, for once, in terms of legislative activity both in the delinquency field and the child abuse field that certain aspects of the jurisdiction, I think, have to be looked at again.

As I say, I am very pleased that there has been this move on the part of the Legislature because it is all very well and good to sit here and say, everybody is for a Family Court; it's a wonderful idea; and then to watch the years go by and go by and go by and see very little activity. Notwithstanding what the final outcome will be, because I am sure you are most concerned about the financial and fiscal responsibilities that you would have in terms of putting through this Constitutional amendment and the legislation, I think that if it does nothing other

than to press an impetus for the concept and for experimentation where it can be done under existing rules and existing law, I think it is a very, very positive step.

I would be pleased to meet with any of the members of the staff on the problems of 1899 with respect to the substantive juvenile law and the child abuse law. As I say, I cannot testify; I do not have the expertise to comment as to whether or not any part of 1899 creates substantive problems for the laws of adoption or any other field within family law practice.

ASSEMBLYMAN BATE: Are there any questions?

ASSEMBLYMAN HAWKINS: What would be your opinion if we were to hold onto this bill and not move it and consider the proposal of Judge Simpson?

MS. RICHMAN: As I recall his testimony, it really was a three-step proposal: the unification of the court system---

ASSEMBLYMAN HAWKINS: I am referring specifically to unification of the entire court system.

MS. RICHMAN: I think I would have to answer by saying I would like to see the Family Division moved as quickly as possible. I think what you are going to find is that the financial problems involved in moving this way will be such that you probably will not be able to move as quickly as you like. I don't see it as clear-cut a situation in terms of the unification as such because, as a practical matter, we could have a Family Court tomorrow under our existing Constitution. I just wonder whether or not there would be a possibility of, perhaps, moving in a legislative way to move the causes of action into another Court.

ASSEMBLYWOMAN BERMAN: There has been a great deal of discussion here about the sources of funding for a program, and I assume, from what you have said, that you feel that this is a priority area. I wonder if you could discuss the other side of the coin. We have talked about the costs of funding this combination. What are the ramifications of the costs to society in not making that move?

MS. RICHMAN: That is one of sociological proportions in terms of attempting to answer that.

ASSEMBLYWOMAN BERMAN: I am talking about both - fiscal as well as---

MS. RICHMAN: I would like to address part of my answer to the fiscal consideration. I think the Supreme Court at this point could, in fact, establish a Family Court on an experimental basis without any of this legislation outside, of course, certain Municipal Court jurisdiction where you talk in terms of intra-family disputes. The reason I would like to see this happen immediately is that we may very well find economies in this kind of thing. I talk about economies in terms of your situation where, perhaps, you have more than one probation person involved in a family situation right now - the probation officer on the non-support situation; certain investigative activity by other parts of the Court vis-a-vis, perhaps, a separation agreement or a divorce procedure; children who have been seen in Juvenile Court who are under probation supervision. I think that, in terms of a short-term fiscal answer, we may find that if the Supreme Court were to move in some of the other Counties on an experimental basis, we could see some consolidation of some of the auxiliary services, perhaps. I cannot make a judgment vis-a-vis the level of professional services we foresee or we would like to foresee in a General Family Court.

I think there is a possibility of economy in terms of some of these auxiliary services were these matters all handled together.

I also would think that perhaps there might be economy in terms of judicial time, but I cannot really make a judgment on that because, again, we only see a very small bite of the apple.

In terms of general considerations of money savings, certainly the minute we can address ourselves to a unified way of looking at family problems, the savings to society, in terms of later problems, I think, would be very hard to calculate. Understandably, we see it in our small section. We see juveniles with family problems not being handled early and the entire problem not being looked at. It is not uncommon for a child to be found guilty of an act of delinquency. It's not delinquency; the juvenile now would be found in need of supervision, for example, because the child is truant or ungovernable. What we are talking about is essentially a family problem. The reaction now is to stigmatize the child, place the child on probation and, perhaps, even require that the child go for psychiatric care. What are we saying? We are saying, parents, you are not doing what you ought do.

We take a very splintered approach, and what we tend to see is the children that come through our office are the young adults who go on to all kinds of other anti-social behavior. It certainly is a large cost to society. We have not been able to work with families at a much earlier point in time to avoid what was happening with many of the children whom we represent. I am talking about children ending up in correctional facilities. These are the unwanted children, and the real question is: Do we want to put all our resources - we have a problem with resources but we also have a problem with priorities - if we

choose to rearrange our priorities, into an attempt to create a Family Court that will look at all the problems as they affect a family? The savings to society are probably limitless.

ASSEMBLYMAN BATE: Thank you very much, Ms. Richman.

I am going to call on Judge Belfatto next. Before we get to Judge Belfatto, I want to recognize the presence of Judge Bertram Polow who, I understand, is recuperating and will not testify today; but he is the pioneer of this whole concept in the State of New Jersey. He is sitting in the back; we are happy to have you with us Judge.

Please go ahead Judge Belfatto.

J U D G E H O R A C E S. B E L F A T T O:

Thank you for permitting me to say a few words. I am happy to be here. Certainly I am not familiar with the mechanics of how this thing will come out. I retired from the Bench in January after serving 18 1/2 years as a Judge of the Essex County Juvenile and Domestic Relations Court and the past seven years as its Presiding Judge until I retired.

I was interested, Mr. Bate, when you read something about Paul Alexander. I had the occasion to meet with him many years ago. I certainly subscribe to his philosophy that all family matters should be heard in one Court. That has been my philosophy right along.

I would suspect that I have had about 60,000 families appear before me over my many years on the Bench. I am very much surprised when I read and have read in reports from the Probation Department that this family has been known to this or that other Court. Then, we get it, and I have often wondered why all matters concerning a family should not be in one Court.

You also alluded to the then Governor Hughes - now our Chief Justice - and his remarks to the American Bar Association 10 years ago and what his philosophy and thoughts were concerning a family coming into one Court.

I had been a member, until I retired, of the Supreme Court Committee of the Juvenile and Domestic Relations Court for those 18 1/2 years and had served as Chairman of the New Jersey State Bar Committee on Juvenile Delinquency for three or four years.

You go back 10 years when the then Governor spoke about a unified Court. I go back to 1956 when I served him when he was Chairman of the Supreme Court Committee of the Juvenile and Domestic Relations Court. He there stated, "The Court handling all matters concerning the family determines issues of the highest importance to society as a whole and, therefore, must be a Court of major stature with broad powers."

Down through the years, you are familiar with what has happened, I am sure. The State Bar Association has been in favor of this; there have been editorials in the New Jersey Law Journal concerning this; our former Administrative Director of the Courts, Mr. McConnell's, concept was the same as I have alluded to in his address on March 4, 1971. Our present Administrative Director of the Courts, Judge Simpson, has told you this morning what his pleasure was and is and what that of our present Supreme Court is and what it has been under our other Chief Justices.

In looking at 1899, I note that you refer to having a Constitutional amendment voted on by the public. In January of this year, there was quite an editorial appearing in the New Jersey Law Journal. I note that Judge Clapp is the editor and, after his retirement, Justice John J. Francis became a member of that board. I'll only read part of the article. It says:

> Article 6, paragraph 3, section 3, of the Constitution of 1947 directs that the Superior Court shall be divided into an Appellate Division, a Law Division and a Chancery Division. Each Division is authorized to have such Parts, consist of such number of judges and hear such causes, as may be provided by rules of the Supreme Court. Thus a Family Part of the Chancery Division may be established by the Supreme Court, and with the aid of implementing legislation where necessary, all family law problems now assigned to any trial court can be committed to the new Part. The transition would be quite simple - no constitutional amendment would be required - and the goal of an integrated trial court would be furthered.

As stated by Judge Simpson, we could be de facto in that position because the statute, laws of 1969, authorizes the Chief Justice to assign judges of the Courts to the other Courts including the Juvenile and Domestic Relations Court and District Courts. As it is operated in the Morris County Court now, it could be operated in other Counties de facto. Of course, why have it de facto; let's make it de jure.

I would like to say this: There is no reason why the disadvantaged and poor people that appear in our Court should not have the same stature as people going into the other Courts like the County and Superior Court on the trial level. It seems to me, as Judge Simpson has said - he added the District Court - that all judges on the trial level should be on an equal basis. The Legislature has seen fit now to see to it that all judges on the trial level are now getting the same pay with the exclusion of the District Court - I don't want to go into that - and the same pension rights.

I would urge this committee to make the recommendation that the Family Court concept be furthered and that proper legislation be enacted. I

cannot tell you folks what to do, but I am of the opinion that really there is no need for a Constitutional amendment.

I am happy to be here; I think I was rather short, but certainly it is a nice day to be in Trenton.

ASSEMBLYMAN HAWKINS: Thank you very kindly Judge. We always appreciate seeing you. I would like to make one comment. I have heard the exclusion of the District Court alluded to in respect to the salary consideration.

JUDGE BELFATTO: I had nothing to do with it.

ASSEMBLYMAN HAWKINS: I want to make it perfectly clear that the committee seated before you had nothing to do with it either. What happened was that the bill to give the judges their salary increase came over to this General Assembly, "no reference," meaning that someone considered it important enough or not important enough - one way or the other - to not put it into the Judiciary Committee for its consideration. So, it may very well have happened that had we gotten that particular piece of legislation in our committee, we would have considered unifying all salaries; but we had no opportunity to do so. It was not this committee's fault.

JUDGE BELFATTO: I want it noted on the record that I am only appearing here as a private citizen. (Laughter)

ASSEMBLYMAN BATE: We are going to call everyone according to the list. I do want to give a three-minute break to the stenographer. When she returns, we will continue until 1:00 and then take one hour for lunch. Those who have not been heard will be heard beginning at 2:00.

(Short Recess)

AFTER RECESS:

ASSEMBLYMAN BATE: The hearing will now come to order.

Our next witness will be Professor Kestin, Secretary to the Family Court Study Commission

P R O F E S S O R H O W A R D K E S T I N: Assemblyman Bate, it is very difficult for me to state anything but the most vigorous approval for a bill that is so faithful to a Commission's Report, which I have some interest in, as Counsel to the Family Court Study Commission.

There are, I think, one or two lapses in 1899 that I will address myself to later. The comments that I had planned to make relate in a large part to the comments made by Judge Simpson this morning, so I think I can take the two of them together, by and large.

I am frankly mystified by Judge Simpson's approach to this problem. Judge Simpson suggests that this forward-looking measure - highly necessary, from all the various prospectives that are inherent in our system of justice - wait some other measure, which is unification - total unification - of the court system, which is something I could not oppose as a concept but I don't, frankly, understand at all how unification of the court system, or how the future of that proposal, requires that we wait before instituting this very important and necessary measure toward the amelioration of the manner in which our system deals with the family.

Judge Simpson suggests, furthermore, that a constitutional amendment is unnecessary. I think in a technical sense he is right. It is not necessary to accomplish this measure by constitutional amendment because the court does have the inherent power to consolidate, effectively, various phases of subject matter

jurisdiction into a single part of the Chancery Division.

I suggest to you that for the very reason that the court has that power, legislation is necessary because - and a constitutional amendment is necessary - the court, having had that power for lo these many years - and the Family Court concept has gained widespread approval - has failed to do anything about it, with the single exception of a very talented and unusual jurist, Judge Polow, who, by his very own personal efforts, was responsible for much of what this bill would introduce. Our court system has done nothing in that regard.

The courts can do it now, but they haven't done it now and they won't do it in the reasonably near future unless the Legislature mandates it and unless the people mandate it by constitutional amendment.

There are more important fish to fry in the judicial system and I can understand it, from the point of view of the Administrative Director of the Courts and the Supreme Court sitting in its administrative capacity . There are many, many problems in the judicial system, many things that call for their attention and require improvement - many of them certainly viewed in the perspective of the total function of the administrative aspect of the Supreme Court might even appear to exceed in importance this measure and therefore require their attention. Therefore, some other bodies, some other responsible bodies, must take the initiative. That body is the Legislature, and through Assembly Bill No. 1899 and its companion measure, Assembly Concurrent Resolution No. 166, the Legislature is taking the initiative and it is a delight to see that happen.

Now, though the courts possess, technically, the power to accomplish, by and large, what this measure suggests, they do not possess the power to do it fiscally.

Now, Judge Simpson, in one breath, suggests that they are in the process of doing it, and in the other breath he suggested that they don't have enough money to do what they would like to do presently with the court system. Therefore, unless this Legislature resolves to do something about this system - and by resolving I mean something more than just passing a measure that sounds nice in the structural sense, but committing itself to providing the appropriate fiscal resources for that idea to work - it can't be done.

The authors of this bill and the Commission, on which I have served, recognize that a Family Court is more - much more - than merely the consolidation of subject matter jurisdiction. A Family Court which does not have the money to provide the appropriate intake, counseling, referral, and follow-up service is not functioning as a Family Court.

Also the concept of unifying the court system, I don't think, is at variance with this proposal for another reason. The unification of the court system is a bringing together of parts that are separate because of historical reasons, based on geography, largely, rather than because of any inherent idea of what subject matter they ought or ought not to treat. Well, that is a fine idea. Let's unify the court system. Let's abolish these artificial, presently irrelevant, though quite clearly historically-grounded, divisions and differences.

But this does not mean that we can't, at the same time, properly recognize within a unified court system a departmentalization by subject matter.

Now, the trend - it has been said by some people, including Judge Simpson on other occasions - is away from a fragmented court system and toward a unified court system.

Well, that is true - fragmented in the sense that there are court systems presently fragmented - but there is also a very discernible trend toward a division of unified court systems into departmental subject matter functions and the Family Court is one of those trends.

As a matter of fact, just last Friday, Dean Watts of the National College on the Judiciary, spoke on the merits of a Family Court as a separate and distinct element and was highly in favor of it.

A-1899 properly creates the framework of a Family Court system because it does provide conceptually for necessary supporting services, though I am left with some wonderment as to whether all the necessary services are provided for. I think they are. I don't know how one can provide in a bill - I guess one cannot - for an annual legislative commitment for the proper support of this activity. I think that must come on a year-by-year basis. But as long as the proper framework is there, the legislature, from year to year, will be forced to consider appropriate support of this new system.

The system of hearings conducted by a referee is a highly laudable idea which can only make this system function at peak efficiency and at low cost. The protection built in with respect to referee hearings and their supervision by judges of the Family Court, I think, also bespeak a good authorship of this bill.

As important as the supporting services and the basic structure, is the centralized keeping of records and data retrievable systems. This is also essential to a properly functioning Family Court. I gather that this is one matter on which Judge Simpson and I are in agreement. The creation of this new court would accomplish this quite laudably and aid greatly the efficiency of operation and the ability of each judge or referee on any case before him

to easily determine whether any other involvement concerning this family - judicial involvement - has occurred.

I also agree with Judge Simpson that intake services are of distinctly high importance. He mentioned juvenile intake, but it is true of all intake in Family Court matters. Unless you have the proper intake services, unless you are willing to spend the money to establish them, then in the long run you waste money in the operation of the system as a whole. Establish, on the other hand, appropriate and sufficiently extensive intake services and in the long run this system functions at maximum economic efficiency and maximum judicial effectiveness.

I am also concerned with an assumption that Judge Simpson made respecting the administrative officer - the Chief Administrative Officer - of this court. He assumed that this Chief Administrative Officer would be functioning outside the pale of his office. I just don't think that's so. Certainly, the bill doesn't require it and, certainly, the existing and historic structure would command that this Chief Administrative Officer be one of the administrative officials who function regularly out of the Administrative Director's office. Certainly the Administrative Director needs the ability to administer the whole court system, even those departmentalized portions of it, and he needs to have the oversight and supervisory function unlimited by the creation of a new system, such as this.

Finally, in addition to all of the good things I see in this bill, is one thing that the drafters possibly couldn't do anything about - or another thing they couldn't do anything about - and that is, the effectiveness of this system once it is ordered. When the Family Court Study Commission was doing its study in preparation for its report, several of us went to Wilmington to spend a day in the Delaware Family Court

which is considered one of the models of such institutions in this country. In addition to the clear professionalism, efficiency, and dedication which pervaded that court system on all levels, from the Chief Judge to the lowest clerical employee, there was, we were assured, and from every bit of evidence we gathered and based our conclusion on, extensive public knowledge of the existence of that court and the function it is designed to execute, and particularly of the intake services which the court provides. The citizens of Delaware - most of them, apparently - know that when they have a family problem of any kind, if they go to the Family Court they are not necessarily going to be involved in a legal proceeding. As a matter of fact, statistically, they are not going to be involved in one at all. But, rather, these highly-trained, dedicated, intake workers will do what they can to straighten out the problem, short of a formal judicial proceeding and, in addition, will refer these individuals to complimentary social services on the outside that are supported, in part, by funds - by payment for the services they perform for clients of the Delaware Family Court.

But the citizens of Delaware know there is some place they can go - all the citizens, whether they are upper middle class, high economic class people who can afford their own very expensive counseling and referral services, or persons in our lower economic classes who can't afford it and often, therefore, despair of ever getting it. In Delaware they have it and there has been a community information effort which has rendered fairly certain that a good portion of the citizen group that can best use these services knows that they are there.

Again, finally, only because the bill is so faithful to the Family Court Study Commission's Report, I want to express my gratitude to the drafters and I will make

myself available for any questions you might have.

ASSEMBLYMAN BATE: You mentioned at the end of your discourse, Delaware. Are the facilities of the Family Court there commensurate with the other courts in the system?

PROFESSOR KESTIN: Yes. Frankly, I think there is some feeling on the part of the judicial members of that court system that they are another class of judge but some of them, the Chief Judge, particularly, thinks he is a higher class of judge than the ordinary judge because he is dealing with human problems that are really sensitive and day-to-day problems.

But, as far as the facility supporting services and budgetary attention is concerned, this court, as far as we could determine, gets what is its due.

ASSEMBLYMAN BATE: But it is not in the basement or in an auxiliary building?

PROFESSOR KESTIN: Oh, no, no. It has its own beautiful marble building, or a portion of it anyway.

ASSEMBLYMAN BATE: Now, in your opinion, if the legislature were to pass A-1899 and put on the ballot ACR-166, is that really a threat to the unified court system in New Jersey?

PROFESSOR KESTIN: Absolutely not.

ASSEMBLYMAN BATE: Because it adds one division, doesn't it - under Chancery?

PROFESSOR KESTIN: That's correct. It adds a division but to me it is not even relevant to the question of the unified court system. The unified court system is one in which - like Judge Simpson said - the administration, the oversight and the funding of the court system come from one source and this bill doesn't speak to that question at all. That has nothing to do with it.

I might note that the point that Miss Richman

made earlier is one that this committee ought to seriously consider - those words "or by law" at the end of the first main paragraph of ACR-166 could be bad. They create a danger that maybe we oughtn't to cope with at this point.

ASSEMBLYMAN BATE: What were the lapses to which you made earlier reference?

PROFESSOR KESTIN: Only the problem of-- The bill has a clear mandate for the creation of intake counseling referral follow-up services and establishes them to some extent. But I just don't think it provides the assurances that these services will always be maintained or, really, even will be begun at the necessary level.

I recall, a few years ago, Governor Cahill's annual message. The last one-sentence paragraph, I think, of the judicial section of that message, was a statement in support of the Family Court concept and it followed upon a rather lengthy analysis of how unification of the court system could accomplish economies. I got the impression that Governor Cahill believed, at that time, that the institution of the Family Court system would result in an economy - a fiscal economy. Well, I must be frank with you, I don't think it will. A proper Family Court system, with all the necessary supporting services - the two things go hand in hand - must cost money. But in terms of Assemblywoman Berman's question before, the savings in human and sociological cost will be vast.

Maybe it is appropriate that this hearing is being held today, the day before we have on referendum a series of measures involving the authorization for bond issues. The State has always been willing to appropriate money for highways; a little less willing, perhaps,

for green acres and other measures; not terribly willing for education or institutions. The State's got to start finding money somewhere for the human needs of its citizens, the money that will affect them in their day-to-day lives, such as in the creation of the administration of this Family Court.

ASSEMBLYMAN BATE: I would like to ask you one other question, Mr. Kestin. In a brilliant piece done by a husband and wife team, Mr. & Mrs. Dison, at the conclusion of their work they indicated that as far as the track record was concerned in the three systems, Rhode Island, New York and Hawaii - the three systems where Family Court has been in operation for a number of years - that is was not demonstrably better.

PROFESSOR KESTIN: Better did you say?

ASSEMBLYMAN BATE: Yes. There was not a demonstrable improvement. Of course there are only three jurisdictions that have applied it.

Although I concur with your viewpoint, what would you say to offset that viewpoint?

PROFESSOR KESTIN: Well, I would think that the lapses in such systems come largely from penny-wise measures, primarily the failure to provide the necessary supporting services to the appropriate extent.

If you deceive the citizens with the creation of a structure which is only a structure from which they cannot get any benefit, then they will not seek any benefit, obviously, and they will feel further frustrated.

The system can work. It has been demonstrated that it can work where the resources have been made available. Delaware is a good example of that. Delaware's subject matter jurisdiction has been somewhat limited as to what Family Court could consider but that is really not relevant to the question of whether they have done a good job in

what they are supposed to be doing; and they have. The reason for that is their legislature has done a pretty good job of providing them with the supporting services.

ASSEMBLYMAN BATE: Thank you very much.

The next witness will be Rita Bender.

(accompanied by second witness)

Would you like to sit next to each other and, perhaps we will handle this jointly? (affirmative answer)

Miss Bender will be joined by Annamay Sheppard and both are with the Rutgers Urban Legal Clinic.

R I T A B E N D E R: I think that Miss Sheppard and I would like to speak to two separate concerns of the proposed Family Court Bill and the fact that each of us speaks to a separate concern does not in any way mean to indicate that each of us is not concerned about the other's issue.

The Family Court Bill, as proposed, is, as most of the speakers who have been here this morning have suggested, one that has been needed for a long time. It is just obvious that one court which has statewide jurisdiction dealing with family matters is a necessary piece of legislation in this State. Such a court would help solve, for instance, the confusions of concurrent jurisdictions in such matters as affiliation proceedings, support proceedings, and adoptions. It would have the authority to resolve all aspects of the dispute. It would be able to do the necessary central record-keeping to keep parts of disputes concerning particular families from slipping through between the various jurisdictional lines.

We would hope it would help to solve the question of the kind of hybrid probation which now exists in adult matters because as a court of equity it might be able to deal more logically with that question. As the

Domestic Relations Court now exists, it functions in these probation cases without statutory authority for probation in civil matters.

As a court of equity it may be able to resolve some of the present confusions which continue to exist between civil aid to litigants rights proceedings and criminal contempt proceedings. It would provide, of course, a statewide uniformity of procedure and we hope of judges.

The Family Court may be able to give a fresh start with regard to such issues as the confusion which exists concerning the real party in interest. The Family Court should be, and we would hope would be, concerned at all times with the welfare of family members who appear before it. It should not see as its concern the reimbursement of public agencies for support monies expended, although those public agencies might well have a cause of action for such reimbursement. That should not be tangled up in the question of the needs of families.

We would hope that a Family Court would provide and deal with what is now the customary lack of counsel in any adult proceeding. We would hope that the Family Court would deal with the insufficiencies in service of process that now exist in Domestic Relations Court.

In this regard, I would urge that in those cases which go to hearing - and, obviously, in the proposed Bill there would hopefully be many, many cases which would never go to hearing - in adult matters, that the proceedings be open, except where one of the parties asks that the hearing be closed - with the possible exception of child abuse cases where the court might, in its discretion, in the interest of the child which may be separate from the interests of the adult litigants, provide for a closed hearing. Otherwise, we would recommend, in adult proceedings

that the hearings be open.

We would strongly recommend that the legislation provide that orders of the Court should be provided to all litigants. This is not the practice, at least in some counties of the State, in Domestic Relations Court now.

We would urge that the service of process provision of the act as it now exists be further clarified so that service of process is the same as in all present Superior Court actions - in all present matrimonial actions - that is, in person unless the Court orders otherwise. It seems to me there is some vagueness in the bill as it now stands as to whether or not there would have to be a court order in specific cases in order that service of process not be in person.

I'm, obviously, pleased, as I think were most of the speakers here, with the concept of abrogating all the theories of guilt and punishment. It is necessary. It has been a long time in coming and it should happen.

I would personally urge, however, that where the litigants may be acted upon by the court in such a way as to deprive them of liberty or property, that fundamental due process guarantees must be present. By those guarantees, what I have specifically in mind is the right to counsel in non-support proceedings. I think that Argersinger vs. Hamlin in the United States Supreme Court and Rodriguez in our own Supreme Court point the way to that. Parenthetically, the right has been recognized by the Supreme Court of Alaska recently. I think that, certainly, if one has a right to counsel in a proceeding which may deprive one of his driver's license, that in a proceeding where order of support is to be entered which will follow the litigant until the adulthood of his children, or in a proceeding where custody matters as to those children are

about to be acted upon by by the court, that counsel is necessary.

I think furthermore, in terms of due process, that litigants clearly have a right to know of the specific nature of the proceedings at each step in the proceeding and that has been, at times, sorely lacking.

They clearly have the right to be confronted by the complainant and that has, at times, been lacking again in part because of the unfortunate merger in the Domestic Relations Courts, as they presently exist, between the rights and needs of family member litigants and the other needs of public welfare agencies - their need of reimbursement. Again, I would urge the two should not be merged and if the complainant is a family member, that must be clear and those must be the litigants.

Those are the comments, essentially, that I had to make about the bill. I thank you for the opportunity to be heard.

ASSEMBLYMAN BATE: Miss Sheppard?

Miss Bender, would you mind staying just in case there are questions of either, or both of you?

MISS BENDER: All right, fine.

A N N A M A Y S H E P P A R D: The Urban Legal Clinic at Rutgers deals explicitly with the problems of poverty families. I suppose because of that focus, students and faculty of that Clinic have been with Legal Services people more in the adult portions of the Domestic Relations Court than the private lawyers - substantially more - and I would endorse the comment of my partner, Mrs. Bender, in that regard; the comments arise out of very specific experience.

I would like to just expand a little bit. One of the problems that we have perceived, and I think we are joined in that by at least some of the Domestic

Relations Court Judges, arise out of the peculiar function of the existing court as a poor peoples' court where the poor people are dependent in some manner upon a public agency. Usually what's involved is support proceedings set in motion, not by private litigants but by welfare agencies in response to their statutory duty to seek reimbursement.

We think, on the basis of our experience, that there has been enormous difficulty engendered because the complaint which could be-- for example, Essex County Welfare Board against John Doe is postured Mary Doe against John Doe. The litigant - or the plaintiff litigant - in effect, becomes a paper plaintiff and it is very difficult for that paper plaintiff to extricate herself from the proceedings though she is on full grant and will not herself achieve any financial benefit from the proceedings at all. All of the things to which Mrs. Bender's comments are addressed - the due process aspects which drop down from that - are exacerbated by the goal confusion of the court; the goal confusion concerning whether it is - and I am using harsh language and I am using it purposefully - now a Family Court or whether it is now a collection agency.

With all due respect, at least in the urban counties, in the nature of things and not because of anybody's bad intentions, probably in excess of 3/4 of the cases in Domestic Relations Court are welfare cases and their primary focus is on reimbursement. I greatly applaud the bill because I think on a number of fronts - larger fronts than the ones I have discussed here - a Family Court is of very great importance.

One of the ways in which I would like to see that Court get itself assembled is on the basis, as has been indicated, that it addresses itself to the families - to the problems of families and children and only secondarily

to the financial problems of helping agencies.

I would like to make some comments, briefly, on the counseling portions of the bill, which I discern from Sections 13 and 16 and to some degree from Section 12. I think from my prospective the counseling functions are the most important functions that are proposed by the bill, which does not say that I don't favor the other portions. Obviously, family problems are not like problems involving litigation of rights under a deed or a contract and they are not like tort actions; they are very subtle problems. Implicated in family difficulties are the training, the education and the financial ability of the adults in a family; the psychological and emotional state of the adults and the children in a family; the outer environment in which the family finds itself - and I mean by this the decency or indecency of its housing, its schools, its recreational facilities, its access to community facilities, including medical facilities. All of those very much bear upon how that family functions. The involvement or non-involvement of that family with assistance agencies is of very great importance to the manner in which the family members perceive themselves.

The problems generated by being a child and being a parent certainly are not amenable to resolution wholly on the basis of cold pleading, therefore the counseling function, the dispute resolution on a non-judicial level, becomes of the essence in the creation of a Family Court structure. Maybe I am wearing the wrong hat here because I am a lawyer and not a psychologist, but I am at least a lawyer somewhat deeply involved in family problems. I would think the counseling functions are to explore all of these variables in each family situation with a view to solving problems within the parameters of reality and, where necessary,

to provide to a court, which will ultimately adjudicate a real profile and description of the family which has been interviewed and dealt with, so that it is an informed judgment which the court ultimately renders, if it must render a judgment.

There are some problems that I perceive in connection with the counseling function and I would like to review these here very briefly. Obviously, the problem which has been addressed by other speakers throughout the morning is the problem of the provision of resources to do the job better than decently.

It seems obvious that if we are to offer counseling, we do a disservice if we offer anything less than real professionalism in that counseling. I don't think this is the kind of function for which people can be trained in 6 weeks and put abroad in the world to act upon families. I think we have to talk about hiring, or referring to agencies, in the context of our understanding of the minimum training and sensitivity comprehension which is required to fulfill this function. I think it is a much harder function than lawyering or medical doctoring; at least you can zero in on the esophagus and leave the rest of the body alone when you are a doctor. This is dealing with the whole body in the most sensitive fashion.

I recognize that this bill cannot mandate so-and-so many dollars each year from now on, but nonetheless I think that if we don't have some consensus that those dollars will be provided, or found in some fashion, then we are reciting niceties and we are not going to fulfill the intention of the bill.

A somewhat narrower question in connection with the conseling function, particularly where the State is initiating action is, I do perceive some difficulty running to the

question of involuntary self incrimination. The language of the bill is somewhat vague as to whether the utilization of that counseling function - the interviewing function - will be voluntary or involuntary. As I read it - and I read it several times - it sounded to me, at least in the context of psychological or psychiatric evaluation, to be distinctly involuntary.

In terms of the intake, the language seems to me to create some risk. My own view is that counseling service will be of no utility unless it is voluntarily undertaken by the family and, once voluntarily undertaken, it will not continue to be of use unless it can be terminated by the members of the family and the matter referred to the court when they feel that it can no longer be of any use to them.

The impulse of the bill, as I read it, is such a good one that it would be, I think, a great sadness if the function which is sought to be created should in any sense be permitted to become a function labeled "counseling," which would be, in fact, a prosecutorial device, or a collection device. I lean here on the collection device because I think it has produced dreadful results in the existing Domestic Relations Court.

I would make a few recommendations over and above that the utilization of counseling be voluntary and terminable by the parties - over and above that the staff be adequately trained. I think that at least in order to avoid the interposition of assistance agencies in such fashion as to pervert the function, it ought be made perfectly clear by the statutory language or by the rules which come behind the statutory language, that the main plaintiff in litigation must control the litigation; that public assistance agencies ought not be permitted

to position a reluctant main plaintiff and then require that plaintiff to stay with the litigation for a purpose which does not serve the plaintiff.

I am really happy to see the bill wending its way toward what I hope will be enactment and I thank you for this opportunity to be heard.

ASSEMBLYMAN BATE: Miss Sheppard, with regard to the professionals, do you favor their being part of the court structure or do you perfer local option, or do you think, for example, the marriage counselors and the psychologists and the like should be hired on a regular basis, but not be employees?

MISS SHEPPARD: My instinct is that there ought be some distance between the counselors and the court and, therefore, to the extent that it is feasible, I think I would prefer that it be a referral system.

I certainly would have difficulty with the notion of making an either/or choice because there may be parts of the State in which that's quite possible and other parts in which it is not.

ASSEMBLYMAN BATE: As far as the voluntary aspect of counseling is concerned, if it is limited strictly to that, don't you invite the adversary proceeding at an early stage?

MISS SHEPPARD: There is that risk. I think, however, that where-- Well, let me back up and see if I can express it this way - the particular population on which I am focused is a population which is constantly, daily acted upon by agencies and in kind of a mandatory posture.

My own judgment is that the effect of that is that the acted upon simply lie low ; you know, give as little as possible, create an impression of passivity, and don't open up because out there is a danger - that

official sitting and acting upon you in a fashion to which you have not consented. My experience, of course, has been with the Legal Services Project and it has been a huge education to me to begin to teach myself and watch other people teach themselves how to get off that authoritarian acting upon posture, and what we have found - and one of your members, I think, has a like experience - is that, in order to set up a useful relationship which ultimately will help, it is absolutely mandatory that the situation be a voluntary rather than an involuntary situation.

Now, I recognize that there are situations in which the State has a primary interest, as with child abuse cases. In that case, of course, we have all kinds of Fifth Amendment implications. But, on the purely private side I can't imagine - I could imagine the system being set up to say, "you must begin counseling" - good results coming out of mandated counseling if, at some later point, one of the parties said, "look, this is not getting anywhere; I won't help". I think that is true in the population generally. I think it is particularly true in a population which needs to be allowed to make some choices and hasn't been allowed to do so.

ASSEMBLYMAN HAWKINS: How would we allow the plaintiff - the named plaintiff - to keep control of the case - realistically?

MISS SHEPPARD: Okay. I think maybe what I have done is to give you a conclusion without enough background. In the pure non-support situation where the plaintiff is a welfare recipient, for the most part in the existing process the plaintiff does not benefit by any support order. The plaintiff is on full grant. The County Welfare Board benefits because it has a shot at reimbursement. For reasons that are unclear to me - and I think that they may be purely clerical reasons, if the

wind carries the right message - what the Welfare Board has done, at least in the County that we work in, is to put the recipient up front - now, HEW regulations say that that is not permissible - by somehow or other arriving at a consensus with the recipient - "you will be the named plaintiff but it will be for the purpose of our reimbursement".

Now, if that is actually a voluntary arrangement, that is one thing. What my experience has been is that 6 months later there is a primary order, then there is a failure to meet the order, and there is a final procedure. Or there is a six-month review and another six-month review, and the plaintiff's position is, "I neither gain or lose by this. I really would rather not have to get a babysitter or take time out from my job"- if there is a job - "I would like to get rid of this thing". Or the recipient says, "I won't file for a divorce and I want to terminate this proceeding,here", because that proceeding never was for her benefit.

The agency, at least, has taken the position, "you can't do that". There is a statutory basis on which welfare agencies can themselves, in their own name, come into the litigation. I am not faulting that procedure; I am simply suggesting that if we are going to adopt a posture - which I think this bill opts for - that the function of a Family Court is to act helpfully upon members of the family; it really has to be members of the family. If I were to file a complaint three weeks from now,addressed to a member of my family, and three weeks after that I decided "well, that was probably a bad scene, I shouldn't have done that", I should be able to dismiss that action.

ASSEMBLYMAN HAWKINS: Yes, but the problem that we have with welfare clients in the Welfare Department is just

that. Is it not true that the Welfare Department says to the client, "either you file this particular complaint or we will cut you, individually, off from welfare"?

MISS SHEPPARD: Well, it might say that but I suggest that it has no legal basis to say that.

ASSEMBLYMAN HAWKINS: Has it not happened that individual clients have been cut off?

MISS SHEPPARD: Oh, yes.

ASSEMBLYMAN HAWKINS: So, avoiding litigation, the individual client might be cut off from welfare.

I am trying to find a realistic way. You say there is a way that they can be brought into the litigation but can they be the main party?

MISS SHEPPARD: Absolutely.

ASSEMBLYMAN HAWKINS: They can be the plaintiff, themselves?

MISS SHEPPARD: Yes.

ASSEMBLYMAN HAWKINS: Are they going to be able to prove their case without the welfare client?

MISS SHEPPARD: They may require the cooperation of the welfare client as a witness . I don't think it is proper that they should require the reluctant welfare client to become a party.

If I may, just two more sentences - I can't bear to get off the microphone. I have had cases in which the net effect of requiring the ADC recipient to become a plaintiff - a reluctant plaintiff - is to destroy the family unit. It is very hard to explain to "poppa"; "my name is on it but I didn't do it". If we are talking about preserving the family unity, that is absolutely the worst way to go about it.

ASSEMBLYMAN HAWKINS: Well, in essence they do do it because they have to be the ones to sign the complaint. They have done it under coercion.

MISS SHEPPARD: Yes.

ASSEMBLYMAN BATE: Assemblyman Codey.

ASSEMBLYMAN CODEY: Miss Sheppard, you are here as part of the Rutgers Urban Clinic but just who is the Urban Clinic representing?

MISS SHEPPARD: The Rutgers Urban Legal Clinic is a teaching program at Rutgers Law School and I am a member of the faculty of Rutgers. It is a course, as torts or contracts, or what have you.

ASSEMBLYMAN CODEY: Yes, but who do they represent?

MISS SHEPPARD: We have a case load which is largely referred from Legal Services officers. We have a third-year practice authorization from the Supreme Court and we represent clients,for the most part, within the parameters of elligibility for Legal Services.

ASSEMBLYMAN CODEY: Okay. Thank you very much.

ASSEMBLYMAN BATE: Thank you, Miss Sheppard.

MISS SHEPPARD: Thank you.

ASSEMBLYMAN BATE: The next witness will be Professor James Boskey of Seton Hall University. He will probably be the last speaker prior to lunch.

Are you going to read your statement, sir, and then answer questions, if any, or are you going to present the statement and speak extemporarily?

P R O F E S S O R J A M E S B O S K E Y: I can do it either way, at the preference of the committee.

ASSEMBLYMAN BATE: We would prefer you speak extemporary and the statement will go into the record.

PROFESSOR BOSKEY: I am here in my capacity as a Professor of Family Law at Seton Hall. My interest in the Act is very great, insofar as seeing the Act approved and also the constitutional amendment associated with it approved.

I think the fact that, in the some 27 years since the passage of the 1947 Constitution, the Supreme Court

has not seen fit to introduce the Family Division, clearly suggests the immediate necessity of legislative action.

I would further suggest that this is also necessary in view of the funding problem, which has been mentioned earlier. I think there are a number of major supportive services which could not be provided merely by the allocation by the Supreme Court of certain judicial personnel and limited supportive personnel to a Family Division or a Family Court.

I think there are a number of factors in the bill which I would like to speak to briefly. The first is the reference to the function of the Director of the Family Division. One of the functions which it seems clear should be served by this Director is that of organizing appropriate training and educational programs within the Division for the personnel of this Division.

It appears that the judges of the Division will be selected from - in large parts - those already on the Bench with new appointments also being made. May of these judges may not have been exposed to the particular problems which are faced by a Family Court judge, or may not be fully sensitized to the difference in the manner necessary to deal - difference in manner and difference in practice - with the individuals in these situations. I therefore suggest that the Director of the Division be authorized to create a special training program in order to see that the judges are educated in this manner - not only the judges but also the personnel of the court should similarly be trained in this manner. It is the exceptional judge, such as Judge Polow, who will train himself in these needs. But the majority of judges, while they may be willing to go forward, may not have the basic knowledge of the types of training needed, or may not have the opportunity unless some formal program is established to

provide them with this.

Certainly this would be essential with regard to the non-judicial personnel of the court - the need for an understanding of the nature of the problems being dealt with and an understanding of the manner in which these problems should be dealt with, being of primary inportance.

The second feature omitted, which is not an essential of the act but which is something which I feel belongs in the act - and I think could well be provided by the Legislature - is the provision of counsel for all children in any proceeding involving children. We already have this in the area of delinqunicy and in the area of dependency, to a certain extent.

I would suggest the Legislature make provision for counsel to be provided for all children who may need to appear before the court in any type of action, be it one for termination of marriage, one of adoption, or, in many cases, one for the enforcement of support where the child may well be an interested party.

It seems very clear that the interests of the child are frequently not the same as those of the adult litigants and, yet, typically, the child is unrepresented in these proceedings and unable, due to lack of age and lack of, perhaps, intellectual development to present his or her own case to the court to represent his or her own interests properly.

I suggest that in the establishment of a Family Court this, above all else, could go a long way towards assuring the protection of the interests of all members of the family in an action of any kind. There may be circumstances where the adoption of the child may be undesirable for various reasons from the viewpoint of the child. The child may not be given a chance to speak.

Or, typically, in a termination proceeding, the right of the judge to question the child on custody matters,where not contested - I would suggest this is not a sufficient representation of the very real interests of the child as to where custody is placed and what support provisions are made for him or her.

With regard to paragraph 6 of the act, specific provision is made for the transfer of the Municipal Court family proceedings to the Family Division. I would suggest that the same should occur with regard to misdemeanors or high misdemeanors, whereas between family members. In many cases the action of a party against another family member rises out of an underlying situation which requires not merely a judicial decision - even of a criminal nature - to cure it; it may require substantial supportive services, psychiatric services, and the like.

In many cases it may be inappropriate for a criminal proceeding to go forward, even in the case of a misdemeanor or high misdemeanor offense - more typically of a misdemeanor offense, admittedly. The transfer of these proceedings, or at least the granting of concurrent jurisdiction over such proceedings to the Family Division would provide a means for the possible resolution of these disputes and the possible restoration of the valid and valuable family situation.

One other point I think may be provided - it is not 100% clear in the bill - is that I think it is obvious that the Family Division will need substantial investigative services. It will need a provision for substantial personnel for the carrying out of investigations, both in juvenile proceedings and in others. The act does not expressly make provision for such personnel, although it does mention some specialized personnel and I would suggest that these should be provided for either through

this act or through the funding procedures which would follow upon it.

In summary I would like to say that I very strongly support the development of a Family Division of the Superior Court. I think the concept of uniformity in administration is a very important one in the State and I think it has been pointed out a couple of times that we seriously lack such uniformity in dealing with family matters.

I think the merger of jurisdiction over the variety of problems that may face a family will provide the court with a far better opportunity to deal with root causes, rather than with mere symptoms of family disfunction. I think that this can only be done within such a Family Court, having as wide as possible a jurisdiction over the various range problems that can arise within a family.

ASSEMBLYMAN BATE: Are you suggesting, Professor Boskey, that in the case of an adult offender charged with a high misdemeanor, who demands a trial by jury, that that matter should still be handled in the Family Division?

PROFESSOR BOSKEY: No, not necessarily - certainly not in the case where the trial by jury is demanded. But I would suggest that in many cases the difference in the basic offense between a charge of a violation and a misdemeanor, typically - high misdemeanor, I am probably exaggerating my case - may be, in large part, a matter of selection by the arresting officer and the prosecutorial discretion. It may be far more appropriate in many cases of misdemeanor-type offenses, especially where a jury trial is not sought, to attempt to resolve these matters outside of the traditional criminal courts and within the context of the Family Court which, while functioning as a criminal court, may be more sensitive to the particular problems faced by the family unit as a whole.

ASSEMBLYMAN BATE: Thank you, Professor.

The hearing is now adjourned for lunch. We will return at two o'clock.

(lunch break)

(After Lunch)

ASSEMBLYMAN BATE: We will now resume the hearing. The next witness was to have been Philip S. Showell, Jr. I understand he was not able to stay after lunch, and he will submit his viewpoint by letter. Our first witness this afternoon, therefore, will be Father Finbarr Corr, Director of the Family Life Bureau, Diocese of Paterson, who represents the New Jersey Catholic Conference.

F A T H E R F I N B A R R C O R R:

Mr. Chairman, I should say that I brought along an interpreter in case the stenographer has trouble with my Irish brogue. (Laughter) Besides speaking in my own behalf and as a member of the New Jersey Council of Family Life Directors, I have also been involved in family life education for the past 10 years; and I am a licensed marriage and family counselor for the State of New Jersey. Presently, I am involved in research for my doctorate studies at Columbia University specializing in family life education.

The testimony I present today represents not only my own feelings and thoughts on the subject of the Family Court Act but also the careful study and reflection of the New Jersey Catholic Family Life Committee, the Family Life Board of Governors of Paterson, New Jersey, and with the endorsement of the New Jersey Council of Family Life Directors.

At the very beginning I wish to express my sincere appreciation and congratulations to Assemblymen Bate and Rizzolo for introducing a bill such as A-1899. I believe that this bill, if passed by the Assembly and the Senate, and if the Assembly's Concurrent Resolution 166 is accepted by the people of New Jersey in the subsequent general election, then the State of New Jersey has taken a great step forward in introducing a more humane and therapeutic approach to solving problems that beset marriage and family life in our State.

I would like to say that I wish that Judge Simpson could have been here all morning and afternoon to hear, probably, opinions from the social sciences that would be quite contradictory to the focus he took.

ASSEMBLYMAN BATE: I might say, Father, that he will be furnished a copy of the transcript so he will be able to review all the remarks that will be heard today.

FATHER CORR: As a priest and as a pastoral consultant, I have sat, at times, in Municipal and Juvenile and Domestic Courts as clients waited to present their cases before the local magistrate. These were clients who might be coming to my office for marriage and family counseling. On their behalf, I would accompany them in Court.

I do not wish to condemn these judges but rather to express my dissent at the present system which, as the bill states itself, uses judgmental and punitive processes of law to prevent crimes which, I feel, could be handled much better and be more encouraging to the offender if a more therapeutic approach were used.

As a citizen and professional marriage counselor for the past 10 years, I do not expect the average judge to be an expert in psychology; but I would expect him to have the foresight to use professionals in the social sciences - psychiatrists, psychologists, social workers, marriage and family counselors and pastoral counselors - as an integral part of his approach in making judgments about domestic problems.

In this situation, the judge's decision about an individual's future projects a happy balance between seeing that the laws of the State are observed and that the individual gets the psychological help necessary or appropriate for his rehabilitation.

I believe, therefore, all cases listed in paragraph 6 of this proposal should be submitted to a panel of at least two people - not one as the bill says but two - one of whom would be a judge and one would be a professional in the field of psychology. In the case of a disagreement between these two professional people, the decision of the judge should be the final decision.

In paragraph 11, I propose that the referee be appointed by the Chief Justice and that he be a psychiatrist or psychologist experienced in child psychology, marriage and family counseling and that he submit his findings and recommendations in writing - with permission of the offenders - or offendees - to the Court. If the offendees refuse this permission, then the appointed referee would refer the case to a panel of at least one judge and a professional in the field of psychology. I think this would be in keeping with the testimony given just before lunch pertaining to confidentiality and voluntariness of information given by a client to a judge.

In paragraph 14, I recommend that the 48 hours granted for response to a summons be extended to two weeks before the Court assumes jurisdiction over a particular case.

In conclusion and possibly to be more specific, I will take one aspect because I think a lot of the points I might like to say have already been covered. I would like to say that thoughts that I am presenting in behalf of the various committees I represent are not completely foreign to the minds of judges throughout our own State. Take just one area of domestic problems - the dissolution of the marriage bonds or divorce.

As far back as 1950, Justice Case, in Sheperd v. Ward stated that "matrimonial suits are

in some respects sui generis. Their reflex consequences are rooted deeply in the home, in society and in human relations generally. They ought not be permitted to take on the aspects of a game wherein wits, speed, daring and finesse prevail over elemental right and justice."

In an interview which was conducted by a reporter and published by the Passaic County Bar Association, Acting Superior Court Judge Salvatore Ruggiero suggests a solution which would be in agreement with my thinking. According to Judge Ruggiero - and in many respects I heartily agree - the basic reform would be a non-adversary proceeding. The judgment dissolving the marriage, dividing property and awarding custody would be only the first step to be followed by court supervised assistance and direction for the establishment of a new way of life primarily for the wife. For this process the educational nature of the Court would have available a bank of resources - social, psychological, job placement, child guidance, etc. - for its discretional use. I think this is in keeping with the presentation given by Mrs. Bender today.

In conclusion, I would like to make a plea in behalf of children besides the testimony given already. It is a known fact that children don't hire lawyers; and in many instances, children are used as pawns to get the most satisfactory financial settlement and the minimal visitation rights by parents. In many cases, lawyers and judges are being paid by parents except the negotiated agreement; and the court's calendar moves along with dispatch and efficiency. We frequently forget how the vengeance of parents affects children.

Frequently we as marriage counselors or family counselors see so-called adults in their 30's or 40's still acting as children or adolescents. They come

in with marital problems or psycho-sexual problems and tremendous feelings of insecurity as a result of being used as pawns by parents in a divorce case.

I would be in favor of the proposal made by Professor Boskey that children be afforded the opportunity of individual counsel. I can see the opportunity of law students being used in the case of children to see that the rights of children are protected.

Judge Ruggiero said, again, that at present the child has no rights in a divorce proceeding. Why, he asked, couldn't the court, through a sponsor or a motion, appoint a guardian to safeguard the interests of children where the proper circumstances exist?

On the aspect of damage to the child in the constant atmosphere of hatred present, he suggested that the State retain competent psychiatrists with whom both parents with all the children be required to meet for one session of an hour to an hour and a half. Here they would receive thorough explanations of the damage to the child as a result of improper treatment. This, he suggests, would be an expensive program for the State especially contrasted with the costs we now have of treatment care or correction for the damaged child. But, he goes on to say, who can fix the price of a child saved from that condition?

I agreed with Judge Simpson when he said this morning that it is possibly astronomical in terms of costs but not impossible.

This new addition to the New Jersey court system would obviously add possibly million of dollars to the state budget in terms of rehabilitation. At the same time, I feel it should lessen the amount of money that would be assigned to psychological or social services. At the same time, it would be giving us here in the State of New Jersey the better possibility

of giving children and young people a better opportunity to grow to full maturity as individuals. It should lessen the divorce rate and, in general, make New Jersey a more humane State to live in.

I certainly would offer the services of our committee - the New Jersey Family Life Committee and Family Life Bureaus - to any revision of the proposed bill.

I thank you for the opportunity of being able to address you this afternoon.

ASSEMBLYMAN BATE: Thank you Father.

The next witness will be Roberta Holmes of the National Association of Social Workers.

R O B E R T A H O L M E S:

I am Roberta Holmes and I am representing the Task Force on Juvenile and Criminal Justice. I am also a probation officer from Passaic County.

The National Association of Social Workers, New Jersey Chapter, expresses its support for Assembly bill number 1899, but wishes to offer a series of amendments to that bill which it believes will significantly strengthen the proposed measure. (Refer to page 8 X.)

First, social workers have historically been advocates for the family in seeking solutions to complex personal and legal problems in the primary social grouping, the family. In 1971, a special committee of NASW-New Jersey reviewed the work of the New Jersey Family Court Study Commission to date and made its recommendations. It is with the greatest shock that NASW notes the exclusion of the social work profession from the current bill. Certainly, social workers should be included along with their professional co colleagues, the psychologists and psychiatrists. For the committee's reference, we will enter the brief report of the NASW Family Court Study Committee into the record. (Refer to page 10 X.)

Second, NASW has written a definition of "family" which it believes must be included in the bill. This definition encompasses three elements of a group which make it a family: relationship by blood marriage or obligation; dependent children; and a common household or legal responsibility.

Third, NASW-New Jersey would have the Director of the Family Court establish and operate an examination and treatment unit of the Court whose purpose would be the provision of professional advice to the court. This unit could then make professional diagnoses and recommend to the judges treatment programs for the adults, children and families appearing before the court.

Fourth, section 16 which relates to examination and treatment is revised to allow for the use of the examination and treatment unit and auxiliary treatment options. Section 18 is clarified and psycho-social treatment is added as a possible treatment.

Fifth, continuous training for the personnel assigned to the Family Division of the Superior Court is required in an amendment to section 20. This is to protect the clients of the court from well meaning individuals who may not have presently the skills necessary for this important work. Funds for this training are provided.

Finally, NASW-New Jersey in supporting A-1899 hopes that the Family court will not be merely a renamed juvenile and domestic relations court, but a vehicle for protecting and fostering family life. To meet this goal, will require the expenditure of State revenue. For this reason NASW-New Jersey respectfully requests that the Committee chairman call for a fiscal note to be prepared by the Office of Fiscal Affairs. In addition, NASW has proposed a new section 26 which will allow the Family Division to function until such time allows for detailed budgeting.

ASSEMBLYMAN BATE: Thank you. We appreciate your preparation of proposed amendments. I can assure you that the full committee will give very serious consideration to them.

MS. HOLMES: Thank you.

ASSEMBLYMAN BATE: The next speaker will be Richard Talty of the Essex County Probation Officers' Association.

R I C H A R D B. T A L T Y:

Mr. Chairman and Assemblyman Codey: On behalf of our Association, I recommend to the committee that A-1899, known as the Family Court Act, be made explicit in designating what agency shall perform the intake, investigatory, case supervision and collections of support functions for the Family Division, Superior Court.

This Act appears to be ambiguous as to whether these functions shall be executed through a newly created staff servicing the Family Court or whether these duties shall continue to be carried out by the Probation Departments in our 21 Counties.

It is the position of the Essex County Probation Officers' Association and it is also the position of other representatives from other organizations of probation officers from whom you will hear shortly that these functions can continue to be efficiently and economically performed by County Probation Departments.

County Probation Departments are staffed by experienced and qualified personnel who, while under the control of the County Court judges, are nevertheless directed by statute to service all courts in our State.- State, County and Municipal.

In Essex County, 50 percent of the work volume undertaken by probation officers is on behalf of the Chancery and the Juvenile and Domestic Relations

Relations Courts. In 1972 the Essex County Probation Department completed 991 investigations for these Courts.

Also, during that year, 10,000 juveniles and adults were supervised under probation commitments or support orders emanating from these Courts. Over $6 million in support payments were collected by the Department and disbursed to the recipients.

We feel that it would be deeply regrettable if the Family Court Act did not insure that County Probation Departments continue to execute these functions.

This morning, Judge Simpson commented on the successful Intake Program in the Juvenile and Domestic Relations Court in Essex County. It should be noted that this program is being staffed by probation officers drawn from our Department.

We would also respectfully remind the committee that the cost of services rendered by County Probation Departments to the Chancery and Juvenile and Domestic Relations Courts is borne by the respective Counties and is not presently a burden on our state treasury.

In spite of the remarks of some of the previous speakers to play down what the economic costs of a Family Court would be, we feel that at a time when our Legislature is facing monumental problems in meeting a large state budget deficit, it should be kept in mind how these services can be performed efficiently in terms of human lives and economically for the advantage of all the people of our State.

Therefore, we would request that the committee consider amending the Act in the following areas:

Page 4, Paragraph 13. a. line 3 to read: "it shall (direct the chief probation officer) to determine..... Insertion of the words direct the chief probation officer between shall and make.

Page 5, Paragraph 13. c. line 19 to read: the (chief probation officer) shall inquire..... Insertion of the words chief probation officer in place of " the court's staff."

Page 7, Paragraph 17. line 3 to read: of the social investigation by (the chief probation officer) has been..... Insertion of the words chief probation officer in place of "an officer of the court."

We feel that these amendments can insure that the functions needed by the Family Court, if it is instituted, shall continue to be carried out by the respective County Probation Departments.

Thank you for your time.

ASSEMBLYMAN BATE: Are there any questions, Assemblyman Codey?

ASSEMBLYMAN CODEY: I would like to ask you, Assemblyman Bate, in regard to this question of who would carry out these duties, what did you have in mind as far as whether it would be the Probation Department or a newly-created staff?

ASSEMBLYMAN BATE: Let me say initially, there is nothing in the bill that intends in any way to eliminate the positions of our probation officers in the Counties of the State of New Jersey. It seems to me, for those of us who listened to Judge Simpson, that hopefully companion bills are going to be passed; and there is going to be, eventually, a transfer of funding so that the state treasury will finance, rather than the respective Counties, this particular responsibility.

I might say that I noticed in your statement, Mr. Talty, that you indicated the hope that the expenses would continue to be borne by respective Counties which, of course, includes the most urban

County, Essex, and not become a burden on the state treasury. That is a viewpoint of your Essex County Probation Officers' Association?

MR. TALTY: We felt it should be pointed out that the creation of a new staff, whether that cost is borne by the State or the County, would only duplicate existing functions which are now performed by existing personnel. Far too often, I think, we can find legislation creating new bureaucracies within the State overlapping functions which are presently being supplied by other personnel. We are not speaking for or against the Family Court Act or the bill in its entirety. We are only speaking to those sections--- We really don't know what the intent of the framers of this particular bill was - just that it does not seem to speak very clearly as to who shall perform these functions.

ASSEMBLYMAN BATE: I do think, though, that uniformity and central recordkeeping would be a vast improvement with respect to probation as well as all the other services provided by the Court - all the adjunct services. Actually, it remains to be developed as to how it will operate. In any event, I think, eventually it is intended that the leadership emanate from the State. That does not stop the County probation officers from functioning subject to the one head in Trenton.

MR. TALTY: This bill does not provide, as Judge Simpson indicated and everyone is aware of, for a unified court. It does provide for the transfer of certain functions of existing courts into a Family Court. It also indicates a lot of other additional personnel will be hired by this Court - by the Director - if one is created. It doesn't really speak as to who shall perform the functions that have been done in the past - who shall investigate, who shall provide intake

services and who are the actual personnel that shall perform these functions. Will they be existing probation officers or will the Court recruit outside Probation Departments and hire new personnel to perform these functions? At this point we really cannot say---

ASSEMBLYMAN BATE: The new people will only supplement the work of those who are presently in existence and not be in lieu of their services. As a matter of fact, the increased staff certainly envisions those specialities which are not part of our present court structure.

MR. TALTY: It still does not seem clear to us, Mr. Chairman, as to how, for example, you would decide who shall perform couseling functions, who shall perform investigatory functions, etc. I don't think this bill speaks to that - to who shall do that function. Obviously, 50 percent of the employees of the Probation Department currently perform functions solely for matters involving the Chancery and Domestic Relations and Juvenile Courts. If those functions are removed from the Probation Department, you are going to have a lot of existing personnel without functions to serve. I wonder just what the intent of the bill is.

ASSEMBLYMAN BATE: Of course, the purpose of this public hearing - one of the prime purposes - is to get the information from the great cross-section that we have here to determine how best we might improve the bill. There have been a number of amendments suggested. Miss Richman indicated that a few of the sections have already been incorporated into existing law. What we intend to do is take the entire transcript of today's hearing and enter such amendments as are necessary and take care of such deletions as are called for and, hopefully, further define what you have questioned today. That we will do; we will review it with the people who actually drafted this bill for us.

MR. TALTY: Thank you, Mr. Chairman.

ASSEMBLYMAN CODEY: Mr. Talty, I guess I would be correct to say that the Essex County Probation Officers' Association feels that if the State bears the cost of these Courts, the administration would go out of the Counties' hands and into the State's hands. Am I correct?

MR. TALTY: No; that is another issue entirely. We just want to point out the fact that the Counties, even if this bill comes into existence, are still going to be paying for services. Other Courts are still going to be maintaining a County Probation Department. We feel it would not be justified for a Family Court to recruit personnel to perform functions which are presently being performed by probation officers throughout the State and which would create a large new bureaucracy under the Family Court while, at the same, the Counties would still be bearing the burden of maintaining County Probation Departments and having qualified personnel perform these functions as they have in the past. The bill does not, in our belief, speak clearly as to the numbers and types of personnel in all categories that the Family Court should recruit to perform its functions.

At the time the unified Court system comes into existence, if and when it does, obviously we anticipate and realize that all County Probation Departments will then come under a state probation set-up of some type.

ASSEMBLYMAN CODEY: But not necessarily state administered.

MR. TALTY: I think it would have to be state administered in some way - under some state agency. It would be either the judicial or executive branch - whatever it might be at that time. We don't think that at the point in time that we are talking

about, they are still going to have Counties maintaining the costs. In Essex County, they are still going to be maintaining a County Probation Department whether the Family Court Act is passed or not.

ASSEMBLYMAN BATE: Thank you very much, Mr. Talty.

The next witness will be Paul Hargrave who will be followed by Frank Sagato, Irving Hirsh and Gary Skoloff in that order. Is there anyone else who wishes to testify in addition to those gentlemen? (No response) Please go ahead, Mr. Hargrave.

P A U L W. H A R G R A V E:

Thank you, Mr. Chairman. I want to thank the members of the committee for having invited me to present a few words with respect to A-1899. I wish to point out that Mr. Talty has placed before the committee, very well, my position. I wish to thank you for the opportunity to continue.

I speak as a direct representative of over 800 probation officers throughout the State as President of the State Association of Probation Officers - probation officers appointed by the County Court judges of the 21 Counties of New Jersey. They are ordained to carry out the enforcement of court orders including the general supervision of adult criminals and juvenile delinquents placed under the supervision of the Court for terms of up to five years duration. They are also charged with the enforcement of orders of support by the judges of the Domestic Relations Courts of the Counties, Chancery Division, Superior Court and even orders of support emanating from Municipal Courts in each County.

The legislation presented in A-1899 has proposed an additional hierarchy of positions of supervisory, consultative and clerical personnel without reference to the status of any and all of the hundreds

of professional officers, para-professional investigators, process servers and the many hundreds of clerical employees of the Counties who are employed by the Boards of Chosen Freeholders. These are the people who support the present system in the Juvenile and Domestic Relations Courts and the Chancery Division of the Superior Court.

This legislation, if enacted, would transfer the duties, functions and responsibilities of most County Probation Departments, Chancery and Domestic Relations Divisions, to the new Family Court, Division of the Superior Court. It would call for the elimination of the positions of all those persons while creating new appointive and competitive positions in the state service Family Court with great injustice to all present personnel whose long service has proved their devotion, their experience and their knowledge of the duties and responsibilities of matters that would be the subject of the Family Court.

I am not given to believe that the wording of paragraph 20, with reference to transfer of employees, was worded in error, omitting any reference to probation officers or present employees of Probation Departments. It was a deliberately conceived plan to eliminate those personnel from the planning for a Family Court and to eliminate the necessity of constructing a new treatment service contrary to the intent and guidance of the Standard Family Court Act. That obviates the need to utilize present talented personnel into a new system but does create the possibility of bringing new people in from outside present personnel.

The plan would enable the new Family Court to start fresh with all new clerical forces thus effectively destroying the careers and morale of the hundreds of present clerical personnel and probation officers now performing those tasks.

I call for the committee's careful review of paragraph 8 in which the Director is given the power to appoint assistants and other employees and paragraph 20 which has reference to the transfer of some present employees. I recommend sufficient study and analysis to warrant this committee's recommendation for inclusion of County probation officers and present County investigative and clerical employees performing services for the Chancery Division and Juvenile and Domestic Relations Courts in this same Family Division of Superior Court as proposed by A-1899.

I also support Mr. Talty and his suggestions for the modification of the present bill.

If such changes are not recommended by the committee and A-1899 is enacted into law in its present form, it would constitute a great loss of talent and experience to the citizens of this State, a far greater cost to the taxpayers and a great moral misdemeanor to the hundreds of probation officers and clerical personnel who are a part of the present Juvenile and Domestic Relations Courts and who perform services for the Chancery Division of Superior Court and the lower Courts.

Last but not least, serious cost duplications to the State are implied in such a transfer of jurisdiction in the creation of the new Family Court. This measure must be accompanied by appropriate funding measures to permit this unification if it is to be properly accomplished.

All of this, of course, is unnecessary if we do not take advantage of the present personnel who are working in the system and can be utilized at less cost to the State.

Thank you for the opportunity of appearing here today.

ASSEMBLYMAN BATE: Mr. Hargrave, you made reference to paragraph 20 which reads as follows:

> All present employees of the Matrimonial Part of the Superior Court, Chancery Division and of the several juvenile and domestic relations courts shall be transferred to the Superior Court, Family Division, and all such employees shall retain their present civil service status.

What do you want to do with that section?

MR. HARGRAVE: That section should include County Court personnel, probation officers, investigators and any persons employed by and presently serving Juvenile and Domestic Relations Courts.

ASSEMBLYMAN BATE: Then it would be satisfactory in your judgment?

MR. HARGRAVE: That part - yes. You have omitted transferring probation officers to the new Family Court. I don't think it was an error; I think it was a deliberate omission; I think that is an injustice.

ASSEMBLYMAN BATE: Thank you very much, Mr. Hargrave.

The next witness will be Frank Sagato.

F R A N K S A G A T O:

I am here representing the Passaic County Probation Officers' Association as the Vice President of the Association. Most of what I wanted to cover has already been covered by Mr. Hargrave and by Mr. Talty. As I stated before the meeting to one of you gentlemen, I have several questions and a general statement. I would like to have the questions studied or answered if possible.

The Passaic County Probation Department Association feels that the Chief Probation Officer is highly capable and able to handle the duties as the Director of the Family Court. It does not see the need at this time for a Director of the Family Court.

Should a Director of the Family Court be needed, we would like to know where he will come from. I know he will be appointed by the Chief Justice as stated in the bill; but we feel that if it is not going to be the Chief Probation Officer, he should be selected from the ranks of the probation system since he would be knowledgeable in this area.

As has been stated, probation officers have been deleted from the bill. We would like to know whether the probation officers would retain their title, their duties and their powers or if this Act negates some of the powers; and if so, which.

How will the probation officers, if included in this bill, be selected to go to the Family Court?

Will the probation officers be able to transfer between the Family Court and the Criminal Court? At the moment, the Probation Department covers all of the Courts. Will they just go to Family Court? Will it be a separate entity or will it remain under the probation system itself?

I would like to make a general statement. The main reason that Probation Departments are down here is that the probation officers were not mentioned in the bill. Probation Departments feel that they perform a necessary and effective function and invaluable service to both the Courts and the community. We would recommend that the words "probation officers" be inserted in bill A-1899, as the officers of the Courts and that their duties and powers be included and that they maintain their seniority and benefits such as salary and longevity, etc., and that the recommendations of Mr. Talty, who spoke prior to me on certain sections, be considered.

ASSEMBLYMAN BATE: Mr. Sagato, County probation officers are in a County, but they are not actually of a County, are they sir? Isn't it a fact

that their salaries are based on negotiations that take place with the Court as opposed to the Boards of Freeholders?

MR. SAGATO: That is correct. At the moment, we consider the County Court judges our bosses. We negotiate with the County Court judges for salaries.

ASSEMBLYMAN BATE: As a result of those negotiations and the figures that are struck, the Boards of Freeholders are required to appropriate the funds.

MR. SAGATO: That is correct.

ASSEMBLYMAN BATE: I will see to it that the questions which you posed are answered and furnished to you.

MR. SAGATO: I would like to make one other point: The bill states on page 7 that "the court, after hearing, may order examination by a physician, surgeon, psychiatrist, or psychologist, of a parent or guardian whose ability to care for a child before the court is at issue." I would suggest from my own experience of dealing with probationers and parents that, if it is possible, the Court have the power to order the parents to receive treatment - psychiatric or psychological - if it is determined that they are in need of such treatment. From my experience in talking with probationers, it appears that the parents have a great deal to do with the child's problems.

ASSEMBLYMAN BATE: Thank you very much, Mr. Sagato.

The next witness will be Irving N. Hirsh, Chairman of the Family Court Committee of the Family Law Section, New Jersey State Bar Association.

I R V I N G N. H I R S H:

Thank you very much for giving me an opportunity to speak.

The Family Court Subcommittee of the Family Law Section has participated in a number of hearings

in the Family Court Study Commission, in our own forums and, last May, at the New Jersey State Bar Association regarding the necessity of a Family Court here in New Jersey.

The problem, as I see it, is whether we actually need the Family Division in the Superior Court by way of a Constitutional amendment or, perhaps, the court system itself could develop this through rules. That is one phase of the problem of this bill.

I think that the bill is not as inclusive as it should be. The Family Court Study Commission outlined certain subject matters which should be taken into account i n c l u d i n g criminal and quasi-criminal matters affecting the family unit, the present Municipal Court matters which involve family matters on opposing sides and juvenile offenses. That is not a subject matter of this bill.

Another matter that I think should be considered is the problem of truancy. The problem of truancy is in the real sense a problem of the parent as well as the child. I think that should be part of the Family Court. It shouldn't be bifurcated in that the parents receive some punishment in Municipal Court - a very light punishment by the way: $5 for the first offense and up to $25 for each additional offense - whereas the child has no sanctions at all unless a juvenile officer makes a complaint against him in the Juvenile and Domestic Relations Court for, I guess, incorrigibility. I think something like that is definitely needed. That type of situation is definitely what the Family Court, as we understand it, should provide. It should provide one forum for all these offenses so that the child can be rehabilitated and the parent can understand why it is important for the child to go to school.

I also feel that the bill itself does not provide any sanctions or any change of existing law with

respect to certain sanctions. About three or four years ago, the Family Court Committee had a questionnaire regarding the feasibility of a Family Court here in New Jersey. At that time all the lawyers in the Criminal Division, the Criminal Section, the Family Law Section, the Juvenile Section and the Probation Section were polled along with all the Superior Court judges in New Jersey and all the Juvenile and Domestic Relations Court judges in New Jersey. We received an overwhelming response; 31 percent of the questionnaires came in - on a statistical basis, that is very good - and 84.6 percent of those people polled were in favor of the Family Court. They were also in favor of it being a Division of the Superior Court with one Court in each County.

They felt that the Family Court should be empowered not only to rehabilitate the people but also to order sequestration or attach real estate in order to provide for money for the family, permit garnishment of wages and, if need be, payroll deductions for the purpose of securing support and alimony.

ASSEMBLYMAN HAWKINS: If this were a part of the Superior Court, wouldn't they automatically have that authority?

MR. HIRSH: I don't think they have the right to garnish wages for support.

ASSEMBLYMAN HAWKINS: Once a judgment is entered?

MR. HIRSH: They have no right to garnish the wages for support.

ASSEMBLYMAN HAWKINS: Once there is a judgment?

MR. HIRSH: Even though there is a judgment. If a person fails to honor an order for support, that person may be held in contempt; he may be fined; he may be put in jail; but his wages may not be garnished.

ASSEMBLYMAN HAWKINS: Are you saying that they have no authority to attach property?

MR. HIRSH: I say that, under certain circumstances, the Court has a right, now, to attach property if a person was going away or going to "fly the coop" so to speak.

ASSEMBLYMAN HAWKINS: Pardon me, Mr. Hirsh, but I have to ask the Honorable Judge the question.

JUDGE BERTRAM POLOW: There is a statute now which permits a judgment be entered for the accumulated arrears; and that, of course, becomes a lien on any property.

ASSEMBLYMAN HAWKINS: May you not also get a garnishment of wages the same way?

JUDGE POLOW: No; but there was a bill which was proposed within the past six months which would authorize garnishment of wages; and I think that should really receive some consideration.

ASSEMBLYMAN HAWKINS: In other words, we have been treating them differently.

JUDGE POLOW: We cannot garnish wages.

ASSEMBLYMAN HAWKINS: That's what I am saying. Even though there is a judgment, we have been treating them differently in regard to support.

Thank you, Judge Polow.

MR. HIRSH: I think that if we are going to allegedly clean up and make modern the family law in New Jersey and put it under one forum of Family Court, we should think of all these things and clean them up at the same time. Otherwise, what we are going to do is have the same court system with the same problems and without any good solutions to those problems.

I also feel that this Act is heavily weighted in favor of the child and, for that matter, heavily weighted in favor of the Juvenile and Domestic Relations Court approach to the Family Court. I think that that is just one function of the Family Court. The Family Court should not only concern itself with the juvenile

but also, if we are going to have an effective Family Court, with the parents. We have to be concerned with all offenses relating to the matrimonial matters.

I just gave a few that the Commission had included and suggested when I appeared before the Family Court Commission.

Incidentally, all the recommendations of the Family Court Study Commission with respect to the subject matters of the jurisdiction of the Court were taken from our questionnaire which we propounded, as I said, about three or four years ago.

Thank you very much.

ASSEMBLYMAN BATE: Thank you, Mr. Hirsh.

Our final witness will be Gary N. Skoloff.

G A R Y N. S K O L O F F:

Thank you for this opportunity to speak to you today. I am Chairman of the Family Law Section of the New Jersey State Bar Association. I have conferred with various officers and members of the Executive Committee and members of the Section, but no poll was ever taken. Unfortunately, no one I spoke to ever saw the bill until I showed them my copy of the bill.

As a result of reviewing the bill with at least 20 officers and members of the Section, we take the following position:

We are not opposed to a Family Court, but we are opposed to this particular bill.

I would like to direct your attention to a few of the items in the bill as the reason why we take this position.

First, on page 1, lines 11 - 13, reads, "The act provides for an elimination of the judgmental, punitive processes of the law and the abrogation of the old theories of guilt and punishment in favor of a therapeutic approach." I am sure that makes a lot of

sense as far as a juvenile situation is concerned. It makes no sense in terms of our divorce reform law. It would make sense if this were Florida, for instance, where there is only one cause of action - irreconcilable difference - so "no fault" is the only cause of action.

In New Jersey, under our divorce reform law, we have both "fault" and "no fault" divorce. When you read that sentence, it seems like we have only "no fault" divorce. I don't know how the alimony situation where "fault" is a factor would be handled if that sentence stays within the bill.

Going on to page 4, line 1, this seems to create a very serious problem in our view. For the first time, we talk about referees in our matrimonial law or under a Family Court Act. No one had ever heard of the term, referee, in any concept involving matrimony until this bill came into being. Of particular interest to us is the fact that, first of all, referees need not be attorneys at law. I don't know whether or not that creates any kind of a Constitutional problem; but by reading this paragraph, it seems that the Chief Justice can appoint anyone who has any training in law such as a probation officer to be a referee; and that referee can hear any case or any cases of a class that are designated for him to hear. We are not sure whether this means that a referee can hear an uncontested divorce action, a contested divorce action, a domestic relations case, a juvenile case, or a simple assault and battery case from the Municipal Court. It seems that he can hear any of these cases.

You have a three-day notice which is an impossible time period to start with to do anything. If you file, or whatever the procedure is under this Act, within three days, you can have another hearing before, we assume, a regular judge. If you make some further kind of request under that paragraph, it becomes a de novo hearing which means that you can have another

complete hearing just like the first complete hearing. Everyone, or nearly everyone, seems to agree that when you walk out of the Matrimonial Division, nobody's happy. The husband thinks he is paying too much; the wife thinks she is not getting enough. Therefore, you are going to have double hearings which can be very costly to litigants. They are going to have to pay attorneys twice for the same kind of matter. I think it is going to be very expensive to the State because you are going to have a double hearing - first before a referee and then a second hearing before your matrimonial judge or other judges of the Family Court.

Moving on to page 5, line 22, we talk about "conciliation." Now, we are all familiar with the fact that years ago, we had conciliation. We had an experiment that lasted, I think, for three years. It was a terrible, terrible failure at that time and very costly to the State. In the Superior Court, from all that I have ever been able to understand from the various reports, there was less than one percent conciliation under a mandatory procedure. That is not to say that conciliation is not of value. I would think that in the domestic relations cases and particular kinds of cases - if a husband is drinking and not bringing home money and that is causing the problem or a simple assault and battery - if it is handled in a manner of selectivity within the Domestic Relations Court, it might make some sense. If what is meant by this is that a conciliation situation is mandatory, as they had years ago, in all matters, it would be very expensive and doomed to failure again.

Going on to page 5, line 28, the bill states, "In children's cases the petition . . . shall be entitled 'In the interest of . . . . . , a child under 18 years of age.'" Thereafter, for the next several pages, it talks about what we think is a

juvenile case and not a custody case in the Matrimonial Division. If it does really include a custody case in the Matrimonial Division, we don't understand at all what they are talking about. After the complaint for custody is filed, the Court is going to issue a summons and order whoever has custody of the child to appear and bring the child before the Court. This is a whole new kind of process and procedure that is foreign to anything we have understood in the Matrimonial Division in the custody cases. In terms of a juvenile case, then it makes sense which seems to follow what Mr. Hirsh said a few moments ago - that this Act is weighted toward juveniles - and it becomes very confusing when you start to interplay it with all the procedures and practices of the Matrimonial Division.

In effect, it is our view that this bill creates more problems than it solves because it throws into a pot divorce, domestic relations, juvenile and simple assault and battery cases in such a way that you are not sure which procedures really apply to which one of the problems. It is too confusing to try and figure it out.

What seems to make more sense is that we don't go along with this bill and that we allow the Supreme Court to proceed as it presently is proceeding. As we understand it, it is now conducting experiments along the lines of a Family Court under its rule-making power which, as we understand it, it certainly has the authority to do. It is being moved along slowly but surely; and we are working out all these kinds of complicated problems. That seems to be the preferable approach.

They have a program in Morris County with which all the matrimonial practitioners are familiar where they are utilizing the Family Court approach. Somebody - a husband or a wife - files a complaint in

the Municipal Court such as simple assault and battery. They send it to the Domestic Relations Court. They have an intake officer in the Domestic Relations Court who meets with the husband and wife on these minor support problems and works them out without it getting into litigation. Certainly, in Morris County as well as throughout the State, the Matrimonial Courts are already appointing court-appointed psychiatrists and psychologists in custody cases. They are bringing them in and utilizing them all of which is part and parcel of this kind of an Act.

We have not even been able to fathom a guess as to the cost of funding the kind of an Act that this bill seems to consider except that it must go into the multi-million dollars. We don't know but I am sure that somebody else does.

It is our preference at this time to let the Supreme Court, under its rule-making power, continue to develop the Family Court concept as it started to do. We think that a better result would be achieved in that manner than by the enacting of this bill.

Thank you.

ASSEMBLYMAN BATE: You made reference to lines 11 - 13 on the first page. This specifically refers to the "elimination of the judgmental, punitive processes of the law and the abrogation of the old theories of guilt and punishment in favor of a therapeutic approach." It seems to me that if this bill is enacted, it would act as a forerunner as far as the further change in the divorce laws is concerned - to become a "no fault" matrimonial jurisdiction. That is one of the thoughts, I think, embodied in this bill.

MR. SKOLOFF: No one that I reviewed the bill with understood that it was one of the intents of this bill to abrogate all the fault concepts and just have

the 18 month separation or irreconcilable difference as in Florida. We didn't know that.

ASSEMBLYMAN BATE: The whole thrust of it is, whether it applies to juveniles or adults, to eliminate the offenses predicated upon guilt. That is my definition.

ASSEMBLYMAN HAWKINS: It doesn't say so.

MR. SKOLOFF: It comes as a great surprise to me.

ASSEMBLYMAN BATE: As far as the reference to referees is concerned, there is a bill - it should be voted on later this month by the Assembly - which I introduced, A-1419, which, if passed by both Houses and signed by the Governor, would permit judges who have reached the mandatory age to return at the request of the Supreme Court and with their permission on a temporary basis. That might well be substituted for the referees which you are hesitant in accepting.

MR. SKOLOFF: In other words, it is the intention of this bill that the referees would be retired judges.

ASSEMBLYMAN BATE: No; no; not necessarily. Your concern is that you could have people trained in the law but not necessarily lawyers.

MR. SKOLOFF: Correct. We assumed that that was what was meant - perhaps probation officers - by not saying attorneys.

ASSEMBLYMAN BATE: I want to understand this. Let us assume that we made that more clear and that the parties had to be lawyers. Would you have any objections to either retired judges or lawyers who are not judges ?

MR. SKOLOFF: As being referees, it would be preferable. We are not in favor of referees. You are going to have double hearings from all I have ever experienced.

ASSEMBLYMAN BATE: The procedure that is enunciated in the bill is based on what, I understand, has been followed in California pursuant to the report of the California Governor's Commission a number of years ago - first, the neutral pleading and, then, the initial evaluative interview with the professional staff, preliminary report of counsel to the Court, within 120 days a detailed written report for the Court, parties and counsel and a hearing with public access prohibited, adjudication after hearings or 90 days thereafter if the conciliation fails, post dissolution counseling and confidentiality of all files except the order of dissolution. That is what is contemplated and, I think, that is what is covered in the bill.

MR. SKOLOFF: That is custody that you are talking about. Were you talking about custody in the Matrimonial Division?

ASSEMBLYMAN BATE: I am talking about the whole concept. That will be the procedure. For example, if there was a husband and wife complaint, so to speak, this would be the procedure that would be adhered to.

MR. SKOLOFF: I lost you totally. When you just read to me, I thought you were talking about custody.

ASSEMBLYMAN BATE: That is one aspect. I was discussing the conciliation.

MR. SKOLOFF: The conciliation procedure. Does the bill actually intend having conciliation in all matrimonial cases?

ASSEMBLYMAN BATE: Yes.

MR. SKOLOFF: In light of the two reports that were filed and the experiments that showed them to be absolute failures?

ASSEMBLYMAN BATE: The conciliation that existed 15 years ago was based on the whole adversary

orientation that we have had heretofore in our court system. That was a fault situation, was it not?

MR. SKOLOFF: At the time that we had the experiments, we only had fault grounds; but what affect would the difference between fault and no fault grounds have upon a mandatory conciliation procedure where it is apparent to everyone that there is no chance that they are going to put the marriage together?

ASSEMBLYMAN BATE: I can refer to California and to the success rate that is reported in that State where that type of thing has existed for a number of years. It is far in excess of the one percent which you quoted and, I think, quite correctly, as far as conciliation in the late 50's. Wasn't it the 50's or thereabouts?

MR. SKOLOFF: Yes.

ASSEMBLYMAN BATE: I don't have the particular statistic with me as far as the percentage of success. Reference was made in the report I recently read to the fact that in 1961, as a result of the California conciliation, six out of ten couples called off divorce. Of course, that is a statistic. I don't say necessarily that both parties had gone to a lawyer's office and said, we're going to get divorced, and then changed their minds three months later. In any event, it does seem to show some degree of success with the program. That is why I am as aware as perhaps you are of the failure of the conciliation experimentation of a number of years ago. I don't think that necessarily means that, for all time, we cannot consider it.

I would like to get this on the record. I don't know that you specifically spoke to it. As the Chairman of the Family Law Section, do you regard this bill as a threat to the income of lawyers in the field of matrimonial law?

MR. SKOLOFF: No.

ASSEMBLYMAN BATE: There would be no objection based on that?

MR. SKOLOFF: Very frankly, I think you would increase the income to lawyers based on this referee system where we could have two hearings for every client.

ASSEMBLYMAN BATE: Even at 120 days, when you have representation by counsel on both sides, it would seem to be as lucrative, if not more so, than exists presently.

MR. SKOLOFF: Possibly; I don't know.

ASSEMBLYMAN BATE: Much of the objection that has come - not necessarily on this particular bill but in other jurisdictions - is that the lawyers who are not marriage counselors or social diagnostitians feared the potential loss of dollars. We who are lawyers have been educated to be adversaries. Our professional ethics indicate that we should give our all for our clients and try to prevail on a given matter. That part doesn't bother you?

MR. SKOLOFF: No; this bill would not affect lawyers' incomes from all I can see.

ASSEMBLYMAN HAWKINS: Would you object to a unification of the court system wherein all we would have would be one Superior Court and the subdivisions thereof in the State of New Jersey?

MR. SKOLOFF: No.

ASSEMBLYMAN HAWKINS: You would not object?

MR. SKOLOFF: No.

ASSEMBLYMAN HAWKINS: In other words, your objections pertaining to this particular bill would not necessarily pertain to a unified system of one Superior Court?

MR. SKOLOFF: That is correct. The bill itself is what we find objectionable. We find it

too confusing. A Family Court concept is not objectionable at all.

ASSEMBLYMAN HAWKINS: As long as it is worded properly with proper paragraphs, etc., and without the referee system.

MR. SKOLOFF: We just got lost as to where the thrust was juvenile, where it was matrimonial and where it was simple assault and battery. We got lost in that and we thought it could cause a lot of problems.

ASSEMBLYMAN HAWKINS: Would you prefer one unified Superior Court system to, say, the systems that we have now?

MR. SKOLOFF: Yes; I think it would be preferable.

ASSEMBLYMAN BATE: I want to thank you very much, Mr. Skoloff.

I want to ask Ms. Donath if she would make certain that everyone who testified receives a copy of the transcript in order to read what others have said. Please send a copy to Judge Polow also.

The meeting is adjourned.

(Hearing Concluded)

A P P E N D I X

Testimony

before the

Judiciary, Law, Public Safety and Defense

Committee

of the

general Assembly of the State of New Jerey

by

James B. Boskey, Professor
Seton Hall Law School

Re

"Family Court Act"

Members of the Committee:

I, James B. Boskey, am here today in my capacity as professor of family law at the Seton Hall Law School to discuss several aspects of the "Family Court Act", Assembly No. 1899.

Preliminarily, I would like to congratulate the committee on the promulgation of the "Family Court Act" and to say that I fully support the concept of a family court that it defines.

The resolution of family disputes presents problems quite unlike those seen in other areas of law. Typically, the court is called upon to intervene in a matter which is of primary personal concern to the parties rather than, as in the commercial case, something that effects only their financial interests. Even a dispute over alimony or child support is likely, in most cases, to cause a substantial disruption in the lives of the parties and will require the intervention of the state over a long period of time, in contrast to the effectiveness of the single decision in commercial matters. Further, a resolution of such disputes requires not only an understanding of the legal issues involved, but also, if the resolution is to be effective, an in depth understanding of the social and psychological state of the parties and a sensitivity to the problems that they have faced as a family unit.

In order to provide such an effective dispute-resolving system, it is necessary that judges and other specialists within the court receive special training in the manner of dealing with such matters and that they become increasingly sensitized, by repeated exposure to the range of problems faced by the disfunctional or partly disfunctional family.

Such specialized training and experience is only possible when a specific cadre of judges and specialists is identified and they are allowed the opportunity to concentrate on the resolution of these disputes without undue distraction by the need to deal with the full range of matters considered by a judge in the other divisions of the Superior Court. It seems clear that one of the duties of the director of the Family Division will be the provision of the opportunity for such special training and the identification of individuals who are tempermentally suited to the analysis of problems of this type and to working with the members of families in order to assist them in resolving their disputes.

One of the problems typically faced by judges in dealing with problems of family disfunction has been that these problems do not conveniently divide themselves into the catagories provided by the different actions provided for by the law. Thus, the unification of all "family matters" under the supervision of the Family Court, as provided in the act, will be an especially helpful provision. It is evident, for example, that in may cases "delinquency" is merely a symptom of problems that may not rest within the juvenile him or herself but with the total nature of his or her family situation. The ability of the Family Division to resolve all family disputes may allow the court to intervene in the family relationship in a far more effective manner than is now possible by allowing such underlying causes to be fully aired, and perhaps allowing the "treatment" of the fundamental difficulties rather than the mere symptoms which appear in the form of the act of delinquency.

Similarly, in the context of "matrimonial actions", the existence of a family division will allow the courts to give fuller and more appropriate consideration to the full range of problems facing a particular family. In many cases

intrafamilial disputes may be subject to resolution in some manner other than termination of the marital relationship, and the courts can be encouraged to move forward boldly with the proposing of such alternative solutions. Also, the existence of a trained staff of investigators and other support personnel may make it far more possible for the courts to see that the interests of children of a marriage are protected in cases of termination and to provide children with the right to intervene when their own interests are threatened.

Although the Act sets forth the basic framework for the achievement of these goals, there are certain aspects of the Act which I feel can be improved. I would like to now turn my attention to several of these provisions and also to suggest certain additional provisions which well might be included within the scope of the act. For the convenience of the Committee I will discuss these in the order in which they appear in the Act.

First, with reference to the jurisdiction of the Family Division, Paragfaph 6 of the Act, I would like to suggest that paragraph 6f be ammended to provide for the maintenance of concurrent jurisdiction in the Family Division in the case of misdemeanors and high misdemeanors committed by an adult against a member of his or her immediate family. While the gravity of such violations of law may suggest that the imposition of full criminal sanctions is usually required, the Committee, I am sure, is well aware of the fact that the commission of such violations may, in many cases, be merely symptomatic of some substantial breakdown in family relations. Where this appears to be the case, it may be more appropriate to allow the investigative officers of the Family Court and the trained judges of this court to examine the situation in light of the total family situation of the violator in order to determine the appropriate sanction to

be applied. In many cases where the sanction would normally be imprisonment or fine, the situation may be such as to warrant the imposition of some other penalty in order to protect the remaineder of the family against substantial hardship or to provide the opportunity to cure the underlying problem. This is especially true as the line between offenses and misdemeanors may well depend, in any given case , on a decision of the prosecuting authorities, a decision which could be better made with the assistance of the expert personnel of the Family Division.

With regard to the expertise of division personnel, it appears that the charge to the Director of the Division in paragraph 8 of the Act should include the development of suitable training programs for all division personnel. One of the reasons for the partial failure of other state's Family Courts has been the failure to assure that court personnel receive proper training for the performance of their special functions. The facilities of the various colleges and universities of the state as well as the experience of Family Court judges from other jurisdictions could be brought to bear to avoid a repetition of this problem.

In addition, the personnel of the court should include not only psychiatrists, physicians and psychologists, but trained investigators (probably largely social workers), to carry on the investigation of the background of the disputes which may arise in the court. Also, in any case involving children, whether the matter be quasi-criminal or civil, the court should have the power to appoint, and should appoint, counsel for the children to see that their interests are protected. The need for this has already been recognized in the area of delinquency, and to an extent dependency proceedings, but a similar appointment is needed in any case of termination of marriage where the interests of the children, as to custody or support, otherwise are left unprotected. Similarly in paternity

actions, legitimacy proceedings, actions for the termination of parental rights, etc., the child may have a substantial interest which is distinct from or in direct opposition to that of any or all of the parties to the litigation. Counsel can be provided either through the appointment of private lawyers or through the retention of a permanent office of children's representatives, but in either case assurance would be had that the interests of the child are being fully represented.

With regard to paragraph 11 of the Act, I would like to note that consideration might well be given to the expansion of the referee system beyond that proposed in the Act. Some attention has been given in the literature recently to the potential effectiveness of "family arbitration" as an alternative to judicial action, especially where disputes are of such a nature that the courts have been unwilling to take cognizance of them (ie. in the continuing family situation). Such family arbitration is directed towards the establishment of standards of conduct for all family members in order to reduce tensions between them and to allow a disfunctional situation to heal. The provision of such family arbitration services by the division might well be found to reduce the judicial case load and, in many cases, provide a far more efficient means for the resolution of disputes.

It is not clear under paragraph 13a of the Act whether such preliminary investigation is required only in matters involving allegations of delinquency or all matters involving children. I would recommend that it be extended to include the latter. The need for preliminary investigation exists in all proceedings which involve children, directly or indirectly, including termination of marriage to assure that the child's interest is fully protected. This may in part be accomplished by the appointment of counsel for the child as recommended above.

The case title provided in paragraph 13d could also be applied in all matters beforetthe division with modification according to the nature of the proceeding. As an example, it appears clear that one of the purposes of the modification of the divorce law was to eliminate, or at least reduce, the degree of discord created by the proceedings. A title for such proceedings such as " In the interest of the marriage of Jones" would lead to the presentation of termination actions in the light of an appropriate investigation of the facts rather than a dispute between the parties which is no longer required.

In conclusion, I would like to once again commend the committee for the presentation of an excellent Act, and to strongly recommend its passage and its submission to the voters in the form of a constitutional ammendment. I feel that the establishment of a Family Court will help to achieve the efficient and effective administration of justice and also to provide the state with a means of assuring that its interest in the stability of the family is protected in every way possible. I will be pleased to answer any questions which the committee may have about my presentation.

NATIONAL ASSOCIATION OF SOCIAL WORKERS INC.

NEW JERSEY 110 West State Street, Trenton, New Jersey 08608 (609) 394-1666

ASSEMBLY COMMITTEE AMENDMENTS
TO
ASSEMBLY BILL NO. 1899

Amend:

Page	Section	Line	
2	3	new	g. "Family" means two or more persons related by blood or marriage, or reciprocal obligations and having one or more dependent children and sharing a common household or having legal responsibility for each other's well-being.
3	6	28	After "his" delete "immediate".
3	8	5	After "and" delete "may" and insert "shall".
3	8	6	After "psychologists," insert "social workers,"
3	8	18	Insert f. Establish and operate an examination and treatment unit for the clients of the court. Delete existing "f." and insert "g.".
4	13	3	After "act," delete "it" and insert "the examination and treatment unit".
6	16	1,9	Delete all and insert "For any child or adult for whom a petition has been filed, a hearing held, or an adjudication made, on recommendation of the examination and treatment unit, the court shall order further examination, therapy or other treatment. Public and private facilities and private independent practioners in medicine, social work, psychology and psychiatry may be utilized in the best interests of the child or adult who has the attention of the court."
7	17	1	Delete all and insert "No".
7	17	3	After "by" delete "an officer of the court" and insert "the examination and treatment unit".
7	18	3	After"psychological" insert"psycho-social".
7	18	16	After "to a" insert"governmental or"

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ASSEMBLY BILL NO. 1899

Amend:

Page	Section	Line	
7	18	17,18	After "that" delete "it shall make" and insert "the court or an agency designated by the court shall receive". After "reports" delete "to the court or to an agency designated by the court". After "treatment" insert "that".
7	18	19	After "child" insert "or adult".
8	19	7	After "time" insert "but in no case more than thirty days after the appeal has been made."
8	20	5	After "status." insert "Such funds as are necessary shall be appropriated to the Family Division in the Superior Court to enable all employees to receive specialized training in work with adults, children and families. Such training shall be of the sort approved by the respective professions and the employees' professional colleagues. Staff training shall be an on-going activity of the court."
9	26	new	26. There shall be appropriated to the Family Division of the Superior Court such sums as shall be necessary to implement and effectuate the provisions of this act.

NATIONAL ASSOCIATION OF SOCIAL WORKERS

NEW JERSEY CHAPTER

REPORT OF FAMILY COURT STUDY COMMITTEE

The social work profession has long been interested in and involved with the provision of adequate judicial services to families in trouble, dating back to the first juvenile court in Cook County, Illinois, in the late 19th century. For years social workers have held important positions in courts involved with such family problems as divorce and separation, non-support, desertion, juvenile delinquency and neglected, abused and disturbed children. Social workers and social agencies have been active in making investigations and in providing reports and recommendations to the courts, as well as in implementing mandates of the courts.

Out of their professional experience social workers have intimate, expert knowledge of the human problems that require judicial intervention,of the needs that people have in coming to court and of the difficulties that the courts sometimes have in meeting those needs. Social workers in New Jersey have long felt dissatisfaction over the way our existing system of court services for troubled families has been functioning. The fragmentation of family law jurisdiction among several courts has been especially disturbing. We have become aware of what might be called "horror cases" where two, three and even four separate courts, having little or no communication with each other, have been involved in different facets of what is basically one family problem. The inevitable result is waste of time and of precious judicial, legal and other professional manpower. Most tragic of all, families do not receive adequate service.

We have observed in some counties what seems to be the development of one court system for the poor, the Juvenile and Domestic Relations Court, and one court system for the rich, the Matrimonial Division of Superior Court. We have observed in some counties the growth of tremendous waiting lists. Why should it take a family months to get a hearing on a non-support complaint before a judge who can spare only a few minutes for that hearing?

Social workers are acutely aware of the vast gap between the human needs of clients of the Juvenile and Domestic

Relations Court and the services presently available to serve those needs, inside and outside the court structure. Despite the sensitivity, dedicated skills and high competence of many individuals employed in our court system, social workers have also observed — and we say this with regret — deficiencies in training and occasional incompetence of others. For too long a time we have observed with dismay the practice of appointing individuals, some of whom have very limited qualifications, to the Juvenile and Domestic Relations Court bench as the lowest rung on the judicial ladder. Their hope and expectation is that they will move up to a "higher" court after a period of time. Too often we have observed judges of high calibre being lost to our troubled families after they have gained increased knowledge and understanding through a period of service in the Juvenile and Domestic Relations Court. What is needed is a judicial office which will attract and hold the very best men and women available.

The current structure of our court system is not one which demonstrates clear respect for the needs of the people it is supposed to serve. This in turn leads to a serious diminution of respect for the courts in the eyes of the people. We have observed too many abused children not getting the protection they deserve, evictions that need not have taken place had support laws been properly enforced and black market adoptions not in the best interests of children sanctioned by County Courts whose primary jurisdiction lies in non-family civil and criminal matters.

The New Jersey Chapter of the National Association of Social Workers makes the following recommendations:

1. That there be established an integrated Family Court, having jurisdiction over all family matters requiring judicial intervention and providing by statute adequate probation, mental health and social services.

2. This Court should have clear and exclusive jurisdiction over:
   (a) all matters now handled by the Juvenile and Domestic Relations Courts,
   (b) all matrimonial matters, including divorce, annulment, separate maintenance, abandonment and custody, now handled by the Superior Court,
   (c) all adoption matters now dealt with by the County Courts,
   (d) certain criminal matters (which are presently handled in Municipal Court, Juvenile and Domestic Relations Court and County Court) where defendent and victim are members of the same family.

3. That in order to emphasize its importance and to enhance its status, this Court be established as a division of the highest state court of original jurisdiction, the Superior Court, and that reasonable standards and qualifications be established for those serving in the Court, including its judicial officers.

4. That the judges of the Family Court should have demonstrated an interest and competence in the field of family law.

5. That the Court be provided with a suitable administrative and professional staff, standards for which should be set on a statewide basis by an appropriate committee or commission including representatives of the judiciary and other related professions.

6. Since resolution of legal issues, while often helpful, cannot realistically be expected to resolve underlying social problems which bring families to court, that the structure of the Family Court include an intake service, where some matters can be dealt with through conciliation procedures and where others can be referred to other social and mental health agencies, leaving for the court those matters which require court handling.

Family Court Study Committee:

Michael Woodman, Chairman
F. William Bailey
John J. Enright
Albert J. Olsen

MW:sp

July 14, 1971

November 4, 1974

Ladies and Gentlemen of the Judiciary, Law,
Public Safety and Defense Committee:

I am Frank L. Singer, a resident of Red Bank, N. J., and Executive Director of the Family and Children's Services of Montclair and Glen Ridge. The Family and Children's Services of Montclair and Glen Ridge is a private, non-sectarian, non-profit agency, tax exempt organization, chartered by the State of New Jersey, and governed by a Board of Trustees elected from the membership by the membership, which serves as volunteers without pay. The Family and Children's Services is a member of Family Service Association of America, Child Welfare League of America, and the New Jersey Association of Mental Health Agencies.

I, as a professional, am very much in favor of Assembly Bill #1899 ("Family Court Act"), and feel that it will solve many of the ills which at present beset our system of caring for children.

The intent of the Act is certainly well stated, and the paragraph starting on Line 11 of Page 1 is a great step toward strengthening family ties and rearing children in environments which lead to mental health and maturity.

I also believe that the recommendations on Page 4, starting with Line 1 of Point #11, are excellent and that using referees in family cases will greatly speed the processes and help families reestablish equilibrium more quickly than previously.

Point #12 on Page 4 is also very good in its intent of protecting minors.

In addition, paragraph c., starting with Line 18 on Page 5, I feel, is in the spirit of the attempt to strengthen families which are under stress, and should have the full approval and support of those concerned about the

quality of family life.

I also am very much in favor of the recommendations of Point #14, which begins with Line 12 on Page 5, and makes it possible for the person serving the summons to take the child into custody at once. Agencies who have dealt with the difficult cases of abused and neglected children have very often felt that the process of obtaining protection for these children has been so slow that the abuse of the child has worsened and increased because of the attempts at intervention.

However, I do find one particular fault, which is quite glaringly expressed on Page 7. In mentioning the professions which give the service of study and treatment to children and families, social work has been left out. This, despite the fact that the professional social worker is considered one of the three professions of the mental health team and that clinics, guidance centers, and family agencies have more social workers on their staff than members of any other discipline. This brings us also to the paragraph starting with Line 16 on Page 7, where it is stated that compensation may be made to a non-governmental agency, etc., etc. It is particularly family agencies, similar to the Family and Children's Services of Montclair and Glen Ridge, which employs me, which are expert in the field of adoption, marital counseling, divorce counseling, and parent-child relationship counseling. These agencies are staffed by professional social workers, and if these agencies and the profession of social work are neglected to be mentioned in this bill, the court, the families and the children will be deprived of many, if not the majority, of counseling services and mental health services in the State of New Jersey.

Thank you for giving me this opportunity.

Respectfully submitted,

Frank L. Singer

Frank L. Singer, ACSW

THE NEW JERSEY COUNCIL OF CHURCHES

Testimony to the Assembly: A1899, Nov. 4, 1974
by Philip E. Kunz, Director Social Concerns

We are very pleased with the leadership displayed by Messrs. Bate and Rizzolo in offering the concept of a Family Court for New Jersey. The willingness, in addition, of the Judicary Committee to seriously regard this landmark concept at this moment, is praiseworthy. The current work of the Committee in reviewing the criminal code may lead to the most important accomplishment of this Legislature.

We are especially pleased with the effort in the first fifteen lines of A1899 to set forth a new design for rehabilitation, therapeutic process, and regard for civil rights as a fundemental replacement in the court process for punative concepts.

Other bill authors would be wise to copy this device of setting out the philosophy and broad concept of legislation.

The language on pages two and three of A1899 indicating eight basic areas of jurisdiction for Family Court is useful and important.

One of these jurisdictions, legitimacy, could be better addressed by this Legislature in another simple bill. Let that bill clearly state in but a few lines that the children in New Jersey are each legtimate. We can cut through the existing Gordian Knot of social stigma and legal entanglement with a legal declatation that all children are equal and legitimate regardless of the arrangements their biological parents stumble into.

But the first major problem we have with A1899 is with the deliniation of referees found on page four. This new position is not sufficiently defined or described in the bill. Nor is there specific indication of the number of initial referees envisioned.

Do the authors of A1899 forsee all cases being heard by referee, or many cases? This commentator needs to hear more on staffing numbers and the dynamics dreamed of in the referee's process with sensitive family matters. To be sure, the therapeutic purpose of the referee is far superior to the 'mixed process of today. In any case, this key portion of the bill is not adequately developed.

A far smaller problem with this same section is the spedicifcation of three days limit for filing request for court review of referee's findings . Ordinary people, even with legal counsel, need more than three days to absorb a referee's commentary and findings on their own delicate life situation before deciding if they should seek further court review. Ten days should be specified for the filing limit.

The second major problem with A1899 is on page seven where the authors place the cost of treatment ordered by the Court on the counties. We strenously believe costs should be borne by the State. Why? Because more equal cost distribution to the taxpayers will be made through the State. Moreover, we have a situation akin to the Botter decision, whereby equal opportunity for sound treatment must not be inhibited in the future by the political or financial situation in any county. When A1899 is rewritten, let us bite the cost bullet.

Now, having sincerely praised the far reaching intention and structure in A1899, we must nonetheless ask this Legislature, through the Assembly Judicary Committee, to hold A1899 at this time for the express purpose of refining its excellent concepts in a fresh drafting. Indeed, we suggest that the Chairman convene , at the earliest possible moment , a special symposium including Legislators, Bar Association leaders, and members of the professional psychiatric, social work, and religious communities to pointedly clarify and strengthen A1899 and bring it forth through the Committee for passage in the Assembly.

The need for refinement must not be construed or used as cause for killing delay.

The provision of a sensitive, effective Family Court in New Jersey should be a prime objective of this Legislature. That objective, together with Criminal Code reform, and the call for a 1976 Constitutional Convention, would offer the people a sound fundemental restructuring of the social contract in this State. It is a process badly needed, and deserving of the Legislature's best efforts.

RUTGERS UNIVERSITY *The State University of New Jersey*

SCHOOL OF LAW • CAMDEN
Fifth & Penn Streets
Camden, New Jersey 08102

October 25, 1974

The Honorable William J. Bate
General Assembly of New Jersey
970 Clifton Avenue
Clifton, N.J. 07013

My dear Mr. Bate:

Further to my letter of August 30, 1974 I have now had an opportunity to examine your proposed family court act in more detail. Let me reiterate my belief in such an act and make it clear that my comments do not reduce my belief that such an act is very important for New Jersey. However, I have the following two comments to make.

1. In §5 lines 1 through 5 there is some indication that judges who are already appointed and seated will have to be renominated by the Governor and reapproved by the Senate, before they join the Family Division of the Supreme Court. I wonder if this is intentional or necessary or fair to judges already seated? Presumably it is intentional because of the reference at line 5-6 to "the duration of their respective term."

2. In §11 lines 14 through 16 provide an appeal mechanism when parties want to review a "referee's" decision. The 3 day deadline for these appeals seems to be far too short a period - even in view of the necessity for prompt resolution of the problems brought to Family Court.

I understand there is to be public testimony on this statute on the 4th of November, and most sincerely regret that I will be unable to testify at those hearings. I await with interest the outcome of this bill which I consider to be one of great importance.

Sincerely yours,

Carol E.R. Bohmer, LL.M.
Assistant Professor of Law

CERB/seh

FATHERS UNITED FOR EQUAL RIGHTS (N.J.) INC.
THE SECOND WIVES COALITION (N.J.) INC.
UNITED STATES DIVORCE REFORM INC.
NEW JERSEY STATE CHAPTER
P. O. BOX 217
FAIR LAWN, NEW JERSEY 07410

November 12, 1974

Assemblyman William J. Bate
970 Clifton Ave.
Clifton, N.J. 07013

Dear Assemblyman Bate:

I have read Assembly Bill No. 1899 with a great deal of interest. I plan on making a report to the members of our organization this Thursday. These members and myself are for the most part divorced individuals who are extremely concerned about the passage of this bill or a similar one.

It is too bad that we did not have the opportunity to give our comments at the public hearing held in Trenton last week. I understand it is still not too late to add comments and I will attempt to do so.

Without having consulted other members I can only give some of my thoughts at this time. The approach of problem solving in favor of a therapeutic means is correct. We do not need eternal battles between two or more parties but a rational suggestion of how divorced persons and their children are to live.

However, as in most of the present laws there seems to be too many loopholes for court officials to slip through. Why should the referees be subject to the rules of the Supreme Court? Family problems fall outside of the court system and the law. Solutions are extremely personal and run the gamut of financial, medical etc. situations.

The referees we would like would not be trained in the law but in family problem solving and would not be subject to appointment but permanently established. Futhermore, their decisions would be final.

We would appreciate meeting with you for any further discussion on the matter. We also hope to be down in Trenton the week November 25th at which time we would be glad to confer with you.

Very truly yours,

Anthony Gil

Anthony Gil
Director

NEW JERSEY ASSOCIATION ON CORRECTION

A Citizens Association for Correctional Services

118 CHURCH STREET
NEW BRUNSWICK, N. J. 08901
(201) 846-7220

EXECUTIVE DIRECTOR
Philip S. Showell, Jr.

TESTIMONY ON ASSEMBLY BILL 1899
before
Assembly Committee on Judiciary, Law, Public Safety & Defense

- -

The New Jersey Association on Correction strongly and urgently supports creation of a statewide Family Court system as potentially the most effective means of short-circuiting the many criminal careers born of family disruptions. As numerous state and national studies have concluded, the present multi-jurisdictional adjudication of domestic and family disputes is grossly dysfunctional and often contributes directly to new or continued juvenile and adult delinquency. Immediate reform is imperative.

We are unaware of a single responsible organization or individual in this state who, having studied the existing court system, has opposed the concept of a Family Court which would have jurisdiction in all domestic, matrimonial and juvenile matters. At the same time we are aware of the successful experiment with a unified Family Court now underway, under Judge Bertram Polow, in Morris County. The early and positive results of that experiment argue strongly for statewide implementation.

The Association must respectfully differ with the testimony offered on November 4 before the Assembly Committee on the Judiciary, Law, Public Safety and Defense by Judge Arthur J. Simpson, Acting Director of the Administrative Office of the Courts. We see no advantage and obvious loss in delaying creation of a Family Court system until state tax revenues will permit a complete takeover and unification of county courts. Nor do we share Judge Simpson's fear that the creation of a Family Court system would diminish prospects for approval of federal funding for other criminal justice reform projects being undertaken by his office. On the contrary, the federal Law Enforcement Assistance Administration, during the past year, responded to passage of the state's new Juvenile Code with a $600,000 discretionary grant to assist with implementation. We would anticipate equally favorable response to the more fundamental reform embobied in the legislation now before this committee.

In the debate, which we were unable to join on November 4, we would have subscribed to the views expressed by Howard Kestin, Esq. of the Rutgers University Center for Continuing Legal Education.

We do share, however, the concern expressed by many who testified before the committee with regard to the vaguely defined role of the Family Court "referees". While a non-judicial advisory and mediating role is essential to effective functioning of a Family Court, the qualifications and method of appointment of such key auxiliaries should be carefully defined with focus on their capacity to help resolve complex interpersonal problems.

If the parens patriae concept, now all but lost in the due processing of complaints in the state's Juvenile Courts, is to be revived in the Family Court, we would suggest that it might best be kept alive through referees with demonstrated expertise in personal and family counseling rather than in "family" law. The latter expertise would best be made available by Family Court judges sitting on those cases which clearly require application of the law for their resolution.

Of course, we anticipate that the committee will undertake any amendment of the bill before you necessary to insure its conformity with both the new Juvenile Code and the Child Abuse legislation enacted last Fall.

In conclusion we believe that creation of a Family Court system for the State of New Jersey should not wait upon incremental extension of the Morris County experiment. It may be argued that such an approach to the administration of justice embodies, per se, violation of the "equal protection" clause of the 14th amendment to the Constitution. That is a difficulty that can best be avoided by a legislative mandate to create a Family Court system, whose potential for crime and delinquency prevention is amply and best indicated by the social histories and pre-sentence reports of juveniles and adults now incarcerated in our state correctional institutions.