

Commission Meeting

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of

THE COMMISSION TO STUDY THE LAW OF DIVORCE

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

LOCATION: State House
Room 319
Trenton, New Jersey

DATE: December 7, 1993
2:00 p.m.

MEMBERS OF COMMITTEE PRESENT:

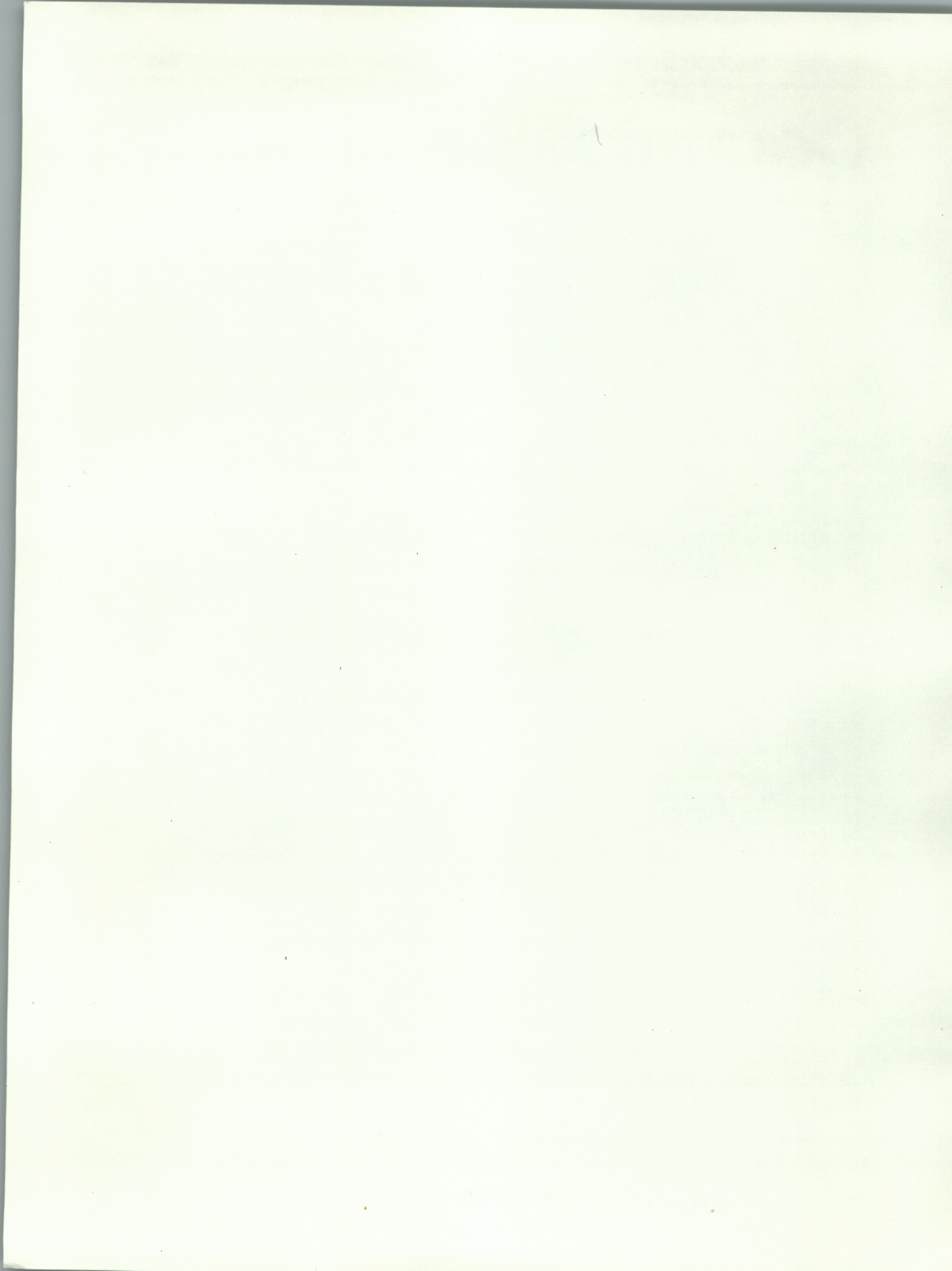
Assemblyman Walter J. Kavanaugh, Chairman
Douglas K. Schoenberg, Esq., Vice Chairman
Nancy J. Benz
Carol Bishop
Robert P. Broderick
Sara Flohr
Irene Von Seydewitz
Frank A. Louis, Esq.
Jeffrey S. Blitz, Esq.
Marianne Espinosa Murphy, Esq.



ALSO PRESENT:

Patricia K. Nagle
Office of Legislative Services
Aide, Commission To Study The Law Of Divorce

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



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MEETING NOTICE

TO: Members of the Commission to Study the Law of Divorce
FROM: Assemblyman Walter J. Kavanaugh
DATE: November 24, 1993
SUBJECT: MEETING DATE

A meeting of the Commission to Study the Law of Divorce will be held on Tuesday, December 7, 1993 at 2:00 P.M. in Room 319 of the State House, Trenton, New Jersey.

The public may address comments and questions to Patricia K. Nagle, Judiciary Section, Office of Legislative Services, or Karen M. De Marco or Elaine Fennelli, Secretaries, at (609) 292-5526.

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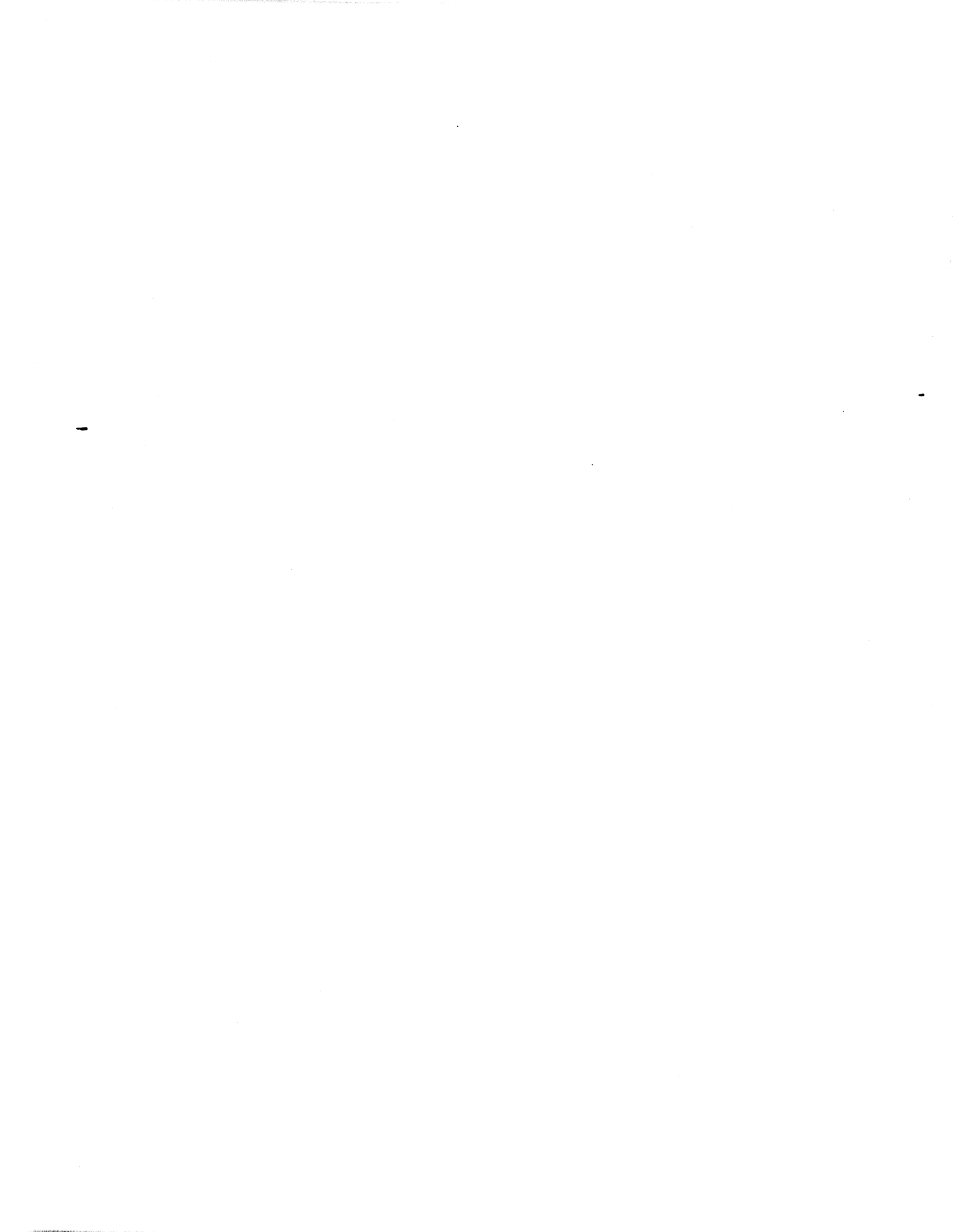


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ASSEMBLYMAN WALTER J. KAVANAUGH (Chairman): Good afternoon, ladies and gentlemen. I'd like to call the Commission to Study the Laws of Divorce to order. The Open Public Meetings Act has been met. If necessary we can read it, but if not, we'll waive that. A notice has been given of the meeting to all the necessary parties.

I'd like to ask Pat Nagle to call the role.

MS. NAGLE (Committee Aide): Mr. Broderick?

MR. BRODERICK: Here.

MS. NAGLE: Mr. Louis?

MR. LOUIS: Here.

MS. NAGLE: Ms. Flohr?

MS. FLOHR: Here.

MS. NAGLE: Ms. Bishop?

MS. BISHOP: Here.

MS. NAGLE: Ms. Von Seydewitz?

MS. VON SEYDEWITZ: Here.

MS. NAGLE: Assemblyman Kavanaugh?

ASSEMBLYMAN KAVANAUGH: Here.

MS. NAGLE: Judge Murphy?

MS. MURPHY: Here.

MS. NAGLE: Mr. Blitz?

MR. BLITZ: Here.

MS. NAGLE: We have a quorum.

ASSEMBLYMAN KAVANAUGH: We have a quorum.

Thank you very much, and thank you to the members and to those of the public here. I would like just to say at the outset, for the members of the public that are here and the observers: Decorum is something that I'll insist upon. You'll have every opportunity to voice your opinions, but they'll be done in such a manner that, once again, we will not castigate any members of the Commission.

If you want to send letters of concern to any of the members, they can be sent to: The Office of Legislative Services, Attention the Divorce Commission, to Ms. Pat

Nagle. I appreciate, in discussing this with some of you, that you've all agreed to it.

This Commission is something that took quite a long time to establish, and there is a very serious need to review the divorce laws in the State of New Jersey. I'm hoping that we can be productive, and we can only be productive who are cooperative, not only the members of the Commission, but the members of the public. So we are working in your interest, and your interest, I think, will show the needs in various areas. We'll now move--

I would just like to say that during the previous meeting there was an objection raised -- there were some concerns -- and there was a question raised at the Commission's organizational meeting on the eighteenth -- as reported in The Star-Ledger on October 19 -- concerning Marianne Espinosa Murphy's qualifications as a retired Judge and what merit the opinion has come through. All members of the Commission have received a copy. Marianne Espinosa Murphy is qualified, and she is duly recognized as a member of the Study for the Laws of Divorce and a member of that Commission. So we will clear that first, and we won't have any more comments regarding that. Is there any question that any member of the Commission has regarding that? (no response) Thank you.

You have before you a packet of the New Jersey statutes concerning family law. It was put together by members of staff -- mainly Pat Nagle. Because of the problems of gathering this, it was just completed yesterday. So we weren't able to get it out before the meeting. But I ask that you take this with you, and as far as you can study it, determine where the legislation is necessary, what changes can be made during our hearings, so that we can get down to actual changes that are needed. You'll see that is quite lengthy. It is in various areas. For those of you who are members of the bar, your expertise can be very helpful to us.

I would hope that at the next meeting we'll be able to put together the suggestions, specific recommendations, points for discussion, and comments that the Commission members hope to bring forth. It's something that is going to be time-consuming. We do have the support of Tom R. Curtin, who has written to me, and Frank Louis, as a family lawyer, who is here. Tom, who is President of the New Jersey State Bar Association, has pledged that his staff will assist in any way possible.

I'd like to welcome our Vice Chairman, who is a little late today but -- heavy traffic.

I'd like to open at this time for any comments from any Commission members, in particular, that we can raise at this moment. We can just go around. If you have anything that you want to bring forth regarding future discussions, or anything that you'd like to bring up for today because of the points that seem to be--

We tried to correlate and bring together some of the major concerns that we as legislators -- now, I'm speaking as a legislator -- that going in and discussing with them, they've said that major concerns have been the problems of alimony, the discretion of judges, a psychologist choice, child support, custody, and marital -- as far as, say, for example, home buyout, or things that try to make divorce fair. We've had several calls in our office on it, and certainly all of you will now start receiving it as members of the Commission.

So I want you to feel that you are going to be fully involved. We are all equal partners in this, and anything that you have to say can be either reduced to writing, or can be by phone call to one another. But at this time, if you have anything that you want to--

I would also like to mention that the meeting today is being recorded by OLS so that we can then look and get summaries from this meeting today.

Anyone care to start?

MS. FLOHR: Mr. Chairman?

ASSEMBLYMAN KAVANAUGH: Yes, Sara.

MS. FLOHR: I'd like to-- Did you receive my fax?

ASSEMBLYMAN KAVANAUGH: Yes.

MS. FLOHR: Okay.

At the last meeting, Mr. Kavanaugh had requested that we summarize our philosophy and submit it to him. I come from a business background. What I recommended to Mr. Kavanaugh was a quality management approach to solving the finance problem.

I believe that the customer of the State in the divorce process is the family, and that by soliciting information -- feedback from our customer, as you would in a business, as to what their areas of satisfaction or dissatisfaction are, then we could develop solutions to those problems that account for the largest bulk of that area. I have experience in this, in quality management as well, and could guide us as a Commission through this process.

ASSEMBLYMAN KAVANAUGH: To that point, I think it's important that when we are focusing on the New Jersey statutes that will be there, your particular areas of expertise will be very beneficial to the Commission. If you can bring those together and focus on those in your review, we can put them forth for findings.

Irene.

MS. VON SEYDEWITZ: My concern is that-- Well, our first meeting was stated to be an organizational meeting, I think it was termed, for developing. We haven't had any opportunity to develop any kind of cohesiveness, or only had very informal introductions to the other members, so that we should focus on testimony. My concern is that as we set the agenda; we clarify that every meeting we have will include comments from the public, or there will be the set hearings that we talked about: three hearings and then intermittently some of the meetings that we have here will be inclusive of public comment.

ASSEMBLYMAN KAVANAUGH: My response to that-- What I'm hoping after today's meeting-- Some members have mentioned that if we could have a meeting, like a work session, that we could all get together, discuss, and review. But they thought possibly prior to that meeting we could send out and seek throughout the country -- not only here in New Jersey, but throughout the country -- experts who could give us some insight on the problems that not only New Jersey, but other states have, and changes.

Pat has been in communication with the State of New York. They've done some major reforms. We could have individuals from New York and other areas that you know of -- bring them forward here. We could have this meeting of experts who can give us some insight, and then we can go into, say, a work session, then the public hearing. But I think if we just have meetings for the sake of having meetings, then we're not going to be too successful.

We've got to get to know each other. I think that if we can get things together-- I thought it was important that we do have these statutes; that we could review those and you can look at them in your areas. Then from there, look to have input from experts in the field of divorce reforms. Then after that, we could generate our ideas, discuss them among the Commission members, and then we could go public.

There was an article that I would like to just read a few lines from, that was written about: "Divorce can be a protracted and expensive encounter with the legal system. Although fees vary from region to region and lawyer to lawyer"--

MR. BRODERICK: Mr. Chairman, we're getting a lot of feedback. I think we have too many open microphones. I'm sorry to interrupt you.

ASSEMBLYMAN KAVANAUGH: This was low bid, that's why.

Chief Judge Judith Kay is the one who has been very involved in New York, and we have now communicated with her. New York State-- One of the areas that they had, beginning the

first of November, was that lawyers must give the clients itemized bills at least every 60 days, and disputes would be subject to binding arbitration.

Another area that was of concern, and maybe we could discuss this a little, was the-- In midstream a person who is in a divorce proceeding -- and because of rotation of judges, they'll start with one judge and get halfway or three quarters of the way, then because of rotation, the judge will be changed; will come in from, say, Criminal into the Family Court and will kind of have on-the-job training. Not to demean the judge, but they're learning in a matter as delicate as a divorce proceeding in the Family Court. I wonder if we could have some discussion there, and your feelings that the judge would stay in that field instead of having to move out and bringing another judge in. Maybe the attorneys or the other ones who have been involved could give us some input on that?

MS. MURPHY: Do you mean now?

ASSEMBLYMAN KAVANAUGH: Yes.

MS. MURPHY: Well, there is a policy that a judge should stay with the same family, but I don't think it would be very helpful to go beyond the directives from the court on this, because -- certainly not legislatively -- you would wind up-- Matrimonial litigation has a tendency to go on and have a post-judgement life. I think it would simply be unreasonable to expect a judge to stay with the same case forever. That's really something that should be within the discretion of the administration of the courts -- how that's handled. There's already preference that a judge stay with the family, and sometimes a change is good for everybody concerned. Sometimes it helps for there to be a change.

ASSEMBLYMAN KAVANAUGH: Well, how does that work? If someone is in a divorce proceeding, how often does it happen that there is a change? This is one thing that legislators

have told me is one of the major complaints that they get in their offices, that that happens.

MS. MURPHY: Depends on how long the litigation lasts, really, wouldn't you say?

ASSEMBLYMAN KAVANAUGH: Frank?

MR. LOUIS: There are two separate questions. One which is fundamental; that is, whether or not we as a group can legislatively mandate to the courts how they run their procedures. But beyond that, I don't think that means that you can't criticize something that we see as wrong that is within our charge. There is a policy for all judges who -- and it's defined as new judges. In other words, if someone has been sitting for 10 or 15 years, it doesn't apply. But someone who has been appointed in, I believe, the last five or seven years, that judge is supposed to be rotated within the Criminal, Civil, and Family.

The problem that I have, and I think most people involved in the system have -- is, only in the judicial system would you take someone who is doing a good job; who wants to stay; who everyone else involved says is doing a good job, and say for some policy reason, you're going to move that person into a different division with the consequent disruption on the people who have appeared in front of that judge. Judges become familiar with cases.

I would be inclined to-- I think you may want to hear from people, but my own personal view is that it is disruptive and contrary to the best interest of the system and the people who appear in front of judges.

The other question is whether or not a judge is always going to keep that same case, and that becomes a problem. I can see there is some logical cutoff. But even then, I think that if a judge has intimate familiarity with a case and the problems of children, there should be some ability for the system to make an intelligent, if not a sensitive judgement

that that judge should hear that case. But it is a sensitive issue, because it arguably goes beyond the powers of the Legislature to tell the Chief Justice how to run his bailiwick. But as I've indicated, at least my own view is, I don't think we should be-- There is an area of appropriate deference between the branches of government, but that doesn't mean that we can't publicly articulate, identify a problem, and comment on it.

MR. BLITZ: In my view, I agree to part of that. This is a separation of powers issue. The judiciary-- The Chief Justice is the one that assigns the judges. That's something that cannot be done legislatively. As I said, it's a separation of powers issue. So I don't know how useful it is. Other than perhaps to render whatever opinions that we want to, it is not something that we can do by legislation.

ASSEMBLYMAN KAVANAUGH: The charge, as far as the Commission, is looking for legislative remedies, but, as Frank states, we can also make suggestions. Now, we are separate branches of government, but certainly if the concerns and the time that's being spent by the members of this Commission-- I'm sure the judiciary will look kindly on many of the suggestions, and be able to-- I was hoping that when we get down to the end that we can also involve some members of the judiciary, have them come into one of our work sessions, and discuss with them. Any other comment on that?

MR. BRODERICK: Could we not suggest that there be a separate Family Court?

MS. MURPHY: There is.

MR. BRODERICK: Separate in the sense that judges will not be transferred into and out of those courts. One of the stories I read over the weekend was that one litigant had eight different judges.

ASSEMBLYMAN KAVANAUGH: All right, now those that have had expertise in that area, how does it work in Family Court?

MS. MURPHY: Well, typically what would happen is -- there is, as I say-- I can agree that the Commission would have the power to issue a policy statement favoring one judge, one family, but that is a policy of the Family Court. It is very unfortunate when something like that happens; when there are eight different judges for a particular case. I think it is very important for a judge to get to know the family, the problems of the family, and so forth, over the course of time. Hopefully it is a minimal amount of time that any family has to endure before it becomes final.

But what typically will happen -- at least in the county where I was -- is that the alphabet would be divided up. If a case fell in a certain portion of the alphabet, that was assigned to a particular judge. The judge would handle it from the date the divorce complaint was filed until the divorce, and afterwards in post-judgement matters as well. The only thing that would change that, for example, would be if the case was ready for trial and that judge was not available and another judge was available. Then the other judge would handle it.

In the kind of situation which you mentioned, in which there were eight different judges, I would assume that there was quite a heavy motion practice in that particular case, because otherwise why would you appear before a judge that many times? So that would suggest to me that the case was very protracted in length, and therefore, there may have been that unfortunate situation where there was rotation of judges. Typically, once a judge is rotated out of the Family Division, the only motions that that judge would handle from that case would be motions for reconsideration of his or her own decisions. So that's how that would work.

MR. SCHOENBERG: If I can comment on that, I think that I've certainly seen cases, Mr. Broderick, like what you're talking about, where a single case has appeared in front of

many judges. I think anybody who works in the system has heard of cases like that. But I don't think anybody has any idea how often that happens, if that's one awful disaster story, or if it's happening every day of the week in counties all across the State. I think that is one of the problems that this Commission has. We don't know what's going on, and I think we need to make efforts to find out what's going on.

MS. MURPHY: You know, if I might just add to that. In my response, I -- perhaps you as well -- was focusing on the actual divorce litigation, but as we know, particularly now, it may be that the-- For the litigant it's one divorce, one marriage, one family, but the court will divide up certain kinds of issues.

So, for example, if there was a domestic violence action, at some point that would more than likely be heard by a judge other than the one hearing the divorce action. If there was an enforcement of the support order, that could be a different judge. So I don't know to what extent we can impact on that sort of thing. The fact that, as an administrative tool, various pieces of litigation that are not, strictly speaking, considered to be part of the matrimonial action may very well be heard by other judges; that may impact on quality of fact-finding, because it is being splintered in that way. But as I understand, it would be something beyond the scope of what this Commission was considering.

ASSEMBLYMAN KAVANAUGH: There will be a portion for the public, so if you will just keep your question. Thank you. (addressing member of audience)

What I'm trying to bring out-- Talking from the legislative point now, I'm trying to bring forth just for discussion purposes that if any of you have some that you can bring up, so that we can-- Because we're starting to bring up the concerns that people have with divorce, and that's what we're to review.

Another thing I've been asked to discuss is regarding psychologists: why the affected parties must pay, and is it the law? Should it be changed? The freedom of choice: How do you go about with a court appointed psychologist, rather than-- Since we do license them in the State of New Jersey, why can't you pick a licensed one and have your own psychologist, rather than a court appointed psychologist? This has been something that legislators say that they get from their constituents, that they're very distressed at. The court will appoint a psychologist. They feel that there is prejudice one way or another, and that particular thing, where they could bring in their own.

MS. MURPHY: They can bring in their own. I think it would be very foolish for a judge to deny an application for a litigant who sought to have their own psychologist come in after there was a court appointed one. The effort when you appoint one -- when the court appoints one -- the idea is that, first of all, you're cutting down on expenses. Because there's one psychologist who's not on the pad for either of the litigants, this person is presumed to be neutral. Now, it sometimes happens that when a litigant becomes aware of what the psychologist's findings are, they are dissatisfied and they want to have their own psychologist. I know of no court rule -- no case -- and it would seem, frankly, to be very foolish for a judge to deny the application if a litigant wanted to.

Do you have different experiences?

MR. LOUIS: The specific issue is dealt with by the Practice Committee, and is governed by Rule 5:3-3. The judge has the power to appoint an expert -- and that does not mean that the parties can't get their own experts -- but there are two practical problems: 1) cost, and 2), you're sort of traveling uphill to go against someone who is now an independent expert.

The problem that is at least an issue from a legislative standpoint is the difficulty in obtaining qualified people because of their reluctance to become involved. In my county, at least, there are only a few people who are willing to do it.

So some would raise the question, and there are negatives to the proposition-- I'm not sure I'm in favor of it, but do you give some sort of qualified or absolute immunity to a court appointed expert? There are a lot of negatives to that. But that would open up a pool of people who would then-- When you have more people you: number one, have different degrees of price, more flexibility, and it may be easier to find them. But there are clear negatives to permit someone in a sensitive area -- dealing with the status of children -- to be immune from suit. But that may be a question you may want to at least address; that clearly you could deal with legislatively. I'm not sure if the positives outweigh the negatives.

But to answer your question directly, clearly anyone can have their own expert. It's governed by court rule, and the judge is not permitted to give -- to consider his or her own expert as having some greater intelligence. They're just another witness. But there are those problems with costs.

ASSEMBLYMAN KAVANAUGH: But the court appointed psychologist, the cost is incurred by both parties?

MR. LOUIS: To some degree. It may-- It frequently lies on the one person who's working, who's frequently the male. It doesn't always work that way. It's allocated and the judges generally say, "You pay, and I'll consider the allocation -- the ultimate allocation -- later." From the judge's standpoint, it's most important to get the process going, because the longer you delay in a custody case, the worse it is for the children.

MR. BRODERICK: Are there specific circumstances in which a judge has to appoint an expert, or is that pretty much within the latitude of the judge?

MR. SCHOENBERG: It's discretionary.

MR. BRODERICK: Does the individual appointed have to be a Ph.D., Ed.D.? Could it be a social worker with an MSW or an M.Ed.?

MR. SCHOENBERG: It doesn't have to be a psychologist at all. It's up to the discretion of the judge and, at least in my experience, it's very common for judges to end up appointing a specific expert on numerous occasions because they find themselves comfortable with that expert. That may be a problem in that the fact that a judge is comfortable with an expert doesn't necessarily indicate that the expert is highly qualified. I think that certainly one thing this Commission can look at is greater education, or making greater education available -- not mandating it, since it is the judiciary -- to judges in the Family Court.

I've certainly heard of horrible situations where it became apparent that a sitting judge didn't know much about the system. That's usually a judge who's just entered the system, has just gotten on the bench, or come from a different division.

I know that concerning psychologists, the Board of Psychological Examiners is about to promulgate a set of rules or guidelines for psychologists, as far as what qualifications a psychologist should have in order to act as a forensic expert in a custody case. I believe that is coming out sometime this month, if it hasn't come out already.

MR. BRODERICK: Who's doing that?

MR. SCHOENBERG: I believe it's the Board of Psychological Examiners.

ASSEMBLYMAN KAVANAUGH: Another area that was brought up is the concern-- If we could look at the law regarding-- Mainly they call them the deadbeat dads, I guess there might

be some deadbeat moms, also. But the fact-- How do you pay support when you're in jail? How does that work out? Any comments on that, where we could go?

MS. VON SEYDEWITZ: I think that's debatable. We'll spend a lot of time talking about that. I don't think it's something that we can get into now, but, again, that's discretionary in terms of whether the judge will do that or not. It's usually based on criteria--

ASSEMBLYMAN KAVANAUGH: Use the mike there. Is it on?

Are you getting that all right? (addresses Hearing Reporter) (affirmative response)

MS. VON SEYDEWITZ: --of the payment record that already exists and other areas -- of court orders that have not been complied with. Because, again, it is not the finances that have to do with the contempt of the order. So that's very debatable as to whether it's effective or not. But there is an expert who has utilized that for years with fantastic results. If we are going to call on various experts about that, I would be happy to get back to Ms. Nagle -- that we could have that particular judge come forward.

What we were talking about in terms of the psychological examiners-- About four years ago we began requesting, on a county basis, that the presiding judges produce some sort of a list of the most commonly used psychological examiners -- a county by county -- that they called upon as experts in cases, because we were getting conflicting reports about people that they felt were not qualified to be doing whatever the judge ordered, whether it was an actual evaluation of the family, a custody issue, or a custody recommendation. Subsequent to that, we have never received that, because not every county complied with the request.

But it is my understanding that the Board of Psychological Examiners is looking at an actual criteria, because just someone that has a Ph.D. as a psychologist does not necessarily have the specific training that's necessary to deal with that. Particularly if there are any family violence issues, that psychological examiner has to demonstrate that they've had some former experience with that in order to be an adequate evaluator. So they are working on that.

I think one of the compromises there that we've been able to work out in cases where it is contested is, the judge has elected to appoint a particular evaluator; to have one of the two parties -- whichever one we're working with -- have counsel present three names that they've selected from whatever list is available, or the names that they're familiar with, see if both counsel will agree on one of those names, present it to the judge, and see if that is acceptable. That's worked out in a lot of cases. So, in other words, it's still a court appointed psychologist, but one that both parties have selected from maybe three names that both counsels agree upon.

ASSEMBLYMAN KAVANAUGH: Any other comments?

MR. SCHOENBERG: Yes. I would just comment that one of the problems that I see in custody matters is that judges seem to have very limited arsenals as far as how they're going to enforce visitation arrangements. Mr. Chairman, you made reference before to the problem with enforcing child support, and everybody knows that a judge can throw a guy in jail for not paying child support. But what I see happening time after time is that a visitation order is totally ignored, and a judge feels that he has nothing available to him to enforce that. I'm not sure what we can do about that problem, but it is something that I'd like to have more discussion about.

ASSEMBLYMAN KAVANAUGH: For the record, I'd like to note the presence of Nancy Benz.

Welcome.

MS. MURPHY: I agree that that is something that we should look into. That was a very frustrating experience when I had situations. I did threaten to incarcerate mothers who failed to honor visitation orders, and it was very, very difficult. So I think that that might be a very worthwhile thing for us to pursue; to see how we can impact on the process, or give some kind of assistance to judges who are frustrated. It's very difficult.

MR. SCHOENBERG: Well, correct me if I'm wrong, but I think the dilemma that judges face is, for instance, if they sanction the custodial parent financially, well, that's probably going to hurt the child, because the custodial parent is probably receiving child support.

MS. MURPHY: But perhaps it could be alimony that could be impacted upon, or there could be some other kind of procedure, something. I don't have answers at this point, but I share your concern. I think it's a question that's worth pursuing.

MR. SCHOENBERG: It would be very interesting to see if any creative ideas could come from other states, and what they're doing in that regard.

ASSEMBLYMAN KAVANAUGH: Well, we do have the NCSL and the American Legislative Exchange Council working. They've been contacted, which will be more information that you'll be receiving through Pat.

MS. FLOHR: I'd like to make a comment.

ASSEMBLYMAN KAVANAUGH: Yes, Sara.

MS. FLOHR: I think that the custody arrangements should be perhaps changed in a situation where the custodial parent is repeatedly not cooperating with the visitation order -- not complying.

MS. MURPHY: Well, that's an option, but it's so rare that you would ever get to the point that the custody would actually be changed. It's the big threat, but it's also an

empty threat in many occasions. That it is not going to prompt the desired change in action -- change in conduct -- that we'd like. So while that's true, and I have done that, still I think intermediate measures should be available to a judge, and should be a lot easier and less climatic. It's a very big threat.

MS. FLOHR: I agree with you.

ASSEMBLYMAN KAVANAUGH: Rob.

MR. BRODERICK: I think in addition to the question of how to enforce visitation orders, many of the fathers that I have talked to, who are noncustodial parents, are concerned that not only are the visitation orders ignored, but that, in effect, the fathers don't have any decision-making power with regard to the children's education, health, and welfare. In other words, there is a schedule for them to see the children, which may or may not be attended to, but there is no discussion as to where the child will go to school, how often the child will see a physician, or whether the child will see a physician. Matters like that simply don't get discussed at all, and I think that that is something else that we have to examine, because that feeds into the complaint that many noncustodial parents -- not only fathers, but noncustodial mothers -- have; that they become mere cash registers who have no authority in the children's lives.

ASSEMBLYMAN KAVANAUGH: To that point, maybe we could just throw around a little-- It's come to the attention of our office the question of the mandate by judges that you will pay for the education of your child. Now, if you were married, there is no mandate to educate your children. Is there any feeling in that area?

MR. BRODERICK: Well, if my daughter, for instance, decides to go to Harvard, I may have to pay for that. Whereas if I were still living with her, she may wind up going to Rutgers or Trenton State, a lot less expensive proposition. So I think that is an inherently unfair requirement.

ASSEMBLYMAN KAVANAUGH: Right.

MR. LOUIS: There's an ambiguity or a wrinkle in the law that if you're divorced, you have a greater ability to obtain contributions for college than if you're married. You don't have that right to go to court and say, "I'm happily married, but order the father of my children to contribute to college." You can't do that. But it's a philosophical question in a divorce case, and the law has changed over the last 10 years. Where the Supreme Court has equated college, at least, not necessarily graduate school, with basic necessities of life. College expense is now considered a necessity no different than food, shelter, etc. Consequently, once they've made that judgement, then they impose that on the divorced parent.

But they don't have the jurisdiction to impose it on the intact family, and that's the contradiction. I don't know how. I guess legislatively you could make a judgement that society benefits by education, and we want to make a judgement as a Legislature that the courts do have that power.

I guess then the next question is, do you want to legislate -- to intervene -- to have government intervene in the intact family? That's a far different question, and I'm not sure you want to go that far. But there is that disparity in rights between divorced people and nondivorced people. I don't know how you deal with that, short of passing legislation that I think might be met with a great deal of resistance, because the implication of permitting government to intrude into the intact family has ramifications down the line in a lot of other areas. Lawyers have a tendency to cite precedent, and I could envision a creative lawyer making a lot of interesting arguments about determinations on day-to-day decisions that parents make in the intact family, but they don't want government being involved.

MR. SCHOENBERG: Frank, I think you raise an interesting issue, because one of the problems that I see in the system all the time -- and I don't have an easy solution to this -- is that you were concerned with judicial intervention in the intact family. Well, I think in the last 20 years or so since divorce has become so much more available in New Jersey, the intervention of the courts in the divorcing family has reached a level that I find very disturbing in a free society like ours. I don't know what the answer is to that, and I'm certainly not advocating that we go back to making divorces very difficult to get. But I think this issue of whether or not a parent in a divorcing family, or in an intact family, should be compelled to pay for private or public higher education -- it is part of a larger problem.

I would note that sometime in, approximately, the last year, the top court in Pennsylvania threw out the law -- the case law -- concerning a court's ability to compel a parent to pay for college. It is my understanding that the Legislature promptly overrode the court and reinstated the court's ability to order that a parent pay for college. But there is something that I find very disturbing about the degree to which the strong arm of the government, through the court, intervenes in the family, whether it be for paying for college, or a lot of other problems.

MS. MURPHY: I can assure you that no judge volunteered to intervene. The reason that the courts intervene is because the parties ask the courts to do so. I have been asked to decide whether a 10 year old should be permitted to have her hair bleached and permed, and my decision on that question alone resulted in the settlement of the case. I have been asked to decide whether a 12-year-old-boy should be permitted to have an earring, and that was the subject of a motion between the parties. No judge-- This is one of the reasons that judges don't want to be assigned to Family Court,

because they don't want to make decisions like that. They want to decide who gets the million dollars. So recognize that it's not because the courts are hungry to decide issues that the people have been unable to decide.

If I can return for a moment to the college issue: It's true. I agree with Frank that it's almost a given now, that there are going to be contributions for college. But I think there has been some development in the law as well that the cost of college should be commensurate with what the abilities of the parties are. I can tell you, I would receive and I'd wonder what people were thinking-- I would receive a motion that would be returnable at the end of August requiring -- asking -- one party to pick up the entire bill for tuition for September.

So it seems to me that perhaps what we can consider is, imposing an obligation on the parties to be involved in some sort of planning before they can make such demands on each other. Certainly, in an intact family no one would expect the Easter bunny to arrive or, I guess, the Labor Day bunny to arrive with the tuition money if nobody had saved anything for 10 years. So perhaps there is some way that we can address that in terms of what the financial planning -- what the ability to pay has been before such an obligation can be imposed.

MR. LOUIS: Mr. Chairman.

ASSEMBLYMAN KAVANAUGH: Yes, Frank.

MR. LOUIS: Judge Murphy's comments made me think about something we can do legislatively. We have child support statutes that have certain standards. There is no reason why the Legislature -- in their discretion at least, with our assistance -- have a statute dealing with college education, and say, at least in my view, that the courts should have the authority, but they should consider the following standards.

Some of these questions we're dealing with can be dealt with legislatively, and that's a very, very appropriate area for this Commission to deal with. It's perfectly consistent.

We have statutes on equitable distribution, alimony, custody, and child support. All with standards, none with respect to college, and I think that's something that we can definitely deal with. I'd like to hear some testimony from interested people as to their views on what should be in the statute. I mean, the questions that come up: Does the child go to UCLA or Rutgers, a myriad of questions that involve serious policy questions. I think I'd like to see us deal with that.

If I could go back to one other thing about the enforcement of visitation. If we have Tom Curtin's kind offer to volunteer a lot of high-priced lawyers to do the work--

ASSEMBLYMAN KAVANAUGH: I have it in writing.

MR. LOUIS: I know. Why couldn't we ask them to research what the other 49 states do? There may be some program out there, or some policy that we are simply unaware of. I'd like to know what the other states do to enforce visitation. Let's find out -- across the country, or even in Europe, if necessary. Then maybe you can do something legislatively. But let them go out, do the work, and give them to us. Then we can make an informed judgement, which answers Doug's question of not having enough information. We have the resources. It won't cost us anything. Let them go out and do it.

ASSEMBLYMAN KAVANAUGH: Sara.

MS. FLOHR: I'd just like to interject my personal opinion. I wouldn't object to the court ordering parents to contribute, based on their ability, to their children's college education, provided that it's parents across the board. A complaint that I frequently hear from divorced parents is that they are discriminated against; tired of being treated

differently on the basis of marital status, like a gender discrimination; that now that they're divorced, they are required to do something that they wouldn't have otherwise been required to do.

MS. BISHOP: Assemblyman Kavanaugh, if I might address a question to either Judge Murphy, or to an attorney that's here? Isn't it possible for a child to file a complaint against the parents for college costs?

MR. LOUIS: It certainly doesn't make for a pleasant Christmas, but I've handled cases where I represented the father and was sued by his son. Yes, there is a developing body of law consistent with children's rights where they are suing their own parents. That may be one of the questions you might deal with in the statutes. Do we as a society want to permit that? What are the advantages/disadvantages? But, yes--

MS. BISHOP: Well, I mean when it addresses the discrimination problem, it also happens to intact families.

MR. LOUIS: Oh, yes. Children are becoming quite litigious.

ASSEMBLYMAN KAVANAUGH: Irene.

MS. VON SEYDEWITZ: Wouldn't it be possible to maybe consider some kind of plan in some of the recommendations that we make, that on the onset of the family divorcing -- that is, when they're taking into consideration the absence of the marriage and equitable distribution, that they begin to negotiate and get something in writing for college planning? Because the biggest complaint that I get is that they settled that. Both parents will contribute to the college education as their ability to pay. Then when this junior year comes and they start looking at colleges, one of the parents inevitably-- All of sudden, miraculously, whatever money was there is gone. That somehow must be negotiated so that both parties, at the time of the divorce, understand what their

responsibility is in terms of paying, you know, savings for that child's college. Then when the time comes, either party can make additional contributions as they feel they want to.

Maybe it's going to be based on the relationship, or what they feel they would like to do for their child and not mandate it. But at least something will be there secured for that child. Because a lot of families that are intact, where it's feasible, do plan 10 or 15 years ahead of time; and because so many of the divorces are taking place when the children sometimes are even toddlers, I think that's a good time to think about it. Even when kids are in junior high and there is a divorce going on, very often the judge will say, "I'm not going to deal with that now. They can come back on a motion a couple years from now." I think that can be averted if it's dealt with at the time of the divorce.

MS. FLOHR: There is another factor to consider, though. Maybe a couple in-- One is some parents who have the ability, and they're married, simply believe that it's in the child's best interest to require that child to do something to earn their own education. To simply base it on the parent's income and ability to pay would overlook that -- the parent's own value system, and what they want to instill in their child.

MS. MURPHY: I think that's a very good point, and that's something-- Frequently, we're just interested in seeing to it that the tuition bill is paid, and usually when it comes up to the court, it's too late for the kid to do any serious saving for his college, maybe too late for the parties, too.

But in terms of the standards-- As Frank had suggested, if we are going to consider a set of standards that should be applied in allocating the cost of higher education, perhaps one of them should be what the family history has been with respect to contributions from the child toward the education, because it differs from family to family. Some parents feel that it is their obligation to guarantee their children a college education.

I'm familiar with the problem that you mentioned, Irene. I think if the parties themselves, when they're getting divorced care, if it is an important priority to them at the time of the settlement -- hopefully it is a settlement -- they'll put it in place. But that is very rare. The chances are that they are probably going to try to settle only what has to be settled at that point, and if there is a substantial amount of time, a lot of things can happen. So people don't want to rigidly set up a criteria, but perhaps something we should consider is the suggestion that there be some financial planning. The problem that we have to realize is that that costs money, and people when they're getting divorced don't have money.

MS. VON SEYDEWITZ: If they look at the long term, maybe set the agenda that within a two-year period they're going to set up a trust fund. I don't mean that it's mandated that that child has to receive it, because that child may turn 15, become the child from hell, and nobody wants to contribute to the child's college education. But at least it's there. Even if they want to set the standard as parents that, "Well, I really think that you should have a part-time job and contribute to your education, because then you'll have more of an appreciation", at least there's some kind of foundation from the family to draw on, and it doesn't have to become something that mandates litigation just to get the ball rolling.

ASSEMBLYMAN KAVANAUGH: Frank.

MR. LOUIS: I started to write out some factors, and I won't bore you with them now. But one of the things that would answer Irene's question, and Judge Murphy's-- If there was a statute with all these factors and one of them said, "The desirability of establishing a trust fund from equitable distribution," so when you have the four and the seven year olds, and say if there is \$50,000 in a bank account, maybe a judge could say, "If the Legislature mandates it" -- so it's

right there, judges have a tendency to look at statutes -- that maybe \$10,000 of that is going to be put aside in some form of a trust to guarantee the future college education of children. Lawyers sometimes do that themselves. But that would be-- One of the advantages of having a standard is it gives a message to lawyers and judges of how to settle a case.

It answers your question; it answers Judge Murphy's question; and it has the capacity, arguably, to minimize future litigation -- that august motion of, "By the way, Judge, Johnny wants to go to Harvard, but we never thought about it. Can you make daddy pay \$20,000? But by Tuesday, if possible." I like the idea of the standards, because I think it's fairer to everyone concerned.

ASSEMBLYMAN KAVANAUGH: The things here to generate discussion, as far as what were brought up by some of the legislators' concerns-- I have one more that I'd like to bring forth, and then those of you-- As you've been sitting here this afternoon, if you have some of your own thoughts or ideas that we can put on the table, just to try to get a little bit as far as -- to generate more activity, so that we can-- Also, the members of the public who-- We have a list here of those that wish to testify. If you have particular concerns, you can bring them forth, because these are the things that we're going to be studying over the next month.

But is there any policy -- a written policy -- as far as judicial discretion? This is something that-- It seems that different things happen in different courts. Now, is there some kind of a policy? Does the Supreme Court or the Justice have a policy on judicial discretion regarding the Family Court?

MS. MURPHY: You mean that defines discretion?

ASSEMBLYMAN KAVANAUGH: Yes.

MS. MURPHY: I don't know of any.

ASSEMBLYMAN KAVANAUGH: I guess there must be. Do you go to a school or do you go to training? How does this come about? If you're a doctor and you're going to do a procedure, you're trained in that procedure. If you're an attorney that becomes a judge and you're going to do Family Court, you're going to do divorce situations. Certainly you have to have various opportunities for discretion. But is there anything that you can kind of look at so that you would know the same thing if you are in a court in the north, or a court in the south?

MS. MURPHY: There is judicial education. In fact, I think there is more education available for people assigned to Family Court than for the other divisions. There are seminars on a regular basis, and every judge goes through-- When they're assigned to a new section of the court, they go through a training session. There are a couple of days where-- I don't remember. It's been a while since I went to one of them. They change them, but there is education provided by the judiciary.

MR. BRODERICK: I'm curious. May I ask something? In that light, what discretion would you have had when the 10-year -- who wanted to have his hair bleached -- came before you, to say, "I'm not going to decide this. You have to decide it"?

MS. MURPHY: Well, could I have said that?

MR. BRODERICK: Yes.

MS. MURPHY: I suppose so, but then they wouldn't have settled the case. This was in a conference, and the parties asked me, "Judge, what would you say about this situation?" The father was horrified that the mother had bleached and permed the child's hair, and wanted part of the divorce to be that the mother couldn't do this for two years. The mother wanted to have discretion to do that. So all I can do is give them, "Well, this is what I would do if it were my situation," and it's up to them to decide if they want to do it or not. I didn't rule on it.

MR. BRODERICK: Oh, you didn't.

MS. MURPHY: No. It was in a conference and they said, "We're trying to settle the case, and this is the sticking point. What would you do? What would you suggest?" So you give them the benefit of your life experience and see if they want to adopt that.

ASSEMBLYMAN KAVANAUGH: So what you're saying then is, if you ask the question, "what guides," it's really the personality of the individual as far as their training and background as to the discretion that they use.

MS. MURPHY: Well, no. It's subject to review. It's subject to Appellate review -- discretion. In other words, discretion-- It's really as close to its ordinary meaning if you would look it up in the dictionary. It's something to be applied and you really need to have it, because many of the issues are fact sensitive and people sensitive -- involved with people who are involved there. So there has to be a spectrum of right answers.

MR. BRODERICK: For me that gets to another question. It seems to be a tremendous waste of public money to have someone who is on the bench deciding things like that. Even if you didn't make a ruling on it, to decide something like that, or even to be asked your opinion about that, seems to be a tremendous waste of public resources.

MS. MURPHY: Well, you know, a lot of these--

MR. BRODERICK: I think part of what I hear from people is that the courts are tied up with a lot of things like this.

MS. MURPHY: But that happens often--

MR. BRODERICK: I understand.

MS. MURPHY: --that there are many emotional issues that are, frankly, more important to the litigants than the economic issues when they're resolving their divorce.

MR. BRODERICK: But I'm just saying that there's got to be another mechanism to decide whether a 10 year old has his hair bleached. We don't need to ask a judge who's making "X" dollars, in a courtroom that's being paid for by public money and so forth.

MS. MURPHY: But if I hadn't answered it, then they would have gone on, had a trial, and it would have taken much longer.

MR. BRODERICK: I understand that. But there is something about the process that encourages that sort of frivolous conversation from the beginning.

MS. MURPHY: I don't think the process encourages it. I think that we are dealing with people who are--

MR. BRODERICK: No, I don't mean to blame the attorneys involved, or anyone involved. But part of it is the function of the fact that we have people who are willing to sue over just about anything, and who are asking other people to decide questions that they ought to be deciding themselves.

MS. MURPHY: Well, yes.

ASSEMBLYMAN KAVANAUGH: Frank.

MR. LOUIS: Let me disagree with Bob. I think that attorney should be blamed if he's filing a formal motion over an earring or bleached hair.

To go back to your question about discretion, it's hard to answer in the abstract. If you had asked me, "Is there discretion in the child support area?" I would say there is much less discretion in the child support area because there are guidelines. There's some discretion, for example, in the alimony area, depending upon which kind of alimony you're talking about. But it's not what we lawyers call unbridled discretion. Of course, there are standards in the cases. If you were to give me a specific question, for example: Is it a permanent alimony case or not? I can show you which cases

directed the factors that a judge is to consider so the judge doesn't have this wide-open discretion; so you shouldn't get different answers in Bergen than you do in Ocean.

The problem is, I think -- Doug mentioned it, and I think I mentioned it the last time -- when you add that to the rotation policy, judges get, in New Jersey, wonderful education as compared to other states. But judges do not get wonderful education as compared to the responsibilities that they must do when they must do them. By that, I mean-- Say if I were a real estate lawyer and appointed to the bench, and I had to start January 1, I might not get a course in telling me how to do this until March 1. Well, how am I deciding my cases -- my 60 cases every Friday in January and February?

There was a proposal by the Practice Committee, which the Supreme Court has never acted on, that says before you let a judge decide people's lives, that perhaps we ought to educate them a little. Now, I don't think that that is a particularly unreasonable position. Again, this gets into the area of separation of powers.

But if there is a consensus -- not that everyone should necessarily agree with what I've said, and I can supply the report that the Practice Committee wrote -- I think I can supply it, if I didn't throw it out -- how the other 50 states do it -- we're really way ahead. But I think that this area of the law is so complex and so difficult that before people start deciding other people's lives, they should be trained, at least minimally.

I think we can fairly comment on that if we foresee it, or believe it is a problem. Because I believe that it's interrelated with this rotation policy. "Judge, you're out of Criminal. Friday, you're deciding criminal motions. Monday, you're starting a divorce trial. What kind of trial is it? Not to worry, it's a three-week custody trial involving sexual abuse with four psychological experts. You ready?"

I don't think that's right, and I think, Mr. Assemblyman, you said you had a business. You wouldn't run your business that way. We shouldn't run the court system that way.

ASSEMBLYMAN KAVANAUGH: Thank you. Now, how would you go about changing that other through suggestion? I know that-- I admire it, that in just the short period of time I've known you, you can figure out how to move these questions into the area that we can develop legislation. So maybe you can--

MR. LOUIS: I'm not sure it's a legislative question, but my sense is that the Supreme Court, properly, has a great deal of deference to the views of the Legislature. It may be something that-- I don't think there is anything wrong with the branches of government sitting down and talking from time to time. You can't settle a matrimonial case unless you sit down and talk. I don't see why a member of this Commission, for example, if we ultimately conclude that that is a problem, couldn't sit down with someone from AOC and say, "It is our perception that this is a problem. Perhaps you might want to address it in some fashion."

I think that with each branch of government giving due deference to the other, keeping in mind that there is an element of funding going from one to the other, that prudent people might recognize the correctness of having people educated before they decide cases. It may not -- may be done better informally than formally, but I'm convinced it can be done.

ASSEMBLYMAN KAVANAUGH: Thank you.

MR. BRODERICK: Can we explore the question -- this goes back to a question we brought up early on today -- of whether there should be the discretion for somebody to hear an auto accident case on Friday, and a divorce action on Monday? Or should there be a separate Family Court, where judges are in Family Court period? That goes back to how they're educated in

law school. Should there be a specialty? You wouldn't have a brain surgeon operating on somebody's knee. I mean, there are specialties in medical school. Should there be similar specialties in law school?

MS. MURPHY: That would require a constitutional amendment.

MR. BRODERICK: Frank just wrote me that note--

MS. MURPHY: We changed the court system some time ago, where there had been a separate court and now it is one Superior Court. So it's not like we can do anything about that.

ASSEMBLYMAN KAVANAUGH: But that can be done. If it needs a constitutional amendment, it can be done. It's something that the Legislature can do.

MS. BISHOP: That's fine if you get judges in this Family Court that you think can handle those kinds of problems. But Family Court is a very, very stressful area. Those judges need to be rotated. Suppose you get someone in there you don't want in there, then you have no procedure to be able to rotate them.

MR. BRODERICK: Well, I've heard that said time and again, that Family Court is a stressful area. That's undoubtedly true. I don't know whether that's to diminish the stress that a Criminal Court judge faces. Criminal Court is not exactly a piece of cake. They're under a lot of stress as well.

MS. BISHOP: Well, given the complexity of the criminal cases, and the fact that you may be deciding someone's life, that's probably true. But you've got a jury that helps you decide those things. Family Courts have to be involved in custody, visitation, child support, domestic violence, juvenile issues, on and on. It really is a very stressful area for any Family Court judges that I've been involved with. Some of them have been very dedicated people, and others, you really can't wait for that rotation period to come along and give someone else a chance.

MR. BRODERICK: I understand that. But if a doctor tires of being a doctor, he finds another profession.

ASSEMBLYMAN KAVANAUGH: I wonder-- Well, I was just going to start over here. I wonder now-- We've kind of generated some discussion. If we can start over and we can come around the table-- If you have thoughts or ideas that you want to put forth at this time, or comment on what has been discussed? If you have anything to add that you'd like to see -- gives us a general idea -- gives the public some insight on some of the problems?

MS. BENZ: Thank you, Assemblyman.

I'd like to just comment on what Frank said. I agree that there needs to be special training for Family Court judges. I work with a lot of them. It is very stressful. I like the idea of having Family Court judges just do Family Court things. However, there does have to be some kind of mechanism built in to help those folks with the stress, because it's really difficult. We see a lot of informal consulting with judges on dealing with these cases, and what happens when you have really upset people in the courtroom, and how you deal with that. So I certainly think that idea is worth looking at, and perhaps approaching the AOC about that.

I also wanted to comment on the kind of -- the earring and the hair. Gosh, I would hope that in the best of all worlds, we can find a way to help most folks mediate those kinds of situations before they end up in the courtroom. I would certainly like to see that as a goal; that a lot of those kinds of issues are mediated before folks end up in court. Because there are so many other difficult things to deal with, if they end up in court having to decide that--

I also wanted to ask-- Since I was late, and I apologize, perhaps this was already mentioned. I wonder if Judge Schaeffer's report-- Judge Schaeffer had a Committee apparently that worked on economic consequences of divorce--

MR. LOUIS: I was on that Committee.

MS. BENZ: --if those results might be helpful to us?

MR. LOUIS: It was more of an educational program to deal with, and it was a wonderful program. When I criticized the education in New Jersey, we are far better than 90 percent of the states. I just think any system is subject to some improvement. I don't think, Nancy, that we ever went so far as to render a complete report, other than to conduct a series of seminars for judges, and ultimately lawyers as well. If everyone in the system is educated, then you can settle your cases better than if you're not. But that's my recollection. The Committee was chaired by Judge Loftus and Judge Schaeffer. I'm almost positive we didn't formalize a final report.

MS. BENZ: There weren't any final results? (no response)

Okay. I just have one other comment at this point. One of the judges that I was talking to suggested that we might consider an additional grounds of divorce being incompatibility.

MR. LOUIS: I was going to raise that as well.

ASSEMBLYMAN KAVANAUGH: Okay. Thank you. Anything else that you'd like--

MS. BENZ: Not right now.

ASSEMBLYMAN KAVANAUGH: Okay.

Mr. Prosecutor.

MR. BLITZ: Just a couple of comments on the concept-- Well, it sounds good initially to have a well-trained judge who spends, I suppose, his entire career in Family -- for those of us that have dealt with judges for long periods of time. There must be a mechanism for a judge that is either burned out, or a judge that is just not doing well -- no matter how experienced he may be -- to be moved. There is a procedure now; that is, the Chief Justice, in consultation with the Assignment Judge, can move that judge. I think to do anything that would detract

from the authority of the Chief Justice to make those kinds of moves is actually counterproductive. So while initially it may sound good, on reflection it may not be.

ASSEMBLYMAN KAVANAUGH: Judge?

MS. MURPHY: I don't have anything to add right now.

ASSEMBLYMAN KAVANAUGH: Mr. Vice Chairman?

MR. SCHOENBERG: The only thing I'd add at this point is something that I brought up last time. I continue to confer with the academic community, especially at Rutgers and Seton Hall, concerning the possibility of this Commission doing some kind of a study so that we can know more about what's going on out there. I think that, like the case that Mr. Broderick referred to, when one case ended up in front of eight different judges at various times, we don't know how much of that is going on.

One model that was suggested to me that I found very attractive is, instead of trying to go back and exhume information concerning cases past, why not just add another piece of paper to the file, which can be collected and computerized? We can collect information concerning the cases that are going through and being settled or tried now as they go through the system. Somebody in the judge's chambers, the law clerk perhaps, can be responsible for something like this. Every case where the judgement of divorce is entered, that form has to end up, perhaps, with the AOC and being entered into a computer.

ASSEMBLYMAN KAVANAUGH: Thank you, Doug.

Pat Nagle, maybe you could just -- anything that may have come up since our last meeting that you would like to share with the Committee?

MS. NAGLE: We have compiled quite an extensive mailing list, and I'll be happy to-- I'm adding to it from that which was done out of the Assemblyman's office, and I would be happy to share that with everyone as soon as we have

it all pulled together. You all may have other individuals that you can then alert us to, and we'll try to keep the master list. Elaine Fennelli, our secretary, has it all on computer.

We will be receiving the New York report -- a copy. I understand that it began as the New York City Study, and then had branched out to New York State and their recent changes. We've contacted the National Center for State Courts just sort of generally. You had mentioned using the bar, specifically in the visitation enforcement. Hopefully they'll have some ideas of that. But if we overlap, I'm sure that doesn't matter either. We can use that information.

ASSEMBLYMAN KAVANAUGH: Thank you, Pat.

Irene, anything to add?

MS. VON SEYDEWITZ: No, basically we did cover an awful lot of ground. I don't think we stayed with any one specific topic, but one of the things that you had said about making a separate Family Court-- Part of the reason why it was incorporated was because sometimes other issues come in that are not just handled by family part. As an example, if there was a violation on a domestic violence restraining order and now it involves firearms, that's going to go to Criminal Court, based on the investigation. The decisions-- It may get downgraded back down to family part and be dealt with in Family Court, depending on the circumstances, or it may in fact become part of the criminal procedure. But it's a way of making sure that both Criminal and Family are both integrated into that process, as well as Family Case Management, which is part of the court system as well.

I think one of the things they're trying to do now is make a family file. I think they had talked about this. So the judge has access to any juvenile records that might involve children of the marriage at the time of the divorce. So they have a better overall picture of what the dynamics of the family are prior to the divorce.

ASSEMBLYMAN KAVANAUGH: Thank you.

Carol?

MS. BISHOP: I'm just glad that we're finally starting to be able to identify some of the agenda items, and some things that we're going to be able to work on. I'm glad that we're making some progress in that area.

ASSEMBLYMAN KAVANAUGH: Sara?

MS. FLOHR: I'd like the Commission to consider another approach as well, and that would be a prenuptial agreement. Perhaps if we could-- As well as education -- up-front education to let couples who plan to get married know-- I mean, you could almost scare them out of getting married if you really-- There are some people in this audience who could probably convince them not to get married.

UNIDENTIFIED SPEAKER FROM AUDIENCE: We will.

MS. FLOHR: I think people really don't understand what their obligations are. We let people get married so easily, but it's very difficult to get divorced.

ASSEMBLYMAN KAVANAUGH: Thank you, Sara.

Frank?

MR. LOUIS: I've spoken too much, but, Mr. Chairman, would it be all right if I send out a letter outlining-- While we were in the course of the meeting, I wrote some possible standards down for the college education. I had also, in anticipation of the incompatibility question being raised, written the arguments as objectively as I could, pro and con. Is it all right if I disseminate that to the members of the Commission?

ASSEMBLYMAN KAVANAUGH: In fact, if you'd send it to Pat, then from there it can go out--

MR. LOUIS: She can clean up my language. Thank you.

ASSEMBLYMAN KAVANAUGH: Rob?

MR. BRODERICK: I'm glad to see that we're getting underway, and that we had such an open-ended and freewheeling discussion. For me, the work of this Commission gets to so

many parts of our existence as people, especially in light of all the associated problems with violence, and in light of what happened, for instance, in Pennsauken over the weekend, where a father -- a divorced father, or an estranged father -- killed his wife and then committed suicide in front of his five children. I think that what we're studying here gets to the very core of who we are as people. I think that the people on this Commission already take this whole question very seriously, and I would hope that the people who watch this Commission over the next 18 months would take it just as seriously.

ASSEMBLYMAN KAVANAUGH: Thank you very much.

At this time, if there is no one else to comment as far as Commission members, we'll move to the public area. Now, if there is anyone who cares to speak, if you'll sign up. Just come forward. If you haven't signed, just come forward. Put your name on the testifying lists. The slips are there in front. We'll collect it. If there is anyone who has not -- because I don't want any late starters -- if you want to testify, you can pass it up. If there is anyone who cares to testify--

Marty, if you care to testify, just put your name on the slip and bring it forward. Okay.

Now, do I have everyone?

Mr. Lios. It's Clem Lios, L-I-O-S.

C L E M A. L I O S: Correct.

ASSEMBLYMAN KAVANAUGH: If you would, for the record, state your name, address, and any association you may be affiliated with. Then your testimony.

I would ask if you could-- Please, if you would try to limit your testimony to three minutes.

MR. LIOS: Three minutes?

ASSEMBLYMAN KAVANAUGH: If we need additional time, request it. But we can limit three minutes. We have a number of people who want to testify, and in three minute's time I think you can really hit the crux of the problem.

Clem, you're on the air.

MR. LIOS: I am Clem Lios, 177 Randolph Avenue, Mine Hill.

ASSEMBLYMAN KAVANAUGH: If you'd sit down so your voice can be recorded.

MR. LIOS: Okay. Some of the issues I wish to address to the State of New Jersey in general:

There should be an advocate office established for men, and men with children. Legal Aid denies men, and men with children, the right of counsel in the Family Court. I myself have been subject to this, and denied legal counsel repeatedly through Morris and Sussex County under the same issues of not having, or having equity in the home which my wife also had equity in and was given total counsel by the State of New Jersey -- "Legal Aid of the State of New Jersey."

The main issue of education should be addressed in high school, not to be permitted to go on even to college. Once the men are taught what the State of New Jersey does to them after they're brought to the court, you will have little to few marriages going on. Why buy the cow when the milk is free?

I have a situation where I had a wife, at home for 20 years, who watched TV and did not want to go out to work at all. This was her endeavor. She did not want to be confronted with facing the realities of life, and working and helping to support the family. When she was brought to Family Court, Family Court taught her that she was going be rewarded for my efforts in providing a home and equity within the home for her.

The court -- and in this case, Sussex County Family Court -- went on to send three children back to me, of four unemancipated children, and garnished my wages of unemployment to 65 percent. That was allowed to be done by the provisions in the Federal law. The judge, knowing that I had three unemancipated children living with me, knew I had to provide and support myself on \$108 a week -- for myself and three unemancipated children living with me.

The rule of the court has got to be taken away from the judges. It has got to be put into the hands of a Civil, or a review board, or a jury, not to be handed down by the judges who are biased. There are a number of gender-biased judges that are on the court. It will be proven in the future, and we will be taking them to Federal court. Gender bias is now a crime by the Federal laws.

The feminist organizations are now training women as to what they can get from the Family Court system when they apply for a divorce. They are telling them they will start out somewhere about 65 percent, and that is a gracious, conservative, and mild figure from what I've been hearing from a number of associates and friends in the last few months, and even in the last few days in Sussex and in Morris County courts.

I have repeatedly asked the Florio administration to establish the advocate for men, and men with children. Nothing has been done about it. We will now go on to the new Governor Whitman to do so.

The courts are also promoting and causing the killings, as one of the Chairpersons has just mentioned. They are teaching the men that they are going to lose -- if not most of all, all. For months there have been issues of men going into Family Courts, shooting them up, and killing people, not only in the State of New Jersey, but across the United States. I contend that this is being caused by the Family Court system,

and needs to be addressed by the court system to prevent this from happening. One way to prevent it from happening is to stop a number of the issues that are going on.

Custody is a very simple thing to address. If there are two children, one can go with one parent, and one with the other parent; or two with one parent for one year, and reversed on the alternate year. It makes it very simple. No father should be allowed to not have visitation with his children because they're going to the mother, and the mother allowed to raise issues against the father, after 20 and 30 years of being a father, because of what goes on in the Family Court system.

Okay, I relinquish my time.

ASSEMBLYMAN KAVANAUGH: Okay. Thank you, Mr. Lios.

I guess the three minute restriction is a little difficult, so what I'll do -- and since you ran well over that -- in fairness to the rest, we'll expand it to five minutes. But try to confine it, because you're -- other people here certainly want to testify.

I'll ask for Mr. Lawler. William Lawler. Name--

W I L L I A M F. L A W L E R: I'm a little nervous about this. You'll have to bear with me, sir.

ASSEMBLYMAN KAVANAUGH: Say again?

MR. LAWLER: I'm a little nervous, bear with me. I'll try to do this fairly quickly.

ASSEMBLYMAN KAVANAUGH: That's all right. You just think how nervous I was when that Boston College field goal kicker, with three seconds-- (laughter)

MR. LAWLER: All right. I am particularly concerned with a case law, and it's entitled: Moore v. Moore cite as 114 New Jersey 147.

ASSEMBLYMAN KAVANAUGH: Mr. Lawler, would you announce -- give your name and where you're from?

MR. LAWLER: My name is William Lawler, L-A-W-L-E-R. I'm from Branchburg, New Jersey, and I've been a policeman for 23 years, which is important in this particular scenario.

I'm particularly concerned about pension disbursal to an ex-wife. The case that involved this pension disbursal was, as I talked about, Moore v. Moore, 114 New Jersey 147. I belong to the New Jersey Police and Firemen's Pension System. The New Jersey Police and Firemen's Pension System -- you need 10 years to vest in the pension system. What vestiture means, at least for me, is that in order to get a life annuity value of my pension, I must be a policeman for at least 10 years. If I leave before the tenth year, I only get what I donated into the pension system, which amounts, for me right now, about 8 percent of my annual salary, and has been generally that since 1970, when I became a policeman. If I pass vestiture; if I reach 10 years; if I leave before my 25th year, I can get 2 percent per year of my last year's salary collectible at age 55. If I go to the 25th year and I retire at 25 years, I can get 65 percent of my last year's salary the day I go. For me, that would be 46, which is next year, if I decide to go.

In PERS, which is a secondary New Jersey retirement system -- I believe it's Public Employees Retirement System -- you also have a vestiture clause. You must be in the system 10 years in order to get a life annuity value system. In other words, life annuity is not what you put in, but what you get when you retire. If you leave PERS before 10 years, you only get what you put into the retirement system. After 10 years, you can collect. You get full benefits at 60 years old in PERS.

In the United States Social Security System, you must have at least 40 credits in order to get life annuity value of Social Security. Actually, there is no life annuity value, so to speak. You don't get anything back from them. You must get 40 credits -- basically it's 4 credits per year you earn -- ten years in order to collect at 62, 65, or 67 in the United States Social Security System.

I married Janet and I was with her for seven years. I married her 12 years into the Police and Fire Pension System. I was vested the day I met her. I was with her for seven years, we had two children. She was employed the whole time that we were married, with the exception of having the two children. She was employed as a bank manager. Additionally, when we were separated, she was not only a bank manager, she was a district manager. She was in charge of multiple banks. She was making approximately \$4000 gross more than I the day we separated. We decided to separate for 18 months and get a no-fault divorce for various reasons. During that particular time period, seven months into our separation, she was laid off, and received a \$27,000 severance package in her pocket.

At the time of divorce, when we were going to file for no-fault, she charged extreme mental cruelty, and at the time, I didn't quite understand why. But I think I'll lead to it in a moment if you'll bear with me. At the divorce the issue was my pension. The issue was, she wanted a life annuity value to my pension, and she resorted to a case entitled Moore v. Moore. I have to explain Moore because it's important, at least in my particular scenario.

Mr. and Mrs. Moore were married for 18 years. The day they were married -- strike that -- before they-- I'm getting a little caught up here, excuse me. They joined the Newark Police Department together. They were married when he joined. They were there for 18 years. Mrs. Moore never worked, never had a retirement system, never had a benefit, never had Social Security. When they divorced, she wanted life annuity value of his pension. She wanted a percentage of 18 years worth of his pension, not the donations, which would have only been about \$10,000 or \$12,000. She wanted what it was worth when he retired. She got it, and rightfully so.

Janet wanted the same thing, based not on 7 years, which is separation, but 8.5 -- 7 plus 18 months separation. I was put in a position-- There was, like, a conference kind

of scenario, in which the judge basically told my lawyer -- and I know this is third-party conversation, but it was part and parcel to my decision to accept the divorce settlement -- basically it was, the Moore formula fit me. She was entitled to life annuity value of my pension, not donations.

Let me just digress for a moment. Donations at that period of time for our 8.5 years of marriage -- 7 plus 18 months -- was \$9000. Okay? \$9000. Her actuary determined that value of that, in life annuity value from my pension system, was about \$100,000. As I couldn't pay that, she got what I'll term a divvy on my pension when I retire; which amounts to 35 percent of 8.5 years of my marriage the day that I retire; which in 1990 would have amounted, the day that I can retire, which is next year, to approximately \$4600 a year for the rest of her life, plus an insurance policy should I die and she not be able to get that \$100,000. I felt that I had to agree to it, because the judge basically told my lawyer -- again third party, but the way I was led to believe it occurred -- that she was agreeing to 35 percent, he could make it 50 percent. So I agreed to it.

I didn't think it was reasonable. I didn't think it was fair, and I appealed it. I appealed it based on the vested clause. I felt that she should have a certain amount of years in my marriage in order to get a life annuity value of my pension. If I have to be 10 years on a police department to get a life annuity value, otherwise all I get is \$9000; if I have to be in Social Security for 10 years before I get a life annuity value; if I have to be in PERS 10 years before I get a life annuity value; if I have to be in almost every country in the U.S.A. a certain amount of time before I'm vested and get a life annuity value, certainly she should have to be with me at least 10 years in order to get a life annuity value. Otherwise we should be dickering over the \$9000, which, in my mind, \$4500 really was her share if you want to count the 18 month separation.

Yet I had to agree. I mean, I felt I had to agree. I was put in that particular position, perhaps I was emotionally overwrought at that time. But I had to agree to this disbursal. When I appealed it -- and I went into great depth in appealing, listing the vesting clauses of the various retirement systems -- basically her retort to my appeal was that I had agreed to it.

The Appellate Court in New Jersey said, "You're right. You agreed to it. You're stuck with it." So right now I am in a position when I retire, I'm going to have to give her 35 percent of 8.5 years of my pension. Now, another problem with the Moore formula is, it's a percentage of my last year's salary. Do you follow me? In other words, I get 65 percent of my last year's salary. So her percentage isn't of the 1990 salary. Her percentage is whatever I'm going to make next year when I retire.

Now, I can understand -- assuming you want to accept the Moore formula and you want to accept that seven years equals a life annuity value-- Still, I can accept a cost of living increase, and that she gets a percentage of cost of living increase, but what about promotions? I've been promoted three times since 1990. When I leave in 1995, or whenever I leave, she is also-- In other words, her percentage is going to encompass my final benefit, which is promotions since I've been divorced. I don't think it's fair.

I think the Moore formula has got to be changed, and basically I feel the Moore formula has got to be changed to come up with a vested interest clause in the Moore formula. In other words, if you belong to a pension system where you have to work 10 years in order to be vested, in order for your spouse to get life annuity value share of your pension, their marriage must exceed that vested interest, not your vestiture. I was vested the day I met her. She's got to be with me for 10 years.

The way the Moore formula works out is that if you are married to someone for as short as one year, conceivably, if they push it, they can get a life annuity value of your pension where they will actually get a check for the rest of their life the day that you leave. It's not a lot for one year, but it's still an amount, and it's based on the salary that you make when you leave, not when you get divorced. I read a little thing and basically it said something along the lines that in marriages of short or moderate duration, the court must look closely to the entitlement. That's basically the gist.

One last thing. I would like to mail a copy of what I did with regard to a rejected appeal, to include her reply and the Appellate Court's reply. I don't know whether to mail 12 copies or 1 copy, and will you accept it?

One. Thank you.

ASSEMBLYMAN KAVANAUGH: Send it to Pat Nagle, OLS. Any questions, you can call my legislative office to get Pat's number.

MR. LAWLER: Thank you, sir.

ASSEMBLYMAN KAVANAUGH: All right.

Next, Jonathan Gottlieb.

J O N A T H A N G O T T L I E B, ESQ: Members of the Commission, my name is Jonathan Gottlieb, I've been an attorney for 11 years. I've practiced in Michigan; I'm licensed in New Jersey; and I practice in New York. I represented clients which vary from General Motors to the Israeli Defense Ministry, and I've been significantly involved in some matrimonial matters over the past three years.

MR. BRODERICK: Could you use the mike, please? I'm having a little trouble hearing you.

MR. GOTTLIEB: Sure.

MR. BRODERICK: Thank you.

MR. GOTTLIEB: I must say that as an attorney I have never seen before, even when I clerked for a Federal judge, the kinds of things that go on, both on the part of the judges, and on the part of the lawyers in Family Court.

I'll spend a minute and a half on some generalities, and restrict the next three minutes to some specifics. I think there is some significant structural problems where circular reasoning exists before any of the parties walk into court. For example, who gets the house? Well, if the husband is thrown out on a DV, or agrees to leave temporarily, then two years later, when the case is ultimately decided, the courts generally reason that, "Well, the house has to go to someone. The children can't be without a house, even if the father has another house. Therefore the wife should get the house, and therefore she should get custody, because someone needs to take care of the children in a house." That's completely circular. It predetermines what the situation should be without analyzing what any of the facts of the specific situation for that couple were and, again, what's best for the kids.

The same thing happens with the ties and activities that the parents traditionally had or have with the children. You can be in a community, sign them up for Cub Scouts, Boy Scouts, ballet, other activities, and the courts generally say, "Well, we're not going to do anything now different from what was before the filing of the divorce." Except that intact marriages, and happily married couples move, make changes, and send their children to different activities and religious organizations throughout their marriage. Again, that does not contemplate-- The courts do not contemplate what is the best thing for the children.

If signing the children up for an activity in the community where the father has chosen to live, if it's two miles away, or five miles away, and all activities are restricted to where the mother lives -- and you're talking

about small children -- then in two, three, or five years, those children are going to be pretty estranged from their fathers. I think the father can survive, but I'm not sure it's particularly good for the children. It turns the role of the father into a Disneyland dad: a guy that they come and visit on weekends; a guy to pay for toys; but not someone who nourishes them; not someone who disciplines them, does homework with them, puts them to bed at night, and puts Band-Aids on their wounds.

The same thing happens with money. Look, we as Americans are raised to be problem solvers. Judges can solve the problems with money. They can add and subtract. They can see fairly clearly where the money went. But I have been told by representatives of DYFS, and spoken with other judges, that when it comes to certain things such as emotional abuse, which is, in my opinion, as significant as physical abuse, you can't see the wound on emotionally abused children. It may even be worse than a physically abused child, but the judges have no mechanism to really deal with allegations, finding out what really went on, or solving that problem. I'm not really sure it should be up to the judges to do that.

I can tell you of a specific case recently, where there was a judge -- a new judge -- who appointed his former business partner as a guardian ad litem, and didn't set the fee for the guardian ad litem. Two years of litigation ensued. The guardian ad litem sent in a bill for \$102,000. The parents were not wealthy people. It is against the statute if you're looking it up. The statute requires that the fee be set at the time of the appointment of the guardian ad litem. The guardian ad litem was awarded a substantial amount of money. The judge told the lawyers in chambers, "Well, if anyone is going to be paid, this guardian ad litem is going to be paid."

The reason why I'm mentioning this, not to be disrespectful to what Judge Murphy said when she said, "Well, the judges really don't to deal with this. This isn't in their

interest." Respectfully, I think issues of egos, clubiness, and one side helping the other side unfortunately still come into play in our culture of divorce litigation.

I think, for example, on religious issues, Mr. Schoenberg talked about the State being perhaps overly involved, in terms of what the courts should be doing in telling parents what to do. It should be the parents determining what children should do, and yet I know of an instance where a guardian ad litem and a court took a -- I won't say orthodox, but a religious Jewish couple, both mother and father -- ordered that the father pick the children up on the Sabbath; ordered that he pick them up on Rosh Hashanah. He went to the Appellate Division. The Appellate Division agreed, reversed, and in final judgement for divorce, the lower court judge went back and said, "If you want your kids, you have to pick them up on the Sabbath." Clear violation of his First Amendment rights.

What I'm saying is, I don't think the courts, or the players in the courts, have a real appreciation of what is good for the children. Certainly their spiritual nourishment is as important as their physical nourishment.

There are a lot of procedural problems. The rules of civil procedure, which I learned in law school and use in my practice, don't seem to exist at Family Court. Sometimes the judges say, "Well, we're going to let this in. I know it's hearsay. I know it's triple hearsay. I know it's more prejudicial than probative, but I'm going to let it in. As to the evidence that will prove that there has been substantial emotional abuse, in the interest of time, under Rule 4B, I'm not going to let it in." Then a year later, when a final judgement is rendered, the judge says, "Well, I found no evidence that there has been any abuse." Well, how can you find any evidence if you exclude it?

It seems to me that the ultimate problem is that the judges and lawyers-- We all together have a significant way to go in our administration of what's best for the kids. I question whether this type of activity should even be given to judges and lawyers, because it is in the lawyer's interest to churn the account. You mentioned that you had somebody in there for -- to bleach hair. I was involved with someone accusing the father of throwing a snowball. The judge heard two days of testimony on whether the snowball was thrown, a toy gun, and mud on the floor in the father's house. Yet the father didn't see the child for six months, and there wasn't one minute of court time spent on that. Frankly, I think the lawyer should have been sanctioned for that, but I don't think a judge-- An appropriate ruling-- A judge shouldn't have heard that kind of nonsense.

I use this word carefully, and I don't mean to be offensive when I speak of corruption. It's not corruption in terms of somebody being paid off, or gangland corruption, but I think the system is replete with what I would call corruption of arrogance. There are judges who want to take the case and hold on to the case, because they think they know better than the parents what should be for these children. Their egos get involved. I don't think that that's necessarily, ultimately what's best for our society.

Finally, I think you've got to realize that you have a fairly closed club when it comes to the lawyers and the judges, who are not overtly interested, but ultimately interested in helping each other. They go to the same dances. They go to the same judicial conferences. They go and they mix and they mingle. We all do that in all our professions. The problem is that when you're a guardian ad litem on one case, and you're an adversary with your former judge on another case, you have a

wink and an interest in making sure that things go forward smoothly. That's not necessarily taking into consideration what the children really need.

That's it.

ASSEMBLYMAN KAVANAUGH: Thank you very much.

MR. GOTTLIEB: If you have any questions?

MR. BRODERICK: Are you a divorce attorney or a Family Court attorney?

MR. GOTTLIEB: I'm actually a contract attorney. I have handled a couple custodial matters. I myself am divorced. I would prefer to be a commercial attorney. I'm a litigator right now. So I'd say I have a pretty broad background, starting from General Motors in Detroit--

MR. BRODERICK: Where are you from? I don't think you said here.

MR. GOTTLIEB: Highland Park.

ASSEMBLYMAN KAVANAUGH: Any other questions? (no response)

Thank you very much.

The next one testifying, Mr. James Pascale. Once again, I could kind of mention on the time. Everyone's trying to do well.

J A M E S J. P A S C A L E: Thank you, Mr. Chairman, and members of the Commission. I don't envy you. You have a huge charge before you, one that I think is very, very important. You know, we read about various pieces of legislation that are debated down here in Trenton, and they range from how long you should cook an egg, to other items like auto insurance. Here's an issue that touches the lives of 50 percent of the population which lives here in the State of New Jersey. So I would encourage you -- implore you to give the time that's necessary to this issue, and to be very noble in your attempt to bring some semblance of sanity to a very difficult issue.

I'm a divorce attorney, and the particular relief that I would encourage this body to consider is in two areas. One is the high cost of divorce that so many of us face. Obviously it's too late for me, but I do believe that it is something that should be addressed. Life savings are being lost. Families are being devastated.

There has to be some process which takes divorce out of the courts, which are adversarial by nature. Some other mechanism -- binding, mandatory arbitration/mediation perhaps, I don't know the answer, someone must know. But certainly taking divorce out of the courts, I think, is very important. The courts are a big business. It can be quite incestuous, as I think an earlier speaker indicated. It's an employment center. I could go on and on about the potential abuse of the courts, and I'm not blaming the court system per se. I think maybe society-- We rely too much on third-party process. That's number one. The high cost of divorce, and somehow not subjecting individuals to that kind of expense.

Secondly, and a very personal note, is the issue of child support. I'd like to see this Commission consider some kind of enabling legislation which adjusts child support to correspond with time spent by each parent with the child or the children. The problem, if I may elaborate on that second point, is that children and the so-called nonresidential parent are being denied financial resources, in my opinion, very unfairly, and they're being harbored and expended by the so-called residential parent for non-child support reasons. I'm sure a lot of the testimony you're going to be hearing over the course of your 18 months will be anecdotal, and I'd like to share my case study with you very briefly.

In my particular case, my former wife and I agreed that it was most important to coparent our children. To that end, outside the court we agreed that my ex-wife would have the children on Mondays and Tuesdays. I would have my children on

Wednesdays and Thursdays, although at the end of the evenings, Wednesdays and Thursdays, they would go back to their mom's home so they would have the continuity of school district. But she would have them Monday/Tuesday, I would have them Wednesday/Thursday. On the weekend one of us would have them Friday night and then Saturday day, and then the other would have them Saturday night and Sunday. So, virtually, we're talking 50/50 coparent -- important for the children, important for the parents so we can fulfill our obligations. I consider myself in many ways to be a mother/father. My wife has a different way of pronouncing that. (laughter)

I think one of the problems in my particular case is after two years of protracted litigation, using -- as an earlier speaker on the Commission -- Frank Louis, if I'm reading that correctly -- indicated that there are child support guidelines. There are guidelines. Unfortunately, given the glut of cases that are in the, I guess, matrimonial pipeline, there is a propensity to have cookie-cutter, revolving-door justice. When you have something that's a little bit novel, a little bit different, that doesn't conform to the typical visiting father -- Disney father, as I heard earlier -- the judges can't deal with it.

After protracted, very expensive litigation in my particular case, the judge awarded 100 percent of the child support to the mother. Even though, as I indicated earlier, I have 50 percent responsibility of my children 50 percent of the time. In effect, I pay 150 percent for my children's needs. At the risk of that sounding quite selfish, let's remember that my children are with me 50 percent of the time.

So the relief that I would encourage you to provide for me and the, I would guess, literally thousands of noncustodial parents -- male and female, mother and father -- is enabling legislation mandating the courts -- taking away the discretion from the courts -- mandating legislation which

requires some kind of distribution of child support payment obligation based upon the time spent by each parent with the child or children. There should be no zero sum, win/lose situation.

It's quite humiliating for a noncustodial parent to be with their children, or child, and for that child to ask for something, whatever it may be -- shirt, sweater, something maybe more frivolous -- only to be able to retort that, "You'll have to ask your mother," since that's generally the case as the provider of funding. I think fathers have taken on a different role in the '90s. I think you'll see more and more of that as time goes on. There have been many, many studies that indicated the importance of fathers in children's lives, and I think the time is now. We must seize the moment to take divorce out of the adversarial court system, and think in a very, very large, macro perspective about major reform in an area that touches the lives of so many people in the State of New Jersey.

I would encourage you to act posthaste. Eighteen months will go in a blink of an eye. I think you'll need a lot of outside consulting assistance and a thorough search of what goes on in other states. All I can say is I encourage you to do what you can in an area that is extremely important. Specifically, the area that I think is important to keep fathers -- mostly fathers -- and mothers in the case of-- I should say nonresidential parents in parenting their children. Give them the financial wherewithal to be active, and I think we won't have the problems of the deadbeat parent as much as we now have.

Thank you for this opportunity to speak.

ASSEMBLYMAN KAVANAUGH: Thank you.

Any questions from the Committee?

MR. BRODERICK: What was your name again?

ASSEMBLYMAN KAVANAUGH: James Pascale.

MR. PASCALE: Jim Pascale.

MR. BRODERICK: And where are you from?

MR. PASCALE: I live in East Windsor.

MS. VON SEYDEWITZ: I have a couple of questions.

ASSEMBLYMAN KAVANAUGH: Irene.

MS. VON SEYDEWITZ: I take it your ex-wife and you live in close proximity? Was that planned that way, that you were able to maintain the lifestyle that you both wanted in terms of living in the same area?

MR. PASCALE: I don't want to drag this conversation down, but certainly we live as close as we can. In my particular case-- This is very common, I think, in individuals -- former DINKS, double income, no children -- where your house is everything and you save, your asset is your house.

In my particular case, my house and my wife -- our house was our only asset. The judge unfortunately granted my wife the home for a period of five years, so I'm basically just thrown out. I can't recover my asset. It's frozen for five years. I have a child support payment. I make a good living, but I also give one of my paychecks per month to my ex-wife. What happens is I can't rebuild my life because my asset-- I can't restart and put a down payment on a townhouse, because that's tied up, not to mention the legal fees that I owe, which there is a lien against my house. But I just want to finish this, and then I'll see if I can answer your question more directly.

My goal is to live in the same school district -- West Windsor/Plainsboro -- as my ex-wife, so that potentially with time, as wounds heal, my ex-wife might allow me to have my children overnight Wednesday and Thursday nights. Therefore I can really, truly have 50 percent, and allow my children that benefit as much as myself. So, yes, I live within five minutes of my children.

MS. VON SEYDEWITZ: Okay. But that works in your particular situation. Your children are very young, I take it? They're not in a lot of--

MR. PASCALE: Seven to nine, right.

MS. VON SEYDEWITZ: Okay. So they're not teenagers yet in that kind of situation?

MR. PASCALE: No.

MS. VON SEYDEWITZ: And she makes relatively about the same money that you do?

MR. PASCALE: Income is about 60/40. Mine is 60, her's is 40.

MS. VON SEYDEWITZ: Okay. But you were able to work out this custody arrangement without a problem, yet all the other issues about the asset, the finances, and the support you were not able to work out?

MR. PASCALE: Absolutely.

MS. VON SEYDEWITZ: Well, you are very unusual.

MR. PASCALE: Excuse me?

MS. VON SEYDEWITZ: I said that is a very unusual circumstance. Usually that is the one thing that you can work out, and everything else is decided by the court. You were able to come up with that, but yet not settle the other things that you might think were in the best interests of the children.

MR. PASCALE: Well, it's not that-- When you look at things rationally, and what's in the best interest of the children, it's in the best interest of the children for both parents to stay active in their upbringing. But when you bring in the issue of financials, people tend to do strange things.

MS. VON SEYDEWITZ: Okay.

MR. BRODERICK: It may not be as unusual as you think.

MS. MURPHY: I'd just like to congratulate you for resolving the most important issue, which was the coparenting situation. I'd like to find out from you, if we were to amend the way that the child support guidelines were applied in

situations such as your's, what kind of suggestion would you make in terms of how they should be amended? I take it that the way the scenario is now for the five years, the major roof expenses are with your wife? Assuming that the house was already gone, and you had comparable housing or whatever, how would you suggest that they be amended? How should we take into consideration the fact that you have--

MR. PASCALE: That's a good question, and I have given that great thought. If you have two parents that are willing to cooperate, it can work. In other words--

MS. MURPHY: That's a big if. If we have cooperation, it's always easier.

MR. PASCALE: It is a big if. But there should be provision in the law where if one side is being unreasonable-- I don't know. I don't know the answer to that. But I feel that each parent should be allowed to choose for him or herself the housing stock that they want to provide for their children, whatever that may be. As it relates to the clothing, I think both parents should be involve in that.

If there are child support guidelines, as brought up by Mr. Louis earlier, I think there should be some kind of a recognition that, "Here's the pool. Here's the pool of money under child support, excluding the fixed expenses of housing, which should be individual decisions of each parent." That's very important to me, in my opinion, because that's an elective on the part of each parent. Then there is a pool of money that each parent is allowed to draw from, so that I can decide that it's more important for me to provide for certain basic needs of my children, such as clothing, etc.; whereas my former wife might feel that a vacation -- a larger vacation -- is more important.

But as it stands now, since 100 percent of that child support goes to one parent, that one parent-- You know, you could have all the lip service of a joint custody agreement as

you want, but she controls the power of the purse, which is all powerful in so many situations. There has to be joint decision-making on how that child support money is spent.

MS. MURPHY: Would you want the court to intervene to enforce joint decision-making? Is that what you want?

MR. PASCALE: Well, I certainly wouldn't want the court to intervene to the point of deciding whether or not my child should bleach their hair. I guess there has to be, in my opinion-- I surely don't know the answers, but there has to be provision that allows for both parents to parent, just like in a nuclear family. It is emasculating, and children don't understand why one parent is not buying and providing for them. Are you to say to your child -- your seven year old, "You have to go to your mother. I can't do it. She's being paid"? Should a child have to hear that? I don't think so. I think there has to be another system. I know that there can't be just one system that's going to depend upon how the two parents interact. I don't know the answer, but I think as it's working right now, for responsible, noncustodial parents it's patently unfair.

MR. BRODERICK: Even worse, the example that's set for the children in a case like this, and in other cases that I know of, the example that the children have is that the two adults cannot work together on issues, and there is no hope of them ever working together on these issues. Children get the impression in cases like this that there is no hope of two adults ever getting along, period. So we should be very careful of ever getting into a situation like this, because somebody is going to get the shaft in the end. I hear more and more cases like this from noncustodial parents -- fathers mostly, but mothers as well -- in which they have no decision-making authority with the children whatsoever.

MR. PASCALE: I'd like to say that Sara's point earlier about the prenuptial-- How many young people consider the fact that what they're entering into when they get married

is a marital contract? At the risk of it sounding like a socialistic approach, I think maybe the issue of a mandatory prenuptial-- It's not so far-fetched.

MS. FLOHR: I've thought of that myself.

ASSEMBLYMAN KAVANAUGH: Anyone else? (no response)

Thank you very much, Mr. Pascale.

Next a Mr. William Burke.

W I L L I A M F. B U R K E, SR.: My name is William Burke.

ASSEMBLYMAN KAVANAUGH: For the microphone, Mr. Burke, name and address.

MR. BURKE: My name is William Burke. My address is 76, J-O-D-A, Joda Drive, Lakewood, New Jersey. I'd like to talk briefly about an area that has not been mentioned; that is, the area of military retired pay, and its role in the division of property and equitable distribution. In 1977, the New Jersey Supreme Court handed down their decision in Kruger v. Kruger. As a military person, I've read it, and read it, and read it. It has what I feel to be a number of misstatements, things that really aren't so. But they're commonly held misunderstandings.

One is that military retired pay is a pension. People always ask me about my military pension, and I always smile and say, "It's not a pension. It's an entitlement." When Congress is sitting up there in Washington, as they are now, reviewing entitlements for cuts in order to support some of President Clinton's programs, one of the entitlements they're considering is military retired pay.

As a retired naval officer, I'm subject to recall, and I'm subject to the uniform code of military justice. I can be court-martialed for the military equivalent of a civilian crime. I can be stripped of my rank, stripped of my retired pay. I can be imprisoned or worse.

As for military retired pay, we had a decision in 1981, McCarty v. McCarty. When that decision came back to the states, the response of the states was, "Well, it's not

retrospective, therefore, it doesn't affect those of you who have already been affected by it." Then Mrs. Schroeder wrote the Uniformed Services Former Spouses Protection Act, tacked that on the end of a military appropriations bill. They decided that military retired pay could be treated as either property or income.

Now, what's happened in the courts is that the courts have treated it almost uniformly as both; that is, "We're going to take half your retired pay and give it to your former spouse. Then we're going to take a look at what's left; we'll decide that's income; and we're going to use that for child support and alimony."

There are retired military personnel in this country who are fugitives from the long arm of the courts because they have been assessed something like 85 percent of their retired pay, and the Federal payroll centers are only allowed by law to submit 65 percent to the court when they're responding to a court order. The result is the courts go after the individual for the other 20 percent. If they catch him, he's left with 15 percent to live on.

Some of what I'm saying echoes back to the same comments that some of the other people have said about the treatment of pension plans in general by the courts. I have a court order which says that I shall pay my former spouse \$458.53 a month, and that I was to start paying it in July 1980. The bottom line of that order is that it is open-ended. There is no fixed dollar amount that says I owe her a million dollars. I owe her \$458.53 every month. Every 20 years I'll pay her \$110,000, and if I live another 20 years I'll pay her another \$110,000.

I have a problem with these open-ended things that we get from the courts. I just got married a few weeks ago, after spending roughly 16 years as a single person. She has a nice, neat little court order where she gets a fixed dollar amount

from her husband for a few years, and that's it. I don't know that he'll live up to what's in there, but it's fixed; it's locked. I asked myself, "Am I getting the shaft, or is she getting the shaft?"

There is some kind of a balance that's needed in the prescription of the courts to the distribution of these moneys. I don't know where I would draw the line. I'm fascinated by your discussions that I've listened to here. Mr. Louis, your suggestion that perhaps the courts should tell the parents, who are still married, that perhaps they're required to come up with a college education as well. I don't know.

This, to me, is not fair, and we've tried going to the courts for a decision. We have an individual by the name of Mansel, from California, who went up to the Supreme Court in a case called, Mansel v. Mansel, which was, I think, 1991. The Court said, "You're absolutely right. They shouldn't be dividing your disability pay that you receive in lieu of your retired pay as part of the divorce settlement." So Mansell went back to California, and what did California tell him? The same thing they told McCarty; that there was nothing in the court's order that said it had anything to do with him. It only affected people after him. If we can't depend on the courts for a reasonably solution to these problems, where do we go?

ASSEMBLYMAN KAVANAUGH: Captain, I think the point is-- Your concern is the same as was expressed earlier by the police officer; that you are concerned about that and the open-endedness of the contract--

MR. BURKE: Yes, yes. We have some similar problems. I'm familiar with a case where a wife went into court in Michigan. She got 100 percent of the man's retired pay, and when he went to Nevada, he met then Governor Laxalt, who gave him some kind of advice and counseling -- wound up going back to court and having that reduced. I'm aware of a man who lived

in Maple Shade, who had been married to his wife for less than 10 years, and the court gave her a substantial percentage of his retired pay. When under the Former Spouses Protection Act, she would not have qualified.

I'm aware, for instance, that in a New Jersey Supreme Court decision it says that my retired pay is vested, which of course it is not. It also says that it is a descendible. It said if my former spouse was to predecease me -- she has a small son by a second marriage -- that he, according to the New Jersey Supreme Court, might be eligible to receive part of my retired pay -- her share. The Former Spouses Protection Act says that it ends with the death of either party.

I just have these feelings about those of us who find ourselves in this situation, constantly being faced with the necessity to go up to the Federal courts to get a resolution on the laws that involve the Federal and the State. There must be a better way.

ASSEMBLYMAN KAVANAUGH: Well, we certainly-- We want to thank you for your testimony, and certainly hope that we can find one for you. We want to thank you for coming.

MR. BURKE: Thank you.

ASSEMBLYMAN KAVANAUGH: We'll continue with the testimony, but thank you very much.

MR. BURKE: I have some materials here.

MS. BISHOP: I'd like to ask a quick question, or a couple of them. You said, "We have an individual--" I wanted to know if-- Are you part of a group? Is there a retired military group?

MR. BURKE: I belong to a group called The American Retirees Association. Okay? We're made up of primarily men, but some women, who have been divorced in the various states around the country. We're all retired military personnel, and there are some active duty military personnel also, which touches on another area. You have active duty military

personnel who have been ordered to retire by the courts so their wives could start receiving part of their retired pay. I mean, this is total--

MS. BISHOP: I'd like to ask another question.

MR. BURKE: Yes?

MS. BISHOP: To put this in perspective, your order is for \$458--

MR. BURKE: Pardon?

MS. BISHOP: Your order is for \$458.53 per month?

MR. BURKE: Yes.

MS. BISHOP: What is your entitlement?

MR. BURKE: What is my entitlement?

MS. BISHOP: Yes.

MR. BURKE: My entitlement, at this point, is in the neighborhood of \$32,000 a year. But I will point out that at the time of the divorce, there were circumstances that arose in the divorce. That represented 40 percent of my retired pay at that time. It was the determination of the court that she was not entitled to any cost of living adjustments. Okay? I might also mention that I had seven children, and I was left to raise five children by myself.

MS. BISHOP: Thank you.

ASSEMBLYMAN KAVANAUGH: Irene.

MS. VON SEYDEWITZ: Mr. Burke, I might just suggest to you-- I don't know how much your organization works with Veteran's Administration--

MR. BURKE: Pardon?

MS. VON SEYDEWITZ: I don't know how much the particular group that you are with works with the Veteran's Administration. I know that in cases where I am working and the military is involved, there are a lot of rules and regulations promulgated that go through the Veteran's Administration that don't fall into the category of much of what we're talking about, in terms of how your money is

disbursed, the pension, and how they're withholding. Even on some of the disability now there are new rules on. It really doesn't apply here, but you might want to make some good contacts with the Veteran's Administration, and have them work with you in terms of resolving some of these issues, and seeing are these rules applied across the board, or is it just on a case by case basis.

MR. BURKE: This has nothing to do with the Veterans Administration. Okay? As a retired Naval officer, all of my compensation comes from the Defense -- they used to be called the Regional Finance Center in Cleveland. Okay?

MS. VON SEYDEWITZ: Right. I'm just suggesting to you because they're more familiar in terms of the branches of the military and what they do in terms of withholding or taking money from pensions. Believe me, I've worked on a few of the cases. I'm just talking about in terms of resources for yourself. Whether they can resolve your issue or help you, I don't know. I just didn't want you to be frustrated by the things that we're addressing, because it is a little bit different.

MR. BURKE: Okay. There is one point, I think, that needs to be clarified; that is, when a person gets a divorce -- and I think normally it's a woman who's a spouse, who's in this case -- when a woman has gotten her divorce-- I don't know if it occurs in every situation. It didn't occur in mine. It doesn't exist in mine, but there are women who have trouble getting money from someone. They do have the ability to go to court, get a court order, which is then forwarded to the Defense Finance Center. The Defense Finance Center is -- then comes under the laws where they automatically take this money and distribute it, in accordance with the court order. Not everyone does that; I don't have that.

ASSEMBLYMAN KAVANAUGH: Maybe what you can do is give that organization that you belong to to the staff before you leave, so that we can have that. But thank you very much for your testimony.

MR. BURKE: Thank you.

ASSEMBLYMAN KAVANAUGH: Next is Susan Grant, from Concerned Women for America.

S U S A N M. G R A N T: I do have some copies of my statement. Mr. Chairman, and members of the Commission, my name is Susan Grant. I'm the State Director of Concerned Women for America here in New Jersey. My testimony is quite a bit different. It has a different angle than anything that we've heard so far. You've been discussing the process of divorce, and I want to discuss very briefly the fact of divorce.

To listen to your deliberations, and the many people that have spoken, it might be considered advantageous to avoid marriage all together. Indeed, that's what many people are doing in our society. I just want to bring your heads back if I can, and remind you that as a State and as a society, we have a vested interest in valuing the state of marriage, and in upholding it in your legislation and in our public policies. My statement speaks to that a little bit.

In the 1960s, in response to restrictive and unfair divorce laws, many women's advocate groups lobbied for the liberalization of divorce. Thirty years later, we of the nation's largest women's group applaud your intent to look at the issue again. While there have been some benefits, we have reaped many unintended and tragic results from divorce liberalization. Today half of all marriages end in divorce. The number of children affected by divorce has increased from 300,000 in 1950, to more than one million every year. Less than 60 percent of our nation's children still live with both their biological parents.

Many originally thought that escape from an unhappy family situation would not cause lasting harm to children. But a growing body of evidence is proving that assumption to be terribly wrong. The harm is significant, and it is long-lasting. Children of divorce are far more likely than other children to experience low self esteem, depression, worsening school performance, substance abuse and other psychopathology, and a persistent difficulty in forming lasting relationships.

There are other far-reaching consequences of divorce that impact our society as a whole. One study indicates that divorced women and their children experience a 73 percent decline in their standard of living in the first year after divorce. I just want to point out there are studies that show worsening situations for some men too, and some of these statistics are disputed; that particular study is disputed. But there are statistics on both sides of that issue. The point is that no one is happy after a divorce.

The poverty rate of children living with their mother alone is five times worse than the rate of children living with two parents. Many of these disrupted families will end up on the welfare rolls. Children of divorce experience the dissolution of the most solid bond in their lives. They can grow up without the respect for promises and commitments which undergirds our society, and the impact on our growing crime problem is obvious. Lack of a two-parent family is the most important factor in whether a person becomes involved in crime, more important than socioeconomic factors.

We are not saying that there is never a situation in which divorce is not appropriate. We could not counsel a return to a completely restrictive system. But because of the impact on our society of its negative consequences, the State has a compelling interest in taking steps to discourage the epidemic breakup of the family through divorce. It is

appropriate and important that the Legislature place braking mechanisms into the system that will encourage married couples to preserve their marriage. The easier divorce is to obtain, the less effort many couples put into making their marriage work. I just want to point out when I say that divorce is easy, I mean the fact and the absolute right to a divorce is easy, not, obviously, the process of the divorce. Merely contemplating alternatives can itself generate marital discontent, thus easy divorce becomes a self-fulfilling prophecy.

Many groups with varying philosophical bases are calling for reform of divorce laws. The National Council for Children's Rights, the American Legislative Exchange Council, the Family Research Council, the Progressive Policy Institute, and others join Concerned Women for America in supporting State initiatives for divorce reform. I would recommend that you possibly contact some of those for some suggestions. I know that ALEC, for instance, does have some model legislation along the lines of what I'm about to mention.

Some possible legislative reforms include: braking mechanisms such as mandatory waiting periods before a divorce may be granted, perhaps with the stipulation that marriage counseling be sought; elimination or limitation of unilateral no-fault divorce, retaining no-fault for those cases where there are no children present and both parties desire the divorce; a two-tiered system written into marriage licensing that offers couples a choice between no-fault and fault-only divorce proceedings; judicial recognition and enforcement of prenuptial agreements limiting the parties' rights to divorce.

In cases where divorce is inevitable: a presumption by the court of joint custody for the children; settling of the children's custody before all other considerations; and the division of other material goods to be made with the children's benefit in mind.

Today in the United States, the marriage contract is the easiest contract to breach. Dissolving a business contract or partnership is far more difficult than dissolving a marriage. This should not be so. On behalf of the over 600,000 men and women of Concerned Women for America, I thank this Commission for its initiative, and encourage you to do your part to strengthen the marriage bond and through it, the American family.

ASSEMBLYMAN KAVANAUGH: Thank you, Susan. It's good seeing you again. Thank you for your testimony.

Any questions?

Rob.

MR. BRODERICK: In number three, "A system written into licensing that offers a choice between no-fault and fault-only divorce regime," could you say a little bit more about that?

MS. GRANT: Yes. I'd have to refer you to one of those other organizations for the details, but basically I think what it is, in the marriage license itself, the licensees can choose in the event-- It's sort of a prenuptial arrangement, I guess. In the event that we decide to seek a divorce, we will only seek it if fault can be found, or they could choose to go the no-fault route. At least-- I think you've been saying that people should be aware, when they're going into the marriage, of some of the problems associated with breaking up a marriage. Perhaps this is to address that issue. I think ALEC does have some model legislation along that line.

MR. BRODERICK: How about number four, "Recognition and enforcement of prenups, limiting the parties' rights to divorce"?

MS. GRANT: That might address, particularly religious convictions of the people involved. For instance, where one or both parties -- their religious convictions

preclude divorce and if they write that down, the judiciary should recognize that.

MR. BRODERICK: And not grant a divorce?

MS. GRANT: Yes.

MR. BRODERICK: When both parties are requesting the divorce?

MS. GRANT: Well, they would-- I guess it depends on the situation that they wrote into the agreement, but, yes.

MR. BRODERICK: Thank you.

ASSEMBLYMAN KAVANAUGH: Thank you very much.

Next, Greg Giberna.

G R E G O R Y J. G I B E R N A: Good afternoon. Greg Giberna, Somerville, New Jersey. I'll be very brief since some of the topics I wanted to touch on have already been stated. Let me just say that I am here as an interested bystander. What got me interested in this subject was becoming a graduate student at the State University. After being a nontraditional student, I wanted to get back and do some higher education so I could go on to something in life that could bring me satisfaction.

What I found out as I entered that process was that from 1980 onward, law school applications through the 172 ABA approved schools went through the roof, and most of the law students that I ran into, as well as the graduate students, saw their profession or their higher education as a means solely to make large sums of money. Having said that, I think there is no way we can adequately address this issue unless we, as it's been previously mentioned, begin to deal with the systemic problem in Family Court.

This was touched on, but let me just state we've got an adversarial process where we've got two people who, for whatever reason, have decided to split up. Maybe they have kids, maybe they haven't. There's already a level of hurt -- and I've done a lot of observations in courtrooms to come to

this determination -- and what happens is, through this adversarial process, the hurt that existed has now been intensified to a higher level.

The lawyers who handle family law do not have an interest in settling disputes quickly. If they settle a marriage dispute quickly, they don't make as much money. If the litigation gets dragged on for four or five years, they make a lot of money. I think one of the dynamics that happens in this is, you've got these two people who are breaking up, and the lawyers are able to fuel the fires through this adversarial process. It takes four or five years after someone looks at their legal bill to realize that they've been taken advantage of. Then the lawyers turn around and say, "Well, wait a minute. I was only doing what you instructed me to do." I think the more culpable party here is the lawyer, because what they should, in effect, be is a counselor, and they should remedy these situations.

Having said that, I totally advocate a marriage mediation system dealt with by some professional who can get both parties together to lay assets on the table, and get these people to negotiate a settlement as quickly as possible, so we keep that hurt to a limit and get these people on with their lives. Because what's happened is through these litigations, parents and children get permanently scarred. I think you're hearing some of the hurt.

One of the things I think you're going to have to do -- and I attended this -- is I think you're going to have to take a look at the ethics process involved in this. The State ran seminar-type situations where people were allowed to speak from the profession, and lay people. People got up and testified as to their experiences with lawyers, as well as their experiences with the ethics process, which includes the fee arbitration system and also appeals, because when people feel they've been deleteriously hurt, they appeal.

What you've got is a system where you've got ethics committees where the majority of the people that sit on the committee are lawyers. You have fee arbitration situations; the majority of the people that sit on the committee are lawyers. I think we've got a situation, whether it's done overtly or on purpose, where lawyers are going to defend lawyers. Now you've got these people who have been scarred by the litigation, and they want a little relief from somebody. They want somebody to say to them, "Hey, you were hurt, and here's what we're going to do about it." In this whole system that never happens.

In my observations, I was privileged to see a couple of situations, one of which where I forwarded an attorney to a man who was on his second marriage. His first wife died after 40 or 50 years. He was married 10 years, owned quite a bit of property, had very little monetary assets, and was living off a very small pension, as well as Social Security. This woman's intent -- his ex-wife -- was clearly to get a portion of this property which was worth quite a bit of money, which I don't have a problem with. But what I observed in this situation was the opposing attorney approached this man that I forwarded to this fellow for a defense -- who I feel this attorney has an impeccable reputation -- and this attorney stated to this fellow, "If you and I both handle this litigation right, we can make \$40,000 each."

What I say to you is this: What kind of public service are we performing, and what kind of attorneys are we breeding that they have to make a livelihood on the blood and backs of people who have worked hard their whole life? To me, it boggles my mind that we allow that. So there has to be something in the system where we do something to start breeding attorneys in law school who want to be public servants. There's a whole lot of things we could discuss about tuition costs, and so on and so forth.

On a totally different note, it took us a long, long time in the legal system to come to terms with the word battered woman syndrome, which is an explanation for a certain behavior of women which I agree with. This term, deadbeat dad-- I don't know if anybody here has ever been involved in a marriage relationship, but I've had the opportunity to witness this, and I could tell you that when one party tells another party in a marriage, "I no longer want any part of you," then goes to court to try to get this man to pay something -- whether it's for child support, alimony, a total settlement, or so on and so forth -- those two things don't logically make sense. I'm not saying that that shouldn't happen, but I think what we've got to come to terms with is to understand when a man or a woman has been told, "I no longer want any part of you," to ask them to remain a financial part of that person is at opposite ends of the spectrum.

This term, deadbeat dad, I've seen men-- Maybe we can develop a study on this regarding their feelings, because I think this is really important. When men lose their families; when they lose their wives; when they've been told they can no longer be a part of what they had before, they lose total motivation. I can tell you this regarding some men, we can continue to lock them up. If they're hurt, they're not going to pay. That's why I advocate this marriage mediation situation where we keep the hurt low; we keep the scars low; and we get people on with their lives.

Just a couple of comments on some things I heard: We're talking about standards. I don't know that much about family law, but I've looked at it. These standards that judges abide by-- I think the Chairman hit on a good point. It comes down to discretion. Unless a judge does something that is so out of whack with the norm, it will always be upheld on appeal. There are no standards. There are no standards regarding equitable distribution. It's up to the judge to do the distribution.

Regarding alimony: It's up to the judge to reach a decision on what a party should be paid. That brings in a lot of personal bias, a lot of other dynamics, and sometimes those things go astray.

Let me also say this: I think divorce litigation, as far as the mechanics goes, is probably the easiest litigation going. I think that's why a lot of attorneys go into it. Because it doesn't take a brain surgeon, and it's a way to make tremendous money.

Finally, to sum up what I've said, I think lawyers have a vested interest in this whole system to perpetuate it. I think something radical needs to be done, and maybe you could somehow get together with Judge Michaels and their recommendations from their surveys. I think something has to be done in that process to give people avenues for redress.

Just one final point. Medical malpractice: I've heard lawyers say that the reason why that should be there is because suing doctors keeps doctors honest when they make mistakes. I agree with that. What's in the system to keep lawyers honest? Unless a lawyer violates a fiduciary relationship greatly, nothing happens in the ethics process. I'm telling you it doesn't happen. I sat there at this Judge Michaels, and I never heard more war stories regarding people's situations with lawyers where they are dead broke; they've lost everything; and they've become pretty good lawyers themselves because they've had no alternative but to pick up the litigation themselves.

So marriage mediation is definitely the route, then after that, arbitration. Bring them in, get them in front of an arbitrator, lay the assets on the table, settle it, and get them on with their life, not a five-year litigation.

Thank you very much.

ASSEMBLYMAN KAVANAUGH: Thank you very much, Greg.

I'd like to note that Greg is one of my constituents. I've never met him, but that's the type of people we have in the 16th District.

Anything else that's before here?

MR. BRODERICK: Ask him who he's voting for.

ASSEMBLYMAN KAVANAUGH: No, no, please. (laughter)

The next witness, Lourdes Kontos.

L O U R D E S M. K O N T O S: Hi. My name is Lourdes Kontos, and I'm with the New Jersey Council for Children's Rights. I had come prepared with a copy of a statute and criminal code, but I understand that Pat did the work for me so I won't give it out.

One of the things that I would like to start with is by just reading an excerpt from the pamphlet that I got at the legislative office. It says:

"The branches of government: The government of the State of New Jersey, like that of the United States, is divided into three coequal branches: the legislative, the executive, and the judicial. The principle function of the legislator is to enact laws. The executive branch (the Governor and State agencies) carries out the programs established by law. The judiciary (the Supreme Court and lower courts) punishes violators, settles controversies and disputes, and is the final authority on the meaning and constitutionality of the law."

That's where I have a big problem, and maybe this is where the Commission might be able to address what's going on in the Family Court system. The fact that the judges do have such great latitude to interpret the meaning and constitutionality of the law leaves it wide open. You're all sitting here as members of the Commission to Study the Law of Divorce, but I'm not sure how much effect you can actually have. If you find that there are laws that do need to be amended, or new laws enacted, what assurance do any of us have that the Family Court judges will enforce the law and research the intent of the Legislature?

New Jersey Council for Children's Rights definitely advocates physical and joint legal parenting, because we would rather not use the words custody or visitation. If you all

make reference to the New Jersey Statute 9:2-4, it clearly states the importance of children having frequent and continuing contact with both parents, and that the rights of both parents must be equal. However, it leaves it open again to abuse by the litigants and/or the court system, because the statute also states that the courts will consider the parent's ability to agree, communicate, and cooperate.

Having done a lot of court watching and dealing with the members of the New Jersey Council, I have found that the parent -- normally the parent looking for the sole custody -- will make it known to the court that he or she cannot cooperate, and thereby allow the court to grant sole custody to one parent, usually the uncooperative parent. This now leaves one parent as a visitor rather than two parents involved, as the Legislature really intended.

The custodial parent can easily block visitation for whatever reason and when the visitor, meaning the noncustodial parent, seeks justice in the courts, the judge will most likely not enforce what's already in the Criminal Code 2C:13-41. Again, the judges will interpret this criminal code as they please. What I'm asking this Commission is that when studying the laws of divorce, will it also look for a way to implement these laws? That is the issue that I came prepared with.

One of the things that I would like to address is what Douglas Schoenberg had said in how to enforce visitation. There are ways to enforce visitation, and clearly this criminal code says that it is a criminal offense to interfere with visitation. Judge Murphy made reference to the fact that it is hard to enforce visitation. Somebody else brought up the issue of judiciary education. If I'm not mistaken, Judge Fall, from Ocean County, is on a committee that Chairs -- and I'm not sure of the name of the committee, but you must know, Judge Murphy, something about--

Oh, you're on the committee?

MR. LOUIS: Yes.

MS. KONTOS: Okay. They meet once a month?

MR. LOUIS: No.

MS. KONTOS: That's what Judge Fall has said to me, but in any case--

MR. LOUIS: Excuse me. There's a Supreme Court Committee and subsidiary committees. I'm on the Family Law Subcommittee. We don't meet once a month. The main committee may meet once a month.

MS. KONTOS: Okay, he is the Chair?

MR. LOUIS: He's Chair of the Subcommittee Dealing with Family Law.

MS. KONTOS: I knew it was a long title. Thank you.

In any case, Judge Fall has spoken at our meetings, and I have attended conferences -- seminars -- that he has given. One of the things that he has done in his court is when there is visitation interference, he withholds the child support. Not that the parent receiving the child support will never get it, but he holds it until that parent decides that he or she is going to allow the noncustodial parent to have visitation. That's one way, but there has to be better ways. If sanctions are what need to be done, then so it be.

Irene is not here. I did want to comment on something that she said the last time the Commission met. That was in reference to somebody that was testifying; that if the judge actually did not award custody, limited or sometimes blocked all visitation in an order from one parent, there had to be a reason. No, there does not have to be a reason and I'm living proof, because I have not seen my children in two and a half years. Judge Schaeffer -- that scares me; that could be in also this Commission -- is the one that signed that order. I would allow anybody on this Commission to look at every transcript and every report, and you will find that there was no sound basis for me not having any contact for two and a half years.

Thank you.

MR. SCHOENBERG: Thank you very much.

Elizabeth Labagnara.

E L I Z A B E T H M. L A B A G N A R A: Commission members, I thought this was going to be a lot less formal.

MR. SCHOENBERG: Please try to speak into the microphone. Speak up so we can hear you, and try to relax.

MS. LABAGNARA: I just got very nervous because one of your members was my husband's attorney. Does anybody here represent the Probation Department?

MS. BISHOP: What Probation Department?

MS. LABAGNARA: I have some ethical complaints against my husband's attorney in dealings with the Probation Department. I was told I could not file a complaint until after trial was over. I suffer in not receiving that court order -- award -- and yet I have to wait until irreparable harm has occurred to report the violation.

I would like to explain one incident that happened, and ask you if you cannot think of provisions and suggestions to be made to change that from happening from someone else.

For instance, the court requires you request an enforcement hearing through the Probation Department. It is about a two-month process in Ocean County. I did that and I received a court enforcement order. The next time I went to court, I had discharged my attorney. I took my court order to have my husband arrested if he showed up in court January 2. My husband did show up, but the sheriff took the court order to the computer and found out that it had been discharged.

That day I went to the Probation Department after court and my probation officer, Ken, said, "Betsy, I'm sorry, your husband's lawyer called up. He pointed out there were guidelines in the rule book that if a hearing was pending on the temporary alimony" -- the court order subject -- "then a favor could be granted, and a discharge of the court order could be done." Ken, the probation officer, said there were

eight of them in the office. They went to their guidebook. They all confirmed that was a law in their guidebook, but the lawyer had done this orally. When Ken received the letter from the lawyer's office, it was not a hearing on this subject. It was at Case Management that same day, January 2.

I went back to court January 3 on an Order to Show Cause return date that I requested after firing my lawyer, and I explained this to the judge -- Judge Buczynski in Ocean County. He said if I wrote up a new court order, he would sign it. The first court order took me a week. I couldn't figure out what I was doing. It was not proper. It was rejected. A second attempt was made.

That was only one thing that occurred and I'm asking if-- I've spoken to the Probation Office, and I asked them to supply me a report, a history, an accounting of this so I could go to the Ethics Committee. Right now, legal summations were completed mid-August. The complaint on the plaintiff was filed in May of 1989, so it's been a long time. We're waiting for final determination. I am trying to follow the guidelines, but I am beleaguered by everything in circles. It besieges the person who's trying to follow guidelines, and just goes loop-di-loop. We're closing a loop, one after another. The law is there so that you can't not follow the guidelines and get anything done.

That was one violation and I spoke to the Probation Department, one of the young officers, and I asked would he like to have had -- if that happened to him-- He realized he was tricked, and my probation officer said, "Betsy, I'm sorry. I was tricked." I said, "Ken, what do we do now?" He said, "You have to start the process over again." I said, "That's two months -- two months."

He expedited matters for me. But he did not tell the court what caused these circumstances, and yet he had that knowledge. If you understand what I mean? He knew what

occurred. He is more or less a witness.

Now, I don't know if you want to say this is your responsibility; it's part of your job to report these occurrences. That's up to you. But if I could have somebody to validate what's going on, not only for me, my case is ending. But if a Probation Department officer runs across this, should he not have somebody to avail himself of and say, "Gee, boss, this is what happened. If anybody comes back and says, 'This is what happened,' this is what happened. I was involved. I was tricked." I can't think of anything else. Maybe not make it a requirement that he report it, but suggest that he have someone to go to and say, "This is what happened. I'll make it a statement on the record for further reference."

When I get nervous, I get very dry mouth.

Another thing that occurred--

I'm having difficulty talking, could I have--
(witness given drink of water) Thank you.

I requested an enforcement hearing. That's with a hearing officer. My husband's attorney decided to show up. He had it switched to a hearing judge, Judge Grasso. My attorney, he was aware that it was October 1. He's an Orthodox Jew, and that's a Jewish holiday. He could not come, but he felt that the Probation Department would have an officer there sitting beside me to represent me.

When it comes to legal terminology, I knew nothing. My husband's attorney told Judge Grasso: One, he asserted that there was a right to refuse payment by authority under the court order; that if I was working, I did not get payment; and that he would prove, some day at a distant trial, that I was working. I was not working. I have SSI disability. My disability benefits are depreciated by what they thought was being paid under this court order.

I appreciate that, thank you. (witness given drink of water).

Also, it is a violation of rules of professional conduct to assert there's a reason and a refusal to pay when there was none as stated. He has no authority in that court order. If the judge had read that court order, he would have realized the lie. And I call that a lie -- an outright lie. I think you can zealously advocate and advance your client's cause, but there's a line you cannot cross -- omission, deception -- but there's a line you cannot cross. You cannot outright lie and violate a professional rule of conduct. The judge felt that I was disadvantaged not having my attorney, and he refused to look into anything that was said until I could make a date with my attorney to appear on my behalf. Again, nothing was done, and I was there because I was desperate.

I'd like to explain a little part about my case. I understand that the State has a compelling interest in a successful marriage -- culturally -- educating the children to be responsible citizens. We have a tremendous stake in the institution of marriage, which represents the family. The family is our way of life. It teaches us our ethics, our principles, our work ethics. I understand that the State -- because of this interest, because it taxes families, because of bankruptcy laws and everything else -- that you're allowed to intrude upon the private decisions and agreements of a husband and wife.

By that same token, you're giving it sanctuary. If a woman is injured, her husband can sue. If she dies, he can sue. There is something to protect there. There is maybe not real property, but there is an investment there. Many people don't want a divorce. They made that commitment out of love and good feelings, and by the time they come to divorce court, they've given it all they can. They realize to continue to try is the wrong thing to do, although all their lives they've been trying as if it was wrong to quit.

I don't know if I'm getting through. My point is, we all think we're entitled to be married. We all think we know what our way of life would be married. My husband had a very

strange upbringing -- from Argentina. He was under a dictator like that of Hitler. Peron actually went to Germany and studied under Hitler, yet my husband's background was similar to Hitler's himself. This is a very strange paradox.

However, I'm born and bred in the United States -- born 1957. I saw a man land on the moon. I thought women were equal. I didn't think those civil rights fights were about me.

I had five younger brothers and I was the oldest. My father said I could be anything I wanted to be, and all I had to make sure is that I was happy. I had freedom to choose. Nobody told me I didn't. My husband had two stepchildren from a previous marriage. He's 19 years older than me.

I had a preconceived way of how I would raise my children, what I wanted them to be when they grew up. I wanted them to be happy. I didn't want them to be astronauts. I wanted them to choose what they wanted to be and what would make them happy. But I wanted to give them the guidelines. Children will always test you. How far can they push? That's their job. Your job as a parent is to tell them what the guidelines are.

If they got caught by the police, my husband told them they were stupid to get caught. He didn't tell them they did wrong. He didn't make them feel sorry. He didn't make them responsible to pay. They were simply stupid to get caught. That's what the lawyers are doing today under the Ethics Committee. They are stupid if they get caught. Even if they get caught, they have to be caught real bad.

However, I don't want to digress. I said to my father, "Gee, Dad, I had a preconceived idea of how to raise the children. Hector has his own ideas." The answer is, when two people come together and raise their family, they take from their life experiences. They instill what they think is important on their children, and a whole new family culture of mixed values and traditions comes together.

We are a melting pot. There's no right or wrong way to be parent. There are also no instruction booklets that come with being a parent. We want to save our culture, and we have many cultures in our society.

When I was a plaintiff for divorce, I entered that courtroom thinking that I was going to get equal treatment as that of my husband. I did not. It is equitable distribution by discretion of the judge, and how the lawyer I retained, and the lawyer he retained, presented the case.

I think in 1939, public policy on health and safety outlawed common law marriage, which is fine. It did so because it wanted to prevent the marriage of syphilis. There was a syphilis epidemic going on. It required a blood test to get the marriage license. If you had syphilis, you could not marry. That was 1939 and a lot of things have happened. Today, AIDS is an epidemic. You're still required the blood test, but that information cannot be released to your potential spouse without informed consent.

Also public policy on health and safety at that time, in 1939, wanted to see the long-term effect of syphilis. So they went to a small backwoods community down South -- all blacks -- and told them they were getting free medicine -- free medicine for their syphilis. Instead they were given placebo pills. Those survivors have now won a lawsuit that they did not give their informed consent with what was going on with them. Twenty-five survivors, 25 years later or something like that -- \$32,000 each. It came to about a million dollars.

The government is not always right on what's right, what's wrong, what's ethical, what's not ethical. Public policy changes with time and that's how we change our laws.

MR. SCHOENBERG: Ms. Labagnara, could I ask you to try to rap up your comments? There are other people who would like to speak before the Commission, and it is getting late.

MS. LABAGNARA: I'm sorry. I did think I was so late, that I was last. I'm sorry.

The point behind that is, I think when I go for a marriage license-- In the State of New Jersey, there's no automatic equal distribution, and I feel I've equally contributed. I feel that I ought to be signing an informed consent that, upon dissolution of this agreement, I will not be an equal. It will be the discretion, and it will be equitable distribution of somebody who is going to try to understand what my situation is.

Now, in my particular case, I had a 10-year cohabitation. I think this is strongly different than a marriage. This is why many people are seeking out cohabitation. I think when your husband or wife-- Generally, the man to this day proposes marriage -- my husband did -- and the woman accepts. I think there are many considerations that go into that proposal and acceptance. They are not written down.

A woman will generally-- Biologically there are differences between men and women, and I'm not an Equal Rights Amendment advocate. There are differences. There are bona fide differences that we cannot overcome by simply a blanket smear at the time of divorce to say, "That's it, equal -- boom, boom." There are many considerations, and I think the considerations like any--

Well, let's put it this way: Weiss v. Weiss is an Appellate decision in the State of New Jersey. I think that court cases have advanced much further than the marital statutes. I'm very happy for this opportunity and everybody's commitment to catching up and changing the legislation in the statutes. But let's do it reasonably and cautiously. I don't think it's best to deal with the problem after the problems -- after there is emotional bickering, and we've absolutely decided that we can't handle this any more. I think the best

time is when two people are agreeing to start out a life together. Weiss v. Weiss says public policy recognizes a marriage to be a domestic partnership.

Now there's various laws on contracts and partnership. My husband and I started with a marriage proposal and acceptance. We then had two children. To immediately deal with a family situation: Who's going to work? Who's going to pay the bills? Who's going to stay home and take care of the kids? Obligations and responsibilities are hand in hand with rights and liberties. You are free to make this choice; know what you're going into; iron it out then and there.

Every business deal has a dissolution clause. Prenuptial and postnuptial agreements are legal. I don't think that going to a judge and being represented by one person-- He's not representing anybody but the State. He's not informing me, a woman, what the State will do upon dissolution.

The State concept of marriage was, "Oh, the man owes support to the wife." Why? It came out of common-law duty. The wife was not to fall on charity. We don't have charity anymore. We don't have welfare anymore. We have legal entitlements.

I have a lot more to say, but I know that there are going to be a lot more meetings. I really didn't prepare a speech. Everybody looks so glum and gloomy.

It's a hard issue to deal with. It involves the very fabric of our lives. I have been reduced to poverty. I am taken care of by the State. I think the State has a compelling interest to its constituents who pay taxes that are used and fund these programs, that at the time of marriage, the man and woman sit down and say, "Yeah, we're 18. We want to get married. We're madly in love. But I'm going to make a commitment to you and we're going to agree. You're going to take time out of your education. You're going to raise two or

three children." Whatever the individual's agreement is, because we are a melting pot. We have all different concepts of what marriage should be.

These are important, fundamental decisions that are going to make a marriage last. If an agreement cannot be made at the time of the marriage, the State has gained the benefit of not waiting five or six years and supporting the wife and children on welfare programs. They have prevented what could not be; what was a mistake in the first place.

ASSEMBLYMAN KAVANAUGH: We want to thank you very much for being here.

MS. LABAGNARA: I thank you. I'm sorry I'm so nervous, but that man is here and I have been so violated by attorneys. My own attorney sexually harassed me, and I found out, technically, I was his boss, so I can't sue him. But he did cause such emotional distress.

A court case, Crowe v. DeGioia in 1982 in Middlesex County, said, "Pending a trial and the final determination of issues, a reduction to poverty is devastation and irreparable harm." I don't know how to sue for irreparable harm. What is going to restore me?

ASSEMBLYMAN KAVANAUGH: Well, we hope that as we go through with the Commission to Study the Law of Divorce, that we'll be able to give an opportunity to the things that you stated here today. It's on the record.

So we want to thank you very much for being here. We still have--

MS. LABAGNARA: I thank you, Assemblyman. I'm sorry to interrupt you, but I do appreciate what you're doing. I really do.

ASSEMBLYMAN KAVANAUGH: Thank you very much for being here.

Peter Cecere.

P E T E R R. C E C E R E: Thank you, Chairman Kavanaugh, members of the Commission. My name is Peter Cecere. I reside

in Long Branch, New Jersey. I'm a recently divorced father of four, who was separated from my ex-wife for a period of two years prior to the issuance of a divorce decree.

I believe that the Commission should look into certain laws that are already on the books that have a great deal of effect with relationship to divorce and custody issues. Those laws that I'm talking about particularly are the Domestic Violence Act of 1991 and the statute, which I don't have in front of me, which dealt with abuse of children.

In my situation, I was charged under the Domestic Violence Act when my wife and I were separated. I was trying out a reconciliation, and I was charged with harassment on the advice of her attorney. As the judge is gone, what I did was I consented to a court order, and I admitted to some portion of the allegations being true. Because of that fact -- of the admitting of this fact -- I have been treated like a second-class citizen with regard to a relationship with my children. I've been denied the right to visit with my children. I've been denied the right to write to my children. I'm not allowed telephonic communication.

This has been going on for a period of two years. I've been in court in Warren County on 31 separate occasions. The final straw was on October 27. We had our second date for our divorce hearing. My lawyer and I were stuck in traffic. We phoned the court clerk, and advised them that we were in traffic. The judge issued a divorce without our being present, and has continued supervised visitation between my children and myself.

What happened in my case -- because of the admittance of this portion of the Domestic Violence Act, which I admitted to -- was, I hired a moving company to move the furniture from my wife's address back to our address. That's what I admitted to. Because of that fact, it snowballed and they ordered supervised visitation.

On supervised visitation: I had my children a year and a half ago, and I have a three-year-old daughter. We were down at the beach and we were walking on the boardwalk. My daughter grabbed my hand -- I had a cigarette -- and she got burnt. Because of this law that's on the books -- I believe it's 2:382D -- which states if there is an allegation of abuse, that it has to be investigated. My daughter, like I said, was three years old at the time. She had to come into the judge's chambers and tell the judge that it was an accident. Even though it was an accident, the law states that it has to be investigated. So this investigation took nine months. In that nine months, I was only allowed to see my children for one hour, one time a month. Over the last year and a half, I've seen my children for 20 hours.

I think that this Domestic Violence Act-- What happens here is that lawyers have learned that it's an easy way for them to get custody and visitation in their client's best interest, and they're just using it as a tool. I know the law has done some real, real good for people that have really been involved in domestic violence, but in a case like mine it's an abuse. I've noticed many other cases similar to this up in Warren County, and in Essex County.

The other thing I'd like to address is the problem of-- I think we should deal with the problem of marriage and marital problems prior to the divorce situation. I propose that there should be some kind of premarital education, or at least some predivorce education; when someone files for divorce, that you have some kind of mandatory counseling, which I know there have been some suggestions in other states for this to be done.

Through that goal, I've contacted Dr. Howard Markam, who is the head of psychology for the University of Denver, who's done a 25-year study on marital conflict and how to deal with it. Dr. Markam has had grants from the U.S. government,

from the Hunt brothers -- the silver Hunt brothers' ketchup -- and he's written a book, "We Can Work It Out". It deals with how to manage marital conflict.

I flew out to see him in Denver, and he's interested in this Commission. He's willing to come and give testimony as to his approach in dealing with marital conflict. He's had some tremendous success in the field. He deals with people that have already filed for divorce, and he has a 40 percent rate of success saving marriages. Of the people that have come to him for counseling, he has over 70 percent success ratio. He's willing to fly in here to testify. He's also willing to prepare some kind of outline to perhaps get family case management involved in his approach in teaching people how to deal with marital conflict. Again, at my call and your acceptance, he'd be willing to come and testify.

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

MR. CECERE: You're welcome.

ASSEMBLYMAN KAVANAUGH: Vincent Guido.

V I N C E N T G U I D O: My name is Vincent Guido. I'm from Piscataway, Middlesex County. One of the issues that came up earlier was judges -- litigants who have multiple judges. Middlesex County rotates their judges every year, so in three years I've had three judges. Every judge had to renew our case. Because of that, we've had to file paperwork to let them know what's happened. My file right now is about -- no exaggeration -- 12 inches thick.

I've been trying to get visitation with my daughter. Right now, after three years, I finally have every other weekend and once during the week -- Saturday morning to Sunday evening at 6:00. I've been trying to get Friday night to Sunday, and they send us to mediators. The mediators have to review the case. We spent nine months in mediation about a

year ago, and all I was able to get in the nine months was an increase of four hours. The holidays currently are not shared equally. I never have my daughter on Christmas morning.

There's been no problems, no domestic violence, no sexual abuse. I don't take drugs. I'm college educated. Yet I'm being harassed, I feel, with the court system with my visitation. I have a good relationship with my daughter. I don't know why I'm being denied time with my daughter. I don't think I'm asking for anything unreasonable -- equal holidays, equal time on the weekends -- but yet they say no.

Judge Murphy had said earlier, or rather I had read-- I was following a case with Judge Murphy, and I was surprised to read that judges are supposed to be nice to litigants. Every judge that I've gone in front of has blatantly been rude to me. I've been called an intruder. I've just been harassed by the judges.

One of the issues I brought up was the tax exemption -- claiming my daughter. I asked if I could share it. I pay over \$10,000 a year in support, which is more than \$200 a week for one child. I didn't think it was unreasonable to ask to share the tax exemption. I asked Judge Lefelt if I could share the tax exemption. He was just rude and denied it. My case information statement says I pay over 50 percent of my daughter's support, yet I was still denied. I don't understand that. That to me is illogical.

I believe in mediation. However, all the mediations we've gone through, in my opinion, have been worthless. We sat in mediation. My daughter's mother refused to increase the visitation, and it just went on and on like this month after month.

Just to expand on one other thing that somebody had said: It seems that when one of the parents is harassing the other one, joint custody is denied. Instead of working in mediation to get that person to cooperate, that person ends up

getting sole custody. Again, if you searched my files, you won't find that I've done anything wrong. I haven't harassed anybody. I haven't even raised my voice to anybody. Yet I'm the one that has no rights to my daughter.

I agree that visitation-- There should be some kind of standard guidelines. I know other people who have more visitation with their children, and their children are younger than mine. I've been told it's because of her age, that she's three years old. But yet they have more visitation than I do. I think that one solution would be to have a standard for visitation.

Thank you.

ASSEMBLYMAN KAVANAUGH: Thank you very much, Mr. Guido.

MR. BRODERICK: How old is your daughter?

MR. GUIDO: She's three, three years old.

ASSEMBLYMAN KAVANAUGH: Thank you very much.

Marty, you've been great today.

MARTIN RODETSKY: Did I behave myself?

ASSEMBLYMAN KAVANAUGH: You're the final speaker, and it's always been said, "If the final speaker speaks over five minutes, he's going to buy dinner for the group," and we go to big places.

I want to thank all of you for being so patient today. Marty has spoken before. There are just a few things more that he wanted to bring us up to date on.

But I would like to say for the record that I enjoy camp followers. But as we move through the process, we're going to try to have new voices give their opinions and concerns on the Commission. We will not accept the day of a meeting a person that would come forward to a meeting, without first contacting the staff, to go on the list, because I think it's important that we have new people, fresh ideas, and fresh thoughts. This is not in any way to take away from anyone who has been here before, but I think we're all working for a common goal; that is, for reform in the divorce laws.

Marty.

MR. RODETSKY: Assemblyman, I just want to apologize for what you just said. Because I thought that I was going to testify at each of the hearings, what I did was separate my arguments into individual topics. The purpose of today's discussion is basically the anatomy of a divorce and why everybody that goes into it, both husbands and wives, gets screwed by the courts. Why this is being-- I really thought that I was going to be doing all of it.

ASSEMBLYMAN KAVANAUGH: I see. What you have to do is contact staff.

MR. RODETSKY: Okay. I do plan on talking at every-- I took your invitation to heart. I did a lot of research, and I really would hate to have it go to waste, because it's some interesting stuff.

Basically, before we begin, some questions that were brought up in the beginning of this hearing--

ASSEMBLYMAN KAVANAUGH: You remember me saying five minutes?

MR. RODETSKY: Yes.

Custody and visitation are dirty words. Both parents, if they were still married, would have equal access to their children. One would not be penalized to benefit another. Punish, force, sanction are all criminal remedies without criminal due process. The government has no power under the Powers Clause in the 10th Amendment to intrude on life, liberty, and the pursuit of happiness on anybody, not only on the noncustodial parent.

Ms. Murphy -- I do object very strenuously to calling her a judge, she didn't do a good job on the bench -- is wrong. She has a simple answer to all the things that she said. "I have no jurisdiction over the subject matter of bleached hair, an earring, or \$1 million, and it's over." Let her keep to her business, which is to enforce the rules and

laws of the court, and basically stay out of people's lives.

Because of the time limitation, it's going to take me a few seconds to go through here. One of the problems that I have is talking about Family Court as long as it's adversarial in nature. As long as there must be a clear winner and a clear loser, it will continue to be the distressful, emotional, brutal, and abusive environment we currently experience.

One of the problems we have is the jurisdiction of Family Court. By entering the court, you have established the jurisdiction of that court to proceed. I didn't know that when I started. I know now that had I refused to accept the jurisdiction of the court, there would have been no proceedings. The whole question of jurisdiction in Family Court is fraud, deception, subterfuge, and evasion.

Basically, under the current structure, I had to get an attorney. My opponent-- Someone I lived with for more than 20 years had become my enemy. For the record, I did not want my divorce. Her soldier -- her lawyer -- did battle with my soldier -- my lawyer. Both of us forgot that when the court day is over, these lawyers go out and have a drink at the expense of their clients, and go home considerably richer. My adversary -- my wife -- and I, still at war, encouraged by the lawyers, go home considerably poorer.

My adversary's lawyer and my lawyer, like two actuaries -- no, two vultures -- figured out, possibly to the penny, how much they could extract, extort, swindle, and/or steal from both clients. What is a fact is, when it's all over, the only clear winners are the lawyers. I lost a million dollar home and a million dollar business. The lawyers got a lot of money, the bankers got the rest.

The issues relative to the courts: I went into court and I had judges like Glickman, who said, "You're living in a fantasy world if you expect justice in my court." Judges like Murphy who said, "You get no rights here, and the Constitution

does not apply." It's my understanding that the failure to uphold the oath to support the Constitution of the United States and the Constitution of New Jersey is equivalent to treason and sedition.

One of the things that we're talking about is the actual marital contract. Nobody told me that when we got married, the bride and groom were not the only parties to the contract. There was a third party -- the State. We know the husband's consideration and the wife's consideration, but the State's consideration is zero. Therefore under contract law the State's agreement is null and void, but it is enforced under fraud.

Now we have the divorce. The agreement between the husband and wife may be dissolved, but the agreement between the husband and the State, and the wife and the State survive. There is no cancellation of contract. There is merely a renegotiation of terms. This is done without telling the litigant under fraud, deception, subterfuge, and evasion.

Some time passes. The noncustodial parent has made payment, and again the only clear winner is the State. For every dollar paid, 66 percent is paid by the Federal government as an incentive bonus for every dollar paid to the State and county under Title 4d. My information and belief is New Jersey collected over \$550 million last year. This is unaccounted for, under-the-table money, unbudgeted and unacceptable by the people who live in the State and the county where this money is spent. This is money spent by and for government.

For the record, I have asked for copies of the Title 4d contracts from everybody, including: Marion Right, who runs it for the State of New Jersey; Ray Renvil, who operates it for the State of New Jersey; Assignment Judges like Stanton, Humphreys, and D'Italia of Morris, Essex, and Hudson Counties respectively. Basically, under Title 47, the New Jersey Right-To-Know Act, and the Foyer Agreement-- I have been unable

to get this. Under Title 47, failure to provide me with this information -- public information -- is a misdemeanor crime. I have been unable to get them prosecuted for doing it.

I have a lot of other information here that I'd like to put in. Basically--

Could I have those other pages? (addressing unidentified member of audience)

But basically, I'd run out of time by doing it. The last action has just occurred. I filed a Title 42 action in the Federal Court against Judge Murphy. I do use her name in my litigation. The issue is that it--

Not these papers, the other two. Yes, that's it. (addressing unidentified member of audience)

The issue is that the case has been dismissed for the first time now. These dismissals go on three or four times before we finally get it over the hurdles. In this first dismissal, Judge Bissel has stated that she enjoys absolute immunity as long as she is on the bench. What's happened is that we've been able to prove that the immunity question is totally unconstitutional.

The Congress in 1866, under the Civil Rights Acts of 1866, specifically stated that judges are not immune. The Supreme Court in 1967, I believe, in the Pierson v. Ray case, totally misquoted the immunity actions, and under their decision called the judges immune.

The issue is that because judges believe they can break the law, to knowingly, willingly, maliciously, and intentionally violate fundamental, unalienable rights under color of law is part of an ongoing chain of events under public policy and custom to shock the conscience of every rational person. Litigants, knowing that judges in Family Court are corrupt, venial, rude, obnoxious, biased, and prejudiced, and knowing that judges consider themselves above the law and are

not accountable for their crimes, would be clearly suicidal to place themselves in a position to be raped by abusive processes under the color of law.

All that I can do is quote Sheriff Edward V. Rochfort of Morris County, "It is impossible to get Murphy off the bench." Later he said, "It will be very difficult to get Florio out of office." Recently, in our last conversation when they arrested me, again, illegally -- under a false domestic violence action, and I have not been involved with that woman for more than five years -- he said, "You're going to have trouble removing Wilentz from the bench." Like the Marines say, "The difficult we do immediately. The impossible takes a little longer."

My closing statements are recommendations to be done as to existing law, and changes to be made through proposed litigation. Abolish Family Court. It is too biased, prejudiced, and operates without the guiding influence of Constitution, Federal or State. At best, it is a violation of clearly established law -- Constitution -- at worst, as I said before, it is treason and sedition. Abolish the Title 4d support bonus and give the kids the money.

Make it as hard to get married as it is to get divorced. The issue is, it takes five minutes and five dollars-- It's been changed. I know they've increased the amount of money now. But basically you can get divorced-- They bring you in to sucker you into the three-party contract.

Make it as hard to get married. Do the questions; do the CISs; do all the things that we're talking about here today before you get married, and stop the problem. Marriage is a contract. No-fault divorce does not work and is a violation of moral law. The one who violates that contract, either by filing for a divorce or by clearly proven acts of violence, is responsible and must pay for that breach of contract.

Both parents have a God-given right to love, cherish, guide, support, keep, and protect their children. No State, no judge has the authority to violate that relationship, as limited by their shackles under the 9th and 10th Amendments to the United States Constitution.

Parens patriae, as practiced in the State of New Jersey, has become outmoded and abused. Recognize the abuses involved in violating clearly established law. Contempt is a judicial weapon used by small minds with big guns. Recognize that all accused, civil or criminal, have the right to: due process, be informed of the charges against them, face their accuser, challenge evidence, and be afforded equal protection under the law. Make everybody accountable for their acts. If witnesses purger themselves, let them be tried criminally and if found guilty, go to jail.

If a spouse commits an act of violence, whether man or woman, let that offender be tried as any other criminal assault, with full panoply of rights with criminal due process. Don't permit government officers to be protected because of their position. As a matter of fact, these public servants must be more liable for their acts, not less. If judges commit crimes, let their sleeping partners not be the prosecutor.

Legal fees, psychologists, other court appointed professionals: If the court deems them necessary, let the court pay. Make the review process more accessible, less costly, and in keeping with the actions taken.

I have been arrested with five minutes notice, but the appellate process takes two years. I have been arrested four more times and my appeal process still has not been completed. Remove the fraud. Tell the litigant in plain English what is going on. There are Constitutional prohibitions -- shackles -- against proceeding when the accused does not know the nature of the charges against him.

Basically, this is a summation of the information that I have in about 25 minutes worth of talk. What I'll do is retype it and submit it to you. But the issue is with regard to the marriage and the divorce, that the courts totally violate Constitutional law. All judges must take an oath to uphold the Constitution as the supreme law of the land, and then they knowingly go out and violate that oath the first minute they walk into court.

Listening to this woman speak today, she confessed to doing it several times here. She dealt with issues that are none of her concern, and no part of the concern of the State of New Jersey. The 10th Amendment to the Constitution clearly restricts government from interfering in the rights of the people, yet they do it constantly. The issue that I talked about before relative to the legal actions, I'm also in the process of putting that together with more information for you.

The third topic that I'll be dealing with next time we talk will be totally separate from this. I'm trying to keep this as rational as possible. The people took instead of their five minutes, took as long as 40 minutes and then had basic questions from other people on the panel, leading them close to an hour in one case. I really tried to keep down to the issue. I've tried to do it, but it's been disjointed because I've taken my entire report apart. I apologize. For the topics that I did discuss, with the information that I did provide to you, basically you're going to do with it what you can.

ASSEMBLYMAN KAVANAUGH: Thank you very much, Marty. For the record, would you read your full name and address into--

MR. RODETSKY: Martin Rodetsky, R-O-D-E-T-S-K-Y. I live in Morris County.

ASSEMBLYMAN KAVANAUGH: Thank you very much.

Thank you to the staff, and to the Commissioners. We all hope that we'll enjoy happy holidays. I'll be in contact with the members of the Commission regarding the action we'll be taking after the first of the year.

Any comments?

Sarah.

MS. FLOHR: Will we be receiving a typed transcript of today's meeting?

ASSEMBLYMAN KAVANAUGH: How long does it take to--

HEARING REPORTER: It may take long, Mr. Chairman. It's your call. If you'd like it to be treated as a rush, rush priority, we'll do our best for you.

ASSEMBLYMAN KAVANAUGH: Why did you say that, Harry?
(laughter)

HEARING REPORTER: Because we've got 120 legislators, and they all have to have it quickly.

ASSEMBLYMAN KAVANAUGH: No. I think we would appreciate it if you could expedite, but we certainly know the workload you have. So as soon as it's available, we would appreciate it.

HEARING REPORTER: Very good, Assemblyman.

ASSEMBLYMAN KAVANAUGH: Anything else?

MR. RODETSKY: Assemblyman, before we finish, there are two other items that in my rush I did forget, that are very important.

Basically, with regard to the court process, I've been denied transcripts in my own courts. I have actually shown transcripts and had people say they don't believe what's going on. I have moved to have any of my court appearances be video taped. I have a one hour conversation where I-- An impromptu hearing had a cross examination of Judge Stanton, the assignment judge in Morris County, where he confessed that his

oath to uphold the Constitution is irrelevant. My problem with this is I want to make provisions -- and we have here -- that all Family Courts should have all of their hearings taped.

The demeanor of the judges, especially that woman that's no longer here right now, is simply unquestionable. It is definitely inappropriate, and she basically has violated the rights of many of the people who have come before her.

The second issue has to do with the hearing that we went to yesterday, where Martin Herman is being interviewed for reappointment -- for, like, tenure. There are people-- I have actually watched hearings in his courtroom in Gloucester County. The man is an animal, and basically what we have is, we have people that are saying, "We are going to deal with whether or not he has a good decision or a bad decision." The decisions don't mean anything. It's how the court process works. Is the court working in favoritism, bias, and prejudice, or is it working under law?

Marianne Espinosa Murphy specifically told me that she does not work under law, she works under her own decisions.

ASSEMBLYMAN KAVANAUGH: Thank you for those comments. Anything else from any Commissioner?

MR. BRODERICK: I move to adjourn.

ASSEMBLYMAN KAVANAUGH: It's been moved. Is there a second?

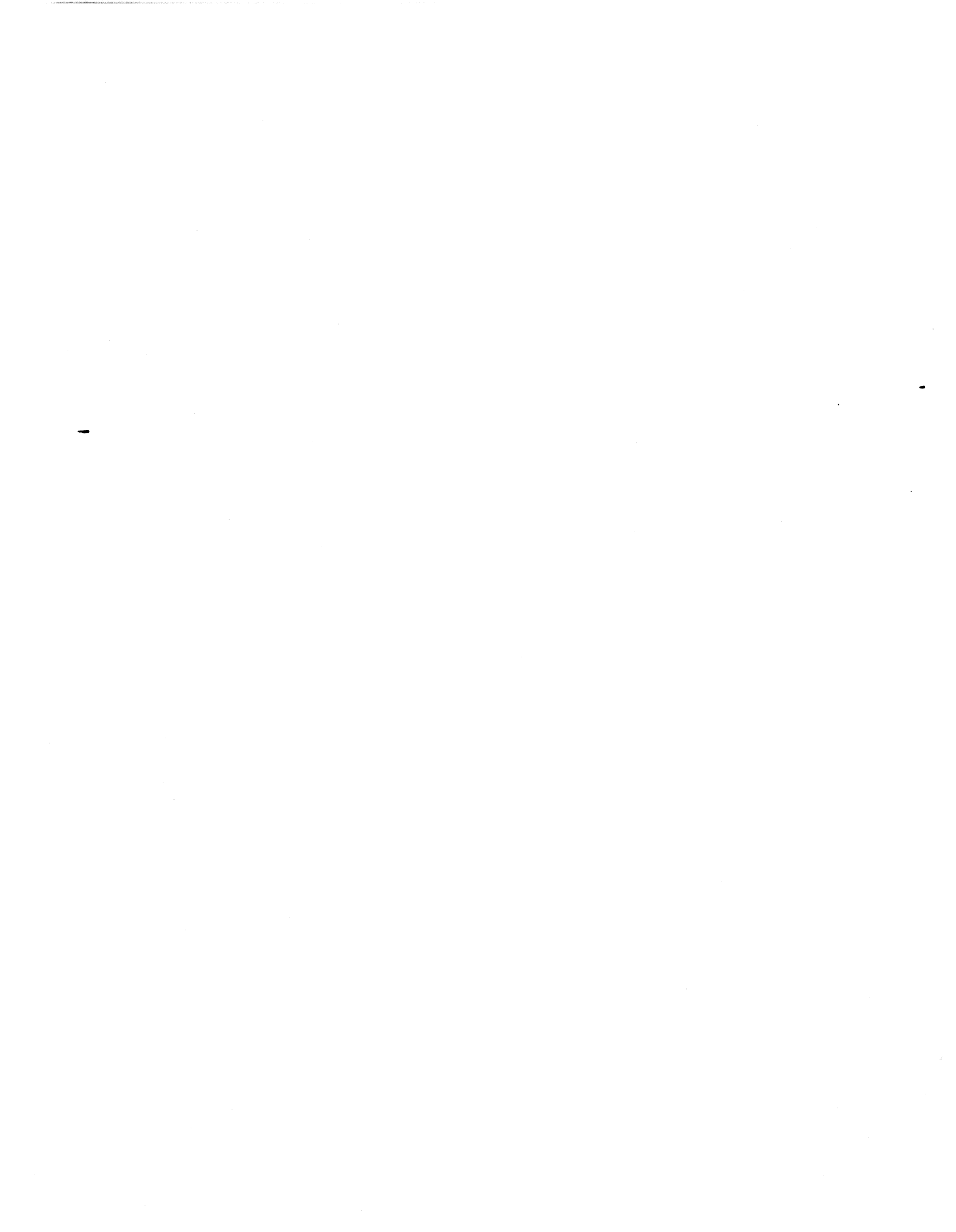
MS. FLOHR: Second.

ASSEMBLYMAN KAVANAUGH: All in favor? (affirmative response) Opposed? (no response) So ordered.

Thank you very much.

(MEETING CONCLUDED)

APPENDIX



American Retirees Association

Serving Divorced Military: Active, Reserve & Retired

POSITION PAPER

January 1, 1993

BACKGROUND

The American Retirees Association (ARA) is comprised of active, reserve and retired military members, male and female, across the United States. It was founded in 1984 for the exclusive purpose of addressing inequities in the Uniformed Services Former Spouses Protection Act (FSPA), Pub. L. 97-252.

The FSPA was enacted by Congress in September 1982 (with an effective date of February 1, 1983), ostensibly to protect deserving divorced spouses of military members. But it has created an even larger class of victims than the spouses it was designed to assist: the military retiree and his or her current family.

Prior to enactment of the FSPA there was no federal authority authorizing states to award property interests in military retired pay. The FSPA created entirely new legal doctrine by inserting the federal government in a legal process (divorce) historically reserved for the states.

GENERAL POINTS

- The FSPA is based on a flawed concept of retired military pay as a pension, and, therefore, property that can be divided. However, federal statutes and case law have historically and consistently regarded military retired pay as reduced compensation for reduced services, with no attributes of a pension. This position has also been taken by the Defense Department, Internal Revenue Service, and U.S. bankruptcy courts. Therefore, the FSPA's treatment of retired pay as divisible "property" is in conflict with all other federal law.
- The FSPA has imposed severe hardships on military retirees and second families where divorce settlements finalized prior to the FSPA's effective date were retroactively reopened. Although the FSPA was amended by the 101st Congress to prohibit retroactive application prior to June 25, 1981, payments currently being made under prior retroactive reopenings of divorces were ordered to continue for another two years. This requirement was unreasonable and discriminatory since military retirees were given no such adjustment period when the FSPA was enacted.
- Unlike former spouse programs for the U.S. Foreign Service and Central Intelligence Agency, the FSPA makes no provision for the termination of benefits upon the remarriage of former spouses.
- The FSPA's implementation in the states has been inconsistent, contradictory, and confusing -- often contrary to congressional intent and decisions of the U.S. Supreme Court.
- The military services have not briefed their members on the FSPA. Consequently, most military people impacted by the law have been "blindsided".

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- The FSPA has created serious morale problems among active duty military personnel and has induced the pre-retirement exodus from the military of many career-oriented, highly trained officers and enlisted personnel. Both active duty and retired military members view the FSPA as a breach of faith, depriving them of a benefit (full retired pay) which they had been led to believe they would receive.
- The ARA's pursuit of FSPA reform is based on a platform of fairness and equity for both members of any military marriage ending in divorce. The ARA believes that divorce settlements should be based on merit, need and ability to pay — not blind adherence to an unfair law.

LEGISLATIVE PROPOSALS

- (1) Terminate payments of retired pay upon remarriage of former spouses. Terminate current payments to remarried former spouses not more than 180 days from the date of enactment of the amendment.
- (2) Restrict awards under the FSPA to correspond to retirees' length of service and pay grade at the time of divorce, not at time of retirement. On this basis, adjust all payments currently being made to former spouses not more than 180 days from the date of enactment of the amendment.
- (3) Preclude retroactive application of the FSPA for any divorce finalized prior to February 1, 1983, the effective date of the FSPA. (Publ. L. 101-510 of November 5, 1990, prohibits retroactive reopening of divorces finalized before June 25, 1981, the date of the Supreme Court's McCarty decision. This denies relief for those divorced during the "gap" period between the McCarty decision and February 1, 1983, the date the FSPA took effect.)
- (4) Establish a statute of limitations giving former spouses two years from the date of a final divorce to seek a division of retired pay under the FSPA.
- (5) Continue to limit the diversion of retired pay to "disposable," non-disability pay, as required by the FSPA. ARA opposes any legislation subjecting "gross" retired pay (which would include disability pay) to court awards under the FSPA. The current law needs to be strengthened in this regard since some state courts have continued to divide disability pay.
- (6) Prohibit military finance centers from making distributions of active duty pay pursuant to court orders citing, or appearing to cite, the FSPA as justification.

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Dr. Beverly LaHave
President



Susan Grant
Area Representative

Testimony to New Jersey Commission to Study the Law of Divorce
December 7, 1993

In the 1960's, in response to restrictive and unfair divorce laws, many women's advocates lobbied for the liberalization of divorce. Thirty years later we of the nation's largest women's group applaud your intent to look at the issue again. While there have been some benefits, we have reaped many unintended and tragic results from divorce liberalization. Today half of all marriages end in divorce¹. The number of children affected by divorce has increased from 300,000 in 1950 to more than 1 million every year. Less than 60% of our nation's children still live with both their biological parents².

Many originally thought that escape from an unhappy family situation would not cause lasting harm to children. But a growing body of evidence is proving that assumption to be terribly wrong. The harm is significant, and it is long-lasting. Children of divorce are far more likely than other children to experience low self esteem, depression³, worsening school performance⁴, substance abuse and other psychopathology⁵, and a persistent difficulty in forming lasting relationships⁶.

There are other far-reaching consequences of divorce that impact our society as a whole. One study indicates divorced women and their children experience a 73% decline in their standard of living in the first year after divorce⁷. The poverty rate of children living with their mother alone is five times the rate for children living with two parents⁸. Many of these disrupted families will end up on the welfare rolls. Children of divorce experience the dissolution of the most solid bond in their lives. They can grow up without the respect for promises and commitments which undergirds our society. The impact on our growing crime problem is obvious. Lack of a two-

¹Whitehead, Barbara Dafoc, "Dan Quayle Was Right," The Atlantic Monthly, April 1993, pg 50.

²U.S. Bureau of the Census, Current Population Reports, series P-23.

³Beer, J., "Relationship of Divorce to Self-Concept, Self-Esteem, and grade Point Average of Fifth and Sixth Grade School Children," Psychological Reports 65 (1989): 1379-1383.

⁴Bisnairs, L.M.C. et al, Factors Associated with Academic Achievement in Children Following Parental Separation," American Journal of Orthopsychiatry 60 (1990): 67-76.

⁵Goodyear, I. M., "Family Relationships, Life Events and Childhood Psychopathology," Journal of Child Psychology and Psychiatry 31 (1990): 161-181.

⁶Bonkowski, Sara E., "Lingering Sadness: Young Adults' Response to Parental Divorce," Social Casework 70 (April 1989): 219-233.

⁷Weitzman, Lenore J., The Divorce Revolution: the Unexplained Social and Economic Consequences for Women and Children in America, (New York, London: Collier Macmillan Publishers, 1985.)

⁸U.S. Bureau of the Census, Current Population Reports, Series P-20, no. 445.

parent family is the most important factor in whether a person becomes involved in crime - more important than socioeconomic factors⁹.

We are not saying that there is never a situation in which divorce is not appropriate. We would not counsel a return to a completely restrictive system. But because of the impact on our society of its negative consequences, the state has a compelling interest in taking steps to discourage the epidemic breakup of the family through divorce. It is appropriate and important that the Legislature place braking mechanisms into the system that will encourage married couples to preserve their marriage. The easier divorce is to obtain, the less effort many couples put into making their marriage work. Merely contemplating alternatives can itself generate marital discontent¹⁰. Thus, easy divorce becomes a self-fulfilling prophecy.

Many groups with varying philosophical bases are calling for reform of divorce laws. The National Council for Children's Rights, the American Legislative Exchange Council, the Family Research Council, the Progressive Policy Institute, and others join Concerned Women for America in supporting state initiatives for divorce reform. Some possible legislative reform include:

1. Braking mechanisms such as mandatory waiting periods before a divorce may be granted, perhaps with the stipulation that marriage counseling be sought.
2. Elimination or limitation of unilateral no-fault divorce, retaining no-fault for those cases where no children are present and both parties desire the divorce.
3. A two-tiered system written into marriage licensing that offers couples a choice between no-fault and a fault-only divorce regime.
4. Judicial recognition and enforcement of pre-nuptial agreements limiting the parties' rights to divorce.

And in cases where divorce is inevitable:

5. A presumption by the court of joint custody of the children.
6. Settling of children's custody before any other considerations, and all other division of material goods to be made with the children's benefit in mind.

Today in the United States the marriage contract is the easiest contract to breach. Dissolving a business contract or partnership is far more difficult than dissolving a marriage. This should not be so. On behalf of the over 600,000 men and women of Concerned Women for America, I thank this Commission for its initiative and encourage you to do your part to strengthen the marriage bond and through it the American family.

⁹Smith, Douglas A. and Jarjoura, G. Roger, "Social Structure and Criminal Victimization," Journal of Research in Crime and Delinquency 25, (Fe., 1986): 27-52.

¹⁰Glenn, Norval, "The Retreat from Marriage: Causes and Consequences (Lanham, Maryland: University Press of America, 1991)

B. DASS
10 BETH ANN WAY
TRENTON, NEW JERSEY 08638
(609) 771-0955

December 7, 1993

Honorable Walter Kavanaugh, Chairman &
Members of the Commission to study Laws of Divorce

Ladies & Gentlemen:

Most respectfully, I submit that the present laws of divorce do not adequately protect the "best interest" of the affected children. The present system only provides for the economic needs of children but it completely ignores their emotional and developmental needs.

Based on the following facts and analysis from experts and my personal experience as a non-custodial parent, I feel there is a desperate need to reform the laws of divorce to:

- provide presumption of joint custody and mediation as a method of resolving & minimizing divorce conflicts and, more importantly, providing equal access to both parents for children.
- make the child support guidelines more fair & equitable. (Please refer to the attached article "Child Support, Fixed Expenses and Discretionary Income For Divorced Parents" from the November, 1993 issue of "Trial Lawyer")
- establish emancipation age at eighteen (18) for child support purposes.
- provide/handle child support and visitation simultaneously. (Otherwise, the out-of-state non-custodial parent has extreme difficulty in getting visitation.)

The facts & analysis referred to above are given in the following excerpts:

- "Traditional sole custody is creating a generation of children who are being psychologically damaged by losing both parents when there is a divorce."
- "Custody implies ownership or imprisonment. Children are neither property nor prisoners. Rather than custody, think of how the children can be with each parent so that both (parents) can parent them in a meaningful way. This is, after all, what they really need for their emotional well-being & development."
- "Studies show that children need both parents and that they (children) suffer a great deal of psychological distress and long term problems (e.g. depression, withdrawal, poor self-esteem, poor grades, aggressiveness, rebelliousness) A frequent, regular and reliable contact with the absent parent is, therefore, very critical for the children." *when a parent is no longer a part of their lives
- "Co-parenting or sharing parenthood (when marriages dissolve) is the best solution to the divorce war to minimize the impact of divorce on children."

(Continued on page 2)

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Members of the Commission to study Laws of Divorce

- "Father's involvement in his children's lives has been found to be highly beneficial to the youngster's cognitive performance and school achievement, especially for boys. Sons also look to their fathers to provide a prototype of male behaviour and to help them develop a stable & valued sense of their own masculinity."
- " Though it may be tempting to place the blame for the limited contact fathers have with their children entirely on fathers' shoulders, studies find that the situation is more complex. Following divorce, the majority of fathers are found to miss their children intensely. They commonly report overwhelming feelings of loss, rootlessness and being "shut-out". They long for a meaningful relationship with their children. They begin to distance themselves from their children because of the frustrating inability to resolve the visitation dilemma with the other parent (mother). The non-custodial parent may well be the least understood party in a divorce."

The above excerpts are taken from the book "Divorce & New Beginnings" by Dr. Genevieve Clapp - a well known expert in the field of child psychology & mental health. A copy of her qualifications ~~are~~^{is} attached.

Thank you for your kind consideration. I trust the above information will be helpful in reforming the present laws of divorce.

Sincerely,



B. Dass