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**Hearing
Before the
United States
Commission on Civil Rights**

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DOMESTIC VIOLENCE

**HEARING HELD IN
HARRISBURG,
PENNSYLVANIA**

JUNE 17-18, 1980

Testimony

U.S. COMMISSION ON CIVIL RIGHTS

The U.S. Commission on Civil Rights is a temporary, independent, bipartisan agency established by Congress in 1957 and directed to:

- Investigate complaints alleging that citizens are being deprived of their right to vote by reason of their race, color, religion, sex, age, handicap, or national origin, or by reason of fraudulent practices;
- Study and collect information concerning legal developments constituting discrimination or a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, age, handicap, or national origin, or in the administration of justice;
- Appraise Federal laws and policies with respect to discrimination or denial of equal protection of the laws because of race, color, religion, sex, age, handicap, or national origin, or in the administration of justice;
- Serve as a national clearinghouse for information in respect to discrimination or denial of equal protection of the laws because of race, color, religion, sex, age, handicap, or national origin;
- Submit reports, findings, and recommendations to the President and Congress.

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EXHIBITS

(Exhibits are on microfiche. Microfiche copies may be obtained by writing to the U.S. Commission on Civil Rights, 1121 Vermont Avenue, N.W., Washington, D.C. 20425.)

1. Draft of Proposed Rules for Implementation of the Protection From Abuse Act of 1976 (This exhibit was not received in time for publication.)
2. Aphrodite Matsakis-Scarato, "Spouse Abuse Treatment: An Overview," *Aegis*, Winter Spring 1980, pp. 39-50
3. Harrisburg Police Department Annual Report of Crime Data (This exhibit was not received in time for publication.)
4. Ray Powell, "A Policeman's View of Crisis Intervention," *Mercyhurst College Law Enforcement Legal Newsletter*, vol. I, nos. 1-4 (1978)
5. Profile of Carlisle Police Department (1980)
6. Letter from State Court Administrator to Pennsylvania District Justices regarding implementation of Protection From Abuse Act of 1976 (This exhibit was not received in time for publication.)
7. Domestic Disputes in Perry County, Pennsylvania in 1979
8. Bloomsburg Women's Center Data (This exhibit was not received in time for publication.)
9. Legal Services Funding Sources Data (This exhibit was not received in time for publication.)
10. Data on Title XX Funding for Domestic Violence Programs (This exhibit was not received in time for publication.)
11. Directive to DHHS personnel from Assistant Secretary for Human Development Services regarding domestic violence as a FY 1981 initiative (This exhibit was not received in time for publication.)

12. Letter from G. Thomas Gates, President Judge of Pennsylvania's 52nd judicial district, to district justices, interpreting the Protection From Abuse Act of 1976 (This exhibit was not received in time for publication.)
13. Letter from G. Thomas Gates, President Judge of Pennsylvania's 52nd judicial district, to district justices, police departments, and members of the Lebanon County Bar, regarding Protection From Abuse Act procedures, May 14, 1980
14. Philadelphia Police Department, "Protection From Abuse," Directive 90, Oct. 19, 1979
15. Pennsylvania State Police Academy, Training Syllabus
16. Pennsylvania State Police, Physical Enlisted Complement Table (1980)
17. Pennsylvania State Police, Organization Chart (1978)
18. Women's Resource Network, training and therapy program materials
19. Women in Transition, Informational materials
20. Philadelphia District Attorney's Domestic Abuse Unit, grant application and quarterly report
21. Philadelphia District Attorney's Office, complaint data
22. Memorandum from Bebe Holtzman, Assistant District Attorney, to Frank J. Montemuro, Chief Administrative Judge, Philadelphia Family Court Division, regarding Contempt of Court, Protection From Abuse Act Orders, Feb. 15, 1980
23. Memorandum from Frank J. Montemuro, Jr., Administrative Judge, to judges of the Family Court Division regarding Contempt of Court, Protection From Abuse Act Orders, Mar. 6, 1980
24. Statement of Felicia Louise Gaines
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UNITED STATES COMMISSION ON CIVIL RIGHTS

Tuesday, June 17, 1980

The U.S. Commission on Civil Rights convened, pursuant to notice, at 8:40 a.m., in Room 107, College Center, Harrisburg Area Community College, 3300 Cameron Street Road, Harrisburg, Pennsylvania, Arthur S. Flemming, Chairman, presiding.

PRESENT: Arthur S. Flemming, Chairman; Stephen Horn, Vice Chairman; Murray Saltzman, Commissioner; Mary F. Berry, Commissioner-Designate; Jill S. Ruckelshaus, Commissioner-Designate; Louis Nunez, Staff Director; Eileen Stein, General Counsel; Gail Gerebenics, Assistant General Counsel; Donald Chou, Attorney-Advisor; Mary Anne Hoopes, Attorney-Advisor; and Anne Meadows, Attorney-Advisor.

PROCEEDINGS

CHAIRMAN FLEMMING. I'll ask the hearing to come to order.

In 1978 the U.S. Commission on Civil Rights began its study of women who are victims of domestic violence with a consultation in Washington, D.C., entitled "Battered Women: Issues of Public Policy." That consultation was the Commission's first step in a project designed to fulfill its statutory mandate to gather data and information concerning legal developments constituting discrimination or a denial of equal protection of the laws under the Constitution on the basis of sex, particularly in the administration of justice.

The first of our formal public hearings was held in Phoenix, Arizona, in February 1980. Phoenix was selected as a site because the laws and enforcement practices in Arizona appeared to be similar to those of most other States. The second and final hearing brings us to Harrisburg. As a contrast to the more traditional approach in Arizona, we decided to hold our second hearing in a State that had enacted legislation specifically designed to provide a remedy for victims of abuse. Pennsylvania, having enacted the Protection From Abuse Act in 1976, provides us the opportunity to study a legal system that has both the

traditional criminal laws and the specially designed civil law available as remedies for women who are victims of domestic violence.

The testimony received at both of these hearings, and other evidence obtained by the Commission, will be used to write a report to the Congress, the President, and the public containing our findings and recommendations.

We are delighted to have with us today, in the capacity of consultants to the Commission, the outstanding individuals who President Carter has nominated to serve as Commissioners and whose nominations are now before the U.S. Senate for confirmation. At this time, present are Dr. Mary Frances Berry and Ms. Jill S. Ruckelshaus.

I would like now to ask Vice Chairman Horn to explain the rules and procedures that govern this hearing.

VICE CHAIRMAN HORN. Thank you, Mr. Chairman.

At the outset I should emphasize that the observations I am about to make on the Commission's rules constitute nothing more than brief summaries of the significant provisions. The rules themselves should be consulted for a fuller understanding and are available from staff members. Staff will also be available to answer any questions that may arise during the course of the hearing.

All persons who are scheduled to appear have been subpoenaed by the Commission. All testimony will be under oath and will be transcribed verbatim by the official reporter. Everyone who testifies, or submits data or evidence, is entitled to obtain a copy of the transcript on payment of costs. In addition, within 60 days after the close of the hearing, a person may ask to correct errors in the transcript of his or her testimony. Such requests will be granted only to make the transcript conform to testimony as presented at the hearing.

All witnesses are entitled to be accompanied and advised by counsel. After the witness has been questioned by the Commission, counsel may subject his or her client to reasonable examination within the scope of the questions asked by the Commission. He or she also may make objections on the record and argue briefly the basis for such objections. Should any witnesses fail or refuse to follow any order made by the Chairman, or the Commissioner presiding in his absence, his or her behavior will be considered disorderly and the matter will be referred to the U.S. attorney for enforcement pursuant to the Commission's statutory powers.

If the Commission determines that any witness' testimony tends to defame, degrade, or incriminate any person, that person, or his or her counsel, may submit written questions, which, in the discretion of the Commission, may be put to the witness. Such person also has the right to request that witnesses be subpoenaed on his or her behalf. All witnesses have the right to submit statements prepared by themselves, or others, for inclusion in the record, provided they are submitted within the time required by the rules.

Any person who has not been subpoenaed may be permitted, at the discretion of the Commission, to submit a written statement at this public hearing. Such statements will be reviewed by members of the Commission and made a part of the record.

Witnesses at the Commission hearings, including those at the open session scheduled to begin tomorrow, June 18, at 4:30, are protected by the provisions of Title 18, U.S. Code, Section 1505, which makes it a crime to threaten, intimidate, or injure witnesses on account of their attendance at Government proceedings. The Commission should be immediately informed of any allegations relating to possible intimidation of witnesses. Let me emphasize that we consider this a very serious matter, and we will do all in our power to protect witnesses who appear at the hearing.

I would also like to explain briefly the special Commission procedure for testimony or evidence that may tend to defame, degrade, or incriminate any person. I would like to make clear, however, that we do not anticipate receiving such testimony, or using this procedure, at this hearing.

Section 102(e) of our statute provides, and I quote:

If the Commission determines that evidence or testimony at any hearing may tend to defame, degrade, or incriminate any person, it shall receive such evidence or testimony in executive session. The Commission shall afford any person defamed, degraded, or incriminated by such evidence or testimony an opportunity to appear and be heard in executive session with a reasonable number of additional witnesses requested by him before deciding to use such evidence or testimony.

When we use the term "executive session," we mean a session in which only the Commissioners are present, in contrast to a session such as this one in which the public is invited and urged to attend.

In providing for an executive or closed session for testimony that may tend to defame, degrade, or incriminate any person, Congress clearly intended to give the fullest protection to individuals by affording them an opportunity to show why any testimony that might be damaging to them should not be presented in public. Congress also wished to minimize damage to reputations as much as possible and to provide persons an opportunity to rebut unfounded charges before they were well-publicized. Therefore, the Commission, when appropriate, convenes an executive session prior to the receipt of anticipated defamatory testimony.

Following the presentation of the testimony in executive session, and any statement in opposition to it, the Commissioners review the significance of the testimony and the merit of the opposition to it. In the event we find the testimony to be of insufficient credibility, or the opposition to it to be of sufficient merit, we may refuse to hear certain witnesses even though those witnesses have been subpoenaed to testify in public session. Testimony that may tend to defame, degrade, or incriminate another witness is not permitted by witnesses in the open session.

The Commission's rules were drafted with the intent of ensuring that Commission hearings are conducted in a fair and impartial manner. In many cases, the Commission has gone significantly beyond congressional requirements in providing safeguards for witnesses and other persons. We have done that in the belief that useful facts can be developed best

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in an atmosphere of calm and objectivity. We hope that such an atmosphere will prevail at this hearing.

With respect to the conduct of persons in this hearing room, the Commission wants to make clear that all orders by the Chairman must be obeyed. Failure by one person to obey an order by Chairman Flemming, or the Commissioner presiding in his absence, will result in the exclusion of the individual from this hearing room and criminal prosecution by the U.S. attorney when appropriate. The uniformed officers stationed in and around this hearing room have been thoroughly instructed by the Commission on hearing procedures and their orders are also to be obeyed.

This hearing will be in public session today, Tuesday, June 17, and tomorrow, Wednesday, June 18. Testimony of scheduled witnesses begins today at 9 a.m. and will continue until 6:25 p.m., with an hour break for lunch. The session will resume tomorrow at 9 a.m. and continue until 4:30 p.m., with an hour and 15 minute break for lunch.

After the conclusion of the scheduled testimony at 4:30 p.m. on Wednesday, there will be an open session for members of the public who wish to bring information concerning the subject matter of the hearing to the Commission's attention. The time available will be filled on a first-come, first-served basis. If you wish to testify at this open session, please consult our staff who are at the entrance of the hearing room. There are three Commission requirements governing such open session testimony: testimony must be limited to 5 minutes; it may not defame or degrade or incriminate any person; and it must be directed to the legal system and its response to the needs of women who are victims of domestic violence.

Thank you very much.

CHAIRMAN FLEMMING. Thank you, Commissioner Horn.

It is my understanding that there is present one of the members of the Pennsylvania State Advisory Committee. I would like to say that our Pennsylvania State Advisory Committee is a very active committee and is one that has been of tremendous help and assistance to the U.S. Commission on Civil Rights in connection with many of its activities.

I, therefore, am happy to recognize at this time Ms. Terri Price, who is a member of the Commission and lives in Harrisburg. Is she present?

WELCOMING STATEMENT OF TERRI PRICE, PENNSYLVANIA ADVISORY COMMITTEE TO THE U.S. COMMISSION ON CIVIL RIGHTS

MS. PRICE. Yes, thank you very much. Let me, first of all, apologize for my tardiness. Good morning, ladies and gentlemen.

It is my pleasure to welcome the Commission to Pennsylvania on behalf of the Commission's Pennsylvania Advisory Committee and on behalf of the citizens of the Commonwealth of Pennsylvania. As you are probably aware, Pennsylvania was among the first States to pass a State equal rights amendment and has, of course, ratified the proposed Equal Rights Amendment to the Federal Constitution. In addition, the Pennsylvania legislature has very recently reformed our divorce law. The law that brought the Commission's attention to Pennsylvania, the

Protection From Abuse Act, has been in effect in our State since 1976, again putting Pennsylvania in the position of being among the first States to enact such a statute.

We on the State Advisory Committee are very pleased that the Commission has chosen to include Pennsylvania in its national study about women who are victims of domestic violence, and we hope that some of the steps that our State has taken toward making conditions better for women will prove useful to other States. We also hope that those in positions of authority, some of whom will be testifying before you during the next 2 days, will heed the Commission's findings and recommendations and realize that there is still work to be done in this and other areas before women will be accorded their full rights under the law.

The Pennsylvania State Advisory Committee has worked hard to further the goals of the agency. The Commission's work has been advanced and supported through the contacts it has established in the community through its State Advisory Committees. State Committees advise the Commission on local concerns and issues in the area of civil rights by providing information on national projects and writing recommendations for reform to the Commissioners, based on independent studies they have conducted in their regions.

Advisory Committee members appointed by the Commission are a diverse group of people in terms of sex, race, ethnicity, religion, age, handicap, political party, and occupation. What we have in common is a sensitivity to civil rights issues and a commitment to the goal of equal opportunity. We bring to our work with the Commission a special understanding of the needs of our communities.

As a member of the Pennsylvania Advisory Committee, I am proud of the long-standing relationship our Committee has established with the Commission through various projects. We have reported to the Commission on such diverse issues as police misconduct in Philadelphia and the working and living conditions of mushroom workers in southeastern Pennsylvania. The Committee has undertaken ongoing monitoring of conditions in the Lewisburg State Penitentiary, school desegregation in Pittsburgh and Philadelphia, and police practices in Philadelphia. We also made a major contribution to the Commission's national affirmative action project by studying employment practices in Philadelphia and the activities of community organizations, civil rights groups, and Federal regulatory agencies promoting affirmative action in employment.

I know that the Commission staff members have been working in our State for several months in preparation for this hearing. I am sure that their research and the testimony we will hear during the next 2 days will make a significant contribution toward national and local efforts to combat the growing problem of domestic violence. Again, Commissioners and distinguished guests, we welcome you to Pennsylvania.

CHAIRMAN FLEMMING. Thank you very, very much. We appreciate your being here and we appreciate your comments.

Ms. PRICE. Thank you very much.

CHAIRMAN FLEMMING. Counsel will call the first witnesses.

Ms. STEIN. Will Barbara Hart and Lynn Gold-Bikin please come forward?

[Barbara Hart and Lynn Gold-Bikin were sworn.]

TESTIMONY OF BARBARA HART, LEGISLATIVE CHAIR, PENNSYLVANIA COALITION AGAINST DOMESTIC VIOLENCE, AND LYNN GOLD-BIKIN, CHAIRPERSON, DOMESTIC VIOLENCE COMMITTEE, PENNSYLVANIA BAR ASSOCIATION

CHAIRMAN FLEMMING. We appreciate your being with us.

Ms. STEIN. For the record, would you please state your name and organizational affiliation, beginning with you, Ms. Hart?

Ms. HART. My name is Barbara Hart. I am with Central Pennsylvania Legal Services. We are a seven-county legal services program here in the central Pennsylvania area. I also, I believe, am wearing the hat today of being the attorney that relates primarily to the Pennsylvania Coalition Against Domestic Violence.

Ms. STEIN. Ms. Gold-Bikin?

Ms. GOLD-BIKIN. I am Lynn Gold-Bikin. I am State chairman of the Domestic Violence Committee for the Pennsylvania Bar Association. I am also national chairman of the Domestic Violence Committee for the Family Law Section of the American Bar Association.

Ms. STEIN. Thank you.

Ms. Hart, would you please describe for us the events leading to the passage of the Protection From Abuse Act of 1976?

Ms. HART. Yes. I'm pleased to say that Legal Services had a major role in the Protection From Abuse Act here in Pennsylvania. Back in 1975, attorney Larry Mass, who was with CLS at that time, and a domestic violence relations specialist, became aware that in the course of his practice the relief he was able to provide for his clients was limited, and one of the things that they needed desperately was some safety, some relief from violence in their homes. He initiated conversations with Judge Montemuro of the Court of Common Pleas in Philadelphia about the possibility of creatively developing something that was not on the books, using the equity powers of the court to create temporary restraining orders in cases where the lives of women and their dependent children were in danger.

So this temporary restraining order grew out of Judge Montemuro's court. However, there was not authority in the law for that particular practice, so attorney Mass began discussing the need for something other than—the only legal remedy at that point that was civil or quasi-criminal was a peace bond that was ineffective and took forever, if, in fact, one ever got relief under it—and began to speak with Senator Hill, when he was actually on a train ride from Harrisburg to Philadelphia, about the need for some kind of restraining order.

And as a result, he and Senator Hill and the staff of the judiciary committee drafted a piece of legislation. There was a lack of receptivity on the part of the senate at that point, and the matter was dropped until the following year when the senate judiciary committee itself, along with attorney Mass, began to look at the language that apparently had

been, unfortunate or not, well received by the Senate and redrafted what we now have as the Protection From Abuse Act, and introduced that. There were public hearings both in the senate and the house, and in almost record time, the legislation passed.

Ms. STEIN. Could you tell us when the Pennsylvania Coalition Against Domestic Violence was established, and what the reason was for its establishment?

Ms. HART. Well, in the process of developing the legislation, attorney Mass and others began to talk with shelter programs around the State. At that time, it is my recollection that there were only programs in Pittsburgh, Philadelphia, Lancaster, and Harrisburg, and those women began a dialogue with the legislators and Legal Services attorneys about specifics of the legislation and were involved in some testimony on the legislation.

After the legislation passed, the group of women who had met—actually in the process of lobbying for the legislation—decided that they needed to get together for information-sharing because they were embarking upon an absolutely new course of providing assistance and advocacy for battered women, and that there were many knotty problems that needed to be resolved. They felt that the one way to resolve those was by sharing information, so that in October of 1976, prior to the effective date of the legislation, we met for the first time in Lancaster to begin to learn and educate ourselves about the legislation and its effective utilization and to begin to share and problem solve with each other.

Ms. STEIN. Could you describe for us very briefly how the Protection From Abuse Act works?

Ms. HART. Sometimes well and sometimes not well.

Ms. STEIN. I mean, what the provisions of it are, what relief it provides for?

Ms. HART. There is major relief that is available over the weekends by district justices who are the lowest level of our judicial system. That, without being pejorative, is round number one.

In Philadelphia, it's the municipal court. When a woman has been violated, when she is held with the threat of physical violence, or when there has been sexual abuse of her children, she may go to her district justice on the weekend and ask for emergency relief.

If abuse occurs during the week, then she must seek assistance from the court of common pleas and file a petition. She is entitled to temporary relief, as appropriate. That temporary relief may include an eviction or exclusion of the batterer from the home. It may include temporary custody of the children. It may include support. It may include just a directive or injunction against further violence. In fact, as the law is written, it is not exclusive. A judge can be as creative as he or she desires in providing that temporary relief.

Then there is a full hearing. The temporary relief may be granted ex parte; if it is, a full hearing is scheduled within 10 days of the filing of that petition, and at that time, the respondent/batterer has the opportunity to appear and set forth any defenses that he or she might have against the petition and the final relief that is sought.

Then again, the court has the option of providing very expansive creative relief at the final order. Should there be a violation of the order, then the court also has authority to impose contempt upon—punishment upon the respondent—that the contempt is now written in terms of indirect criminal contempt, a hybrid that has created some confusion in this State, I might add. But the court can give the violating respondent up to 6 months in jail, up to \$1,000 fine, and do anything else that it feels will effectuate the purposes of the act.

MS. STEIN. Now, the act was amended in 1978, is that correct?

MS. HART. That's correct.

MS. STEIN. Can you tell me whether the act—and I take it the description you've just given is the act as it presently exists?

MS. HART. That's right.

MS. STEIN. Are there any problems that remain in the act in your perception?

MS. HART. Yes. I understand that the '78 amendments were drafted—probably about 6 months after the effective date of the act. Primarily, it is my belief, anyway, that the effectiveness—as effective as this act is in Pennsylvania—a lot of that is due to both the credit of battered women's programs around the State who have been major educators of their local judiciary, police, other law enforcement agencies, as well as Legal Services attorneys who have seen this as a very helpful piece of relief for our clients.

The problems became apparent, however, immediately, and we drafted the amendments and they passed absolutely quickly. I think that, because of the clear problems in the first 6 months, we were somewhat shortsighted and did not address long-term problems and, therefore, we are now faced with, I think, some not insurmountable, but difficult, problems.

In some counties—for example, in Berks County, from where I come—we have been able to meet the problems with the act by adopting local rules. We have very sympathetic and cooperative court administrators, very decent judges who have recognized the importance of the act and have taken it upon themselves to help us create, by local rule, procedures that will expedite the effectiveness of the act. But in other counties around the State there is mass confusion, particularly with regard to the enforcement provisions of the act.

I spoke last week with a woman from Pittsburgh, and apparently there is absolutely no consistency and total confusion about what one does once there is a violation of the act in Pittsburgh. That's not unlike many other counties in the State; therefore, we are in the process of—and Lynn is involved in this as well—drafting rules that we feel will take care of the major deficiencies in the act at the present time.

MS. STEIN. Do you have a draft copy of the rules that you are proposing?

MS. HART. Yes. We have a draft copy, but what I would ask is if we could submit to you, within 14 days, a final draft copy. We could give you what we have right now, but there are some substantial changes that we are now considering and, therefore, if 14 days from now we could submit that, it would be helpful.

Ms. STEIN. May I request that the record be kept open to receive that as an exhibit when it is submitted?

CHAIRMAN FLEMMING. Without objection, that will be done.

Ms. STEIN. Thank you.

Are there any problems, other than confusion, about what the enforcement provision of the act that you see, as it presently exists?

Ms. HART. There are some problems. For example, indirect criminal contempt is not in the Pennsylvania crimes code. When a police officer determines that there is probable cause to believe there is a violation of the act, then, therefore, he or she has the responsibility to act. When the officer takes the victim to the district justice or the municipal judge, he then usually doesn't know what to do because, when a police officer charges persons with crimes in Pennsylvania, there's a number for every crime. There is no number in the code for indirect criminal contempt so that, unfortunately, police officers and district justices in many jurisdictions have thrown up their hands: "What do we do? We don't know what to do." So one of the things we have attempted to do is draft some forms so that the supreme court of the Commonwealth can adopt these forms and that police officers will have no questions about what they are to do once they have arrested for probable cause of a violation.

Ms. STEIN. Is it clear that the court can mandate counseling when a Protection From Abuse Act case is brought before it?

Ms. HART. No, it's not. I think it is our position, as will be reflected in the proposed rules that you receive, that there is no entitlement to counsel except in the contempt portion. In some counties the courts have appointed attorneys for indigent clients.

Ms. STEIN. No. My question really referred to counseling.

Ms. HART. Counseling, I'm sorry. There is no requirement of counseling in Pennsylvania if that—

Ms. STEIN. Is that a deficiency of the act in your view?

Ms. HART. No. I think that a court has a discretion to order counseling, but I think that mandatory counseling is not helpful. I think that until the person, the batterer, recognizes very seriously the nature of his acts and any very strong righteous feelings about the wrong of what he's done, counseling doesn't do any good. I think that it is our experience that a batterer, when he is directed to go to counseling, not having recognized the very serious problem that he has, treats it very manipulatively and, therefore, just has been able to slide around the law and the woman that he has abused.

It is one more way for him to take control over her by going to a session and doing nothing with that session. It creates hopes for her that he'll change and it just doesn't happen.

Ms. STEIN. Thank you.

Ms. Gold-Bikin, can you tell me what the Domestic Violence Committee of the Pennsylvania Bar Association Family Law Section, or you, in your role of chair, has done in support of the Protection From Abuse Act?

Ms. GOLD-BIKIN. Yes. I come from a different perspective than Ms. Hart does. Most of the clients that I deal with are wealthy clients.

When the committee was formed, it was formed, first of all, to disseminate information and perhaps raise the consciousness, if I may use that woman's lib term, of the other lawyers in the community as to the fact that abuse was not only in the poor minority families. So the first thing we did was put on programs at bar association meetings to involve all of my colleagues in the Protection From Abuse Act.

The first program we put on was at the Philadelphia meeting of the Pennsylvania Bar Association. At that time we had somebody from the Philadelphia Police Department discuss how they handled domestic violence calls.

We had somebody from one of the women's centers to discuss the myths connected with abuse—that all abusers were poor, drunk men, and that all of the women either liked the abuse or were poor and dumb and black or pink or anything but white. We had a film, which I recommend heartily to all of you, called "Violence Behind Closed Doors" or "We Will Not Be Beaten," so that people understood that abuse was not a smack in the face but could involve maiming, breasts being cut off, broken arms, really horrendous things that nobody had ever really dealt with in terms of what abuse was.

We then had someone to discuss the possible remedies other than the act in terms of shelters and counseling, and counseling for abusers as well as abusees. We then had two women who had been abused, and we specifically chose women who came from the area that most people didn't think they came from, wives of professional men—wealthy, educated women who had been subjected to abuse and who described not only their experiences but their inability to get help. We found this program to be so successful that we are doing it around the State.

In addition, we are also attempting to put on panels for the judiciary in the various counties because we find that one of the problems in the enforcement of the act is the innate prejudice that is brought by the bench to their role as judges—the attitudes that women like to be beaten, the attitudes that we will not put a man out of his house for this because it goes on in every family. And also, help in terms of the creative solutions that Barbara's been talking about—what else the judges can recommend and understanding that there are counseling provisions that can be not only for the abuser but for the abusee as well. So we perceive our role as disseminating information and helping lawyers to understand that this is a problem of family law, that many of their clients do not tell them when they are abused because many women are simply embarrassed to say that they've been abused, and that the knowledge of a lawyer that this goes on in many, many families encourages them to encourage their clients to talk about it, and that they can be better lawyers because of it.

Ms. STEIN. What steps do you think can be taken to increase the effectiveness of the act?

Ms. GOLD-BIKIN. Well, one of the major things, from my perspective, is education of the judiciary. I think there is a great lack of understanding of what abuse really is. I don't want to repeat my testimony, but I will tell you that I have been shocked by some of the comments that have been made to me in the retiring room of judges.

One judge said to me, "You know, women like to be beaten." And when I said, "Your Honor, I don't think that's funny," he said, "That's what I hate about women, they have no sense of humor."

I then practice in the bathroom asking the judge to recuse himself and then I practice being dragged off to the slammer for contempt. But I think one of the problems we have is a complete lack of understanding by the judiciary as to what we are dealing with.

I have judges who have told me that because the women have taken the pictures of their bruises that they are obviously preparing for litigation and should not be awarded the remedy of a 3-month protection from their husbands by having them put out of the house.

I think that judges simply need to be educated first and foremost about what we are talking about when we are talking about abuse. So the first thing I think of is education of the judiciary.

The second thing I think is necessary is education of the police. From county to county, from police district to police district, this act is handled differently. We have police who say they don't want to get involved. On the other hand, we have police who follow up very carefully as to how this is enforced and how women are protected when they are abused.

I think we need rules desperately. The reason I think that Barbara has asked that you hold the record open for 14 days is because we have a family law meeting of the Pennsylvania bar in Hershey on the 28th of June, and we intend to bring these rules up to the bar association and ask that they be checked and looked over and have additions made. So, hopefully, we will come out with something at the end of June as to rules that should be recommended to our supreme court.

Those are some of the things I think are necessary to make this act effective.

MS. STEIN. Are you aware of criticisms that have been made that the act is unconstitutional?

MS. HART. Yes, I certainly am. And I am aware of it from two perspectives: one, from the judges who say they will not enforce it because they believe it to be unconstitutional, and the second, from people who threaten to raise the unconstitutionality of it but never do.

The act, by its very nature, is not appealable. That's not to say that the act itself says it is not appealable, but if you think about the length of the appellate procedure and the process, you realize that if you put a man out of his house for a year and he appeals, by the time his appeal is heard in the superior court and a decision is rendered, that year is up.

For the woman who does not get the remedy that she asks for, by the time her appeal goes through the appellate process, she is dead or badly bruised and beaten. So by virtue of the nonappealability, if that's the right word, of the act itself, it has never really gone to the superior court of our State to have it questioned, although there has been a lower court decision in Pittsburgh.

Many judges have said to me, "I do not intend to enforce this because it is unconstitutional," and I said, "Your Honor, it's the law," and they say that they believe it is unconstitutional and do not.

One presiding judge in a rural county has informed his bench that they are not to accept any filings because he believes it is unconstitutional, but it has not been declared so. I would suggest to this distinguished panel that it is not an unconstitutional act because, if it were unconstitutional, it would not provide the procedural safeguards that due process requires. Due process simply requires notice and opportunity to be heard.

This act provides both. We are not taking away from someone something without their right to go to court and defend against it. If somebody punches somebody and a civil remedy is brought and that person is fined a certain amount of money for punitive damages, we do not say that it is unconstitutional; they have had due process. They have had the right to come in and say they have not punched that other person, they have not assaulted them. If they are found to have done it, they are deprived of some property, namely, money.

Well, what this act is saying is: "If you abuse your spouse, you have the right to notice; you have the right to a hearing, but if it is found that you have abused your spouse, you will lose, for a temporary moment, the right to live in your home."

We are always balancing two rights: we are balancing the right of someone to abuse and the right of someone to live free from fear of constant harassment and physical violence—and I do not think we will ever find this act to be unconstitutional.

Ms. STEIN. Thank you very much.

CHAIRMAN FLEMMING. Commissioner Horn?

VICE CHAIRMAN HORN. I was interested in the comment that Ms. Hart made with regard to the problems of counseling as you have seen it. As I understand it, your argument is that, first, to get any change in behavior, there must be a recognition by the abuser that, indeed, this is wrong and this conduct is unacceptable.

And I take it your view of counseling, or those types of counseling you have experienced, is that they aren't really coming to grips with the ethical right/wrong nature of the abuse; instead, they are trying to sort of, through indirect methods, or whatever, say, "Well, we all have a lot of problems" and so forth and so on.

Now, I am not a counselor, not a psychologist—I took one course in college and don't claim to be an expert in this area. I know there are a lot of different varieties of counseling. I just raise the question for further elaboration: have you been too hard on counselors? Are there not types of "reality therapy" or others that perhaps trained psychologists, counselors, could bring directly to the individual, through group or individual sessions, some type of experience which would force the individual to confront the illegal behavior?

Ms. HART. Yes, I think there is appropriate counseling and I would like to refer the Commission to an article—unfortunately I don't have the name of it, but it was in "Aegis"—this edition written by a woman from the Veterans Administration Hospital in the District of Columbia who talks about the various therapies available to batterers and which are effective. She quotes extensively from the book by Lenore Walker in which there is a very clear approach to the recognition of the

reprehensible nature of the act at the beginning of counseling and it goes from there.

One of the things that most counselors, I'm afraid, do believe is that the primary purpose of counseling is to save the relationship. From my perspective, the primary purpose of counseling is to stop the violence and, unless the counselor keys into the batterer's problem with violence instead of the nature of the marital relationship, there will be no change, and so that at some point when we have educated the counseling, therapeutic community outside of the shelter movement to the need for that kind of very directive, clear, in my perspective, righteous counseling about what appropriate behavior is and how one controls one's violence, then perhaps we will see some effectiveness in the counseling forum. At this point I see there is almost none.

VICE CHAIRMAN HORN. I take it neither the coalition nor the Pennsylvania bar have done studies in this area as to the effectiveness of counseling, or had experts brought in to have a summary of such studies on changes in attitude and behavior?

MS. HART. Neither that I know of. The studies that have been done, however, are mentioned in the article that I referred you to, and certainly one of the most recent studies is the one that Lenore Walker engaged in.

VICE CHAIRMAN HORN. Could you file a copy of that article for insertion in the record at this point?

MS. HART. I will be glad to.

CHAIRMAN FLEMMING. Without objection, it will be inserted in the record.

VICE CHAIRMAN HORN. Thank you.

CHAIRMAN FLEMMING. Commissioner Ruiz?

COMMISSIONER RUIZ. Our format is established upon the premise that the only victims of domestic violence are women. Given the comparative strength, on the average, of male and female, it is to be expected that in hand-to-hand combat the male will usually prevail.

Are there any problems with relation to male reaction on the issues of abuse? Have any persons or groups espoused the cause of males who complain of physical or mental abuse by their respective wives?

MS. GOLD-BIKIN. If I may respond to that, I represent some men who have been abused by their wives. I am also involved with a group called the "Men Resource Center" in Philadelphia, headed by Gerald Evans, who does counseling of both abusees and abusers. They are the first group that I personally know of that counsels men who abuse, which I think is a very, very important thing that we need to plug in here. I know of no group that counsels men who have been abused, but I have represented, on at least two occasions that I can think of under the Protection From Abuse Act, men who have been abused by their wives, and the wives are not necessarily larger or stronger.

The premise that men normally are the abusers because they are bigger and stronger may be true, but it is not always true. Historically, women have protected other women because, in the past, nobody ever has, and we tend to talk about women as the abusees, but we have an

equal rights amendment in this State, and this act is not only designed to protect women; it's designed to protect anyone.

COMMISSIONER RUIZ. Aren't the women to be protected usually those that have young children that are helpless and out of the home and, of necessity, because of the dependency and the bond between young children and the mothers, aren't those women usually the ones that are in most need of protection?

Ms. GOLD-BIKIN. No, sir. If you will look at the act, you will see that the act is designed to prevent abuse between members of a family who are living together; the act can also encompass "granny bashing," which is a new thing that we're talking about lately, which is where older people live with their children and are physically abused, which is happening more times than we care to talk about it. So we are also protecting old people.

We are also protecting children because this act protects children who are abused not only physically but also sexually. This act is very, very broad. It can potentially protect two people who are living together in a homosexual relationship. It is not only women and mothers of young children; it is any person who is living together in a family relationship and is abused, and when you have a 40- or 50-year-old woman who has been living with a man for 30 years and has no way to protect herself or support herself and is abused, we must protect her as well.

COMMISSIONER RUIZ. The act, therefore, is indeed broad and much more broad than I realized, particularly after our first hearing in Arizona. I believe you are to be congratulated as a pioneer in this particular type of legislation.

VICE CHAIRMAN HORN. I would like to get that definition cleared up. You mentioned that the act could protect individuals in a homosexual relationship. Has there been a ruling under the Pennsylvania ERA which defines sex to include sexual preference? I am just curious, for the record, since this is a recurring discussion.

Ms. GOLD-BIKIN. No, there has been no such designation, nor would there be under this act. It would only come under the act because of the definitional section, which says it protects people living together. It would have nothing to do with the ERA.

COMMISSIONER SALTZMAN. I would like to get back to the line of questioning of Vice Chairman Horn. In our first hearing, there were diversionary vehicles or instruments that the court could use. One of them was mandatory counseling. I believe you feel that mandatory counseling, Ms. Hart, is not at all a good direction?

Ms. HART. That's correct.

COMMISSIONER SALTZMAN. When does it become clear, or how do you recognize whether or not, or at which point, the batterer has ceased to appeal to violence to resolve problems of the family? Can a court order—what happens in the process? What's the point at which the judge can make a determination that there has been some remedy—

Ms. HART. Some change?

COMMISSIONER SALTZMAN. —some change, yes.

Ms. HART. Well, again, this is not set forth in the act. However, the batterer who has been excluded certainly has the option under the act to come in and ask for a modification of that order, to be returned to the home, to have the order dropped, whatever, and I would suggest that his burden of proof in that situation would be to show consistent support, lack of harassment, careful visitation with the children so as not to precipitate any emotional and/or physical violence, a responsible involvement with the family in a noncoercive, nonabusive way.

I don't think that can happen very quickly. I think that the courts are reluctant to think miracles—I agree with them—occur within 30 days. It has been my experience and it's my belief that in those situations when a man wants to come to terms with his violence and wants to control that behavior, it usually takes about 6 months of his very heavy, individual investment in counseling and other kinds of self-discipline treatment before he is able to avoid the violent pattern.

I think that happens rarely. I think that one of the reasons that it happens rarely, as soon as the woman clearly says to him, "I want to be in a safe place. I want for myself and for the children"—if there are any—"a safe milieu," he says, "Well nuts to you, lady. I'll get a divorce."

The primary response—at least it's been my experience—of men once we have brought a protective order, "Well, if you don't like it, I'll get a divorce. I'm not willing to deal with this seriously. I'm not willing to change." However, in the unusual case, when a man does engage in some real self-examination, it is my experience that it is about 6 months before that self-examination and self-discipline is sufficient for a reconciliation.

COMMISSIONER SALTZMAN. Apparently what I'm hearing is that the batterer—there really isn't, or there rarely is, a solution—mandatory counseling isn't the direction, though counseling is the vehicle you're suggesting, but he has to undertake it on his own, not as a result of a court order?

Ms. HART. Yes, it is my belief that voluntary counseling can be very effective. In all candor, let me suggest that I'm not supportive of diversionary mechanisms in the criminal justice system. I attended the National District Attorneys Association meeting in Memphis last year and was very pleased that there was one person from the academic community that clearly recommended the most novel approach to the prosecution of criminal matters in domestic assault cases, and his suggestion was prosecution, something that is rarely done.

It is very hard for a woman to bring a charge—private criminal complaint against an abuser—and have that dealt with in any fashion similar to the kind of prosecution that happens when the victim is a victim of a stranger assault and, therefore, from my perspective at this point, if the victim elects to go the criminal justice system route in Pennsylvania, then diversion is inappropriate.

I mean, diversion is inappropriate from my perspective. The district attorneys' offices in the Commonwealth can say, "Well, we have discretion and our caseloads are too high."

In terms of relief from the problem, I think that the Protection From Abuse remedy, the civil remedy, offers immediate, comprehensive, sufficient relief, and that is what we're concerned with. In terms of prosecution and incarceration, I think that it will be very novel if district attorneys in the Commonwealth would see to the same vigorous prosecution of domestic assault as they do to nondomestic assault.

COMMISSIONER SALTZMAN. Just one final question: is it the experience of both of you that most batterers do not come to terms with the impulses within themselves that lead to acts of violence? That's what I'm hearing from you, Ms. Hart.

MS. HART. I don't think they are necessarily impulses, sir. However, I think that it is a real, very—it is a very clear, cultural training with regard to power. Men in this culture, except in the rare situation of enlightened men, are in power relationships with women in which they have control and the ability to coerce. I think that once a man who is a batterer comes to grip with the facts that he has no right to exert power and coercion over his spouse, then change may come.

It is not his impulses. Clearly, he doesn't beat up his boss. He doesn't beat up his secretary. He doesn't, you know, beat up the kids on the block. It is not impulses; it is a power relationship, and once he comes to grip with the impermissible and equity of power in that relationship, and makes a conscious decision not to invoke his power by virtue of his size, by virtue of the culture, then change can occur, but not until that time.

MS. GOLD-BIKIN. If I may say something, I think that domestic violence is learned behavior. I think that men who abuse—and I'm saying men, although I told you I don't think it is only men—men who abuse have learned that that is the way to respond based on what they have seen in their own families. I happen to favor counseling in many instances because I think, if you do not have some kind of counseling, you will have the repeating cycle.

The children of abused mothers will learn that that is the way to respond. They will lose respect for the abused mother because the father has no respect, that the way to deal with this problem is clearly to knock her around, and that's the way you get your own way. I have many situations, I have the fantasy that I can help people and, where there is clearly a marriage where the parties want to stay together, but the behavior is inappropriate because of the beatings, many times we will attempt to work out a situation where the parties will stay apart for a certain period of time and both members of the family will go for counseling, because not only must the abuser learn to change his behavior, but the abusee must learn to change her behavior as well—she must learn not to accept it; she must learn to have respect for herself. The first time he raises a hand to her is the time she says, "I will not accept this."

COMMISSIONER SALTZMAN. My question was—the implication I have is that it rarely happens that the change takes place.

MS. GOLD-BIKIN. I don't think that is true. I don't think it happens a lot of the time, but where both members of the family truly want that marriage to be saved, however, they do not want the behavior to

persist and they both agree. As Barbara says, it's got to be something they both want to do. It is not something that can be imposed upon them by the courts but, if they both agree, the marriage can be saved provided they both go for counseling.

CHAIRMAN FLEMMING. Commissioner-designate Berry?

COMMISSIONER-DESIGNATE BERRY. I have only one question I would like to ask you, Ms. Gold-Bikin. You mentioned the issue of constitutionality of the act and you were asked and you responded. Is the fact that there's been no decision on the constitutionality one reason why many of the judges, as you pointed out, simply refuse to contemplate cases in their courts under this act? Do you think, if you get some kind of expedited appeal, that that might help the problem?

MS. GOLD-BIKIN. The answer to the question is yes and no. I think it is correct that as long as there is no appellate court decision as to the constitutionality, the common pleas court judges can say, "We think it is unconstitutional."

The fact that there has been a Pittsburgh decision as to the constitutionality, as you understand, is not binding on the rest of the common pleas courts. However, I still have many judges who say, "I don't care what the superior court says. I'm going to handle it the way I want to" and will find some other excuse, because many times when they say, "I don't think this act is constitutional; I'm not going to enforce it," that's their excuse for not enforcing it, but not the reason they are not enforcing it. They are not enforcing it because they don't believe that men should be out of their homes for abusing their wives because it goes on in every family, and I have been told that by more judges than I care to tell you.

CHAIRMAN FLEMMING. Commissioner-designate Ruckelshaus?

COMMISSIONER-DESIGNATE RUCKELSHAUS. This is a question for either of you, I suppose. Ms. Hart, does the act embrace marital rape?

MS. HART. No. Theoretically, it could, but at this point we have not litigated on that issue. It certainly talks about physical menace and the threat of great bodily harm. I don't know that the courts would consider physical menace of assault marital rape.

I certainly think that marital rape that involved clear bodily harm, or the attempt at bodily harm, could be included, but it is certainly not set forth in the act as a separate category. I think that under the first and second definitions of what assault is, yes, it could be included, but the act does not set that forth.

COMMISSIONER-DESIGNATE RUCKELSHAUS. This isn't something that you find as a weakness in the act and it's not something that you would—

MS. HART. No. We always recite—if one of the instances of abuse happens to be marital rape—we recite that in our petition in the allegations of violence, and although there is no such thing in the Commonwealth as a criminal statute regarding marital rape, the judges in my experience, in my county, which, albeit, is fairly receptive, do not give me long lectures about the absence of marital rape in the criminal code and entertain that as an allegation with regard to the civil relief.

CHAIRMAN FLEMMING. Mr. Nunez, do you have anything?

BEST DOCUMENT AVAILABLE

MR. NUNEZ. No.

CHAIRMAN FLEMMING. We appreciate very, very much the contributions that both of you have made. It has been a very interesting opening panel. Thank you for being with us.

Counsel will call the next witnesses.

MS. GERE BENICS. Will Ms. Debra Baldwin, Donna Glover, and Peggy McGarry please come forward? Mr. Chairman, Donna Glover is with us today but is losing her voice and has brought her assistant, Ida Farber. We will direct the questions to both of them.

[Debra Baldwin, Ida Farber, Peggy McGarry, and Donna Glover were sworn.]

TESTIMONY OF DEBRA BALDWIN, EXECUTIVE DIRECTOR, WOMEN IN CRISIS; IDA FARBER, ASSISTANT DIRECTOR, LANCASTER SHELTER FOR ABUSED WOMEN; PEGGY MCGARRY, EXECUTIVE DIRECTOR, WOMEN AGAINST ABUSE; AND DONNA GLOVER, DIRECTOR, LANCASTER SHELTER FOR ABUSED WOMEN

CHAIRMAN FLEMMING. Thank you very much. We appreciate your being with us.

MS. GERE BENICS. Beginning with you, Ms. Baldwin, would each one of you please state your name, title, and your shelter affiliation for the record, please?

MS. BALDWIN. Yes, my name is Debra Baldwin. I'm the executive director of Women in Crisis, which is the shelter and counseling program serving Cumberland, Dauphin, Lebanon, and Perry Counties.

MS. GERE BENICS. Ms. Farber?

MS. FARBER. Ida Farber, assistant director of the Lancaster Shelter for Abused Women serving Lancaster County, Pennsylvania.

MS. GLOVER. I am Donna Glover. I'm the director of the Lancaster Shelter for Abused Women.

MS. MCGARRY. I'm Peggy McGarry. I'm executive director for Women Against Abuse which is a shelter and legal services program in Philadelphia.

MS. GERE BENICS. Thank you. Beginning with you, Ms. Baldwin, would you briefly explain the services that your shelter provides to abused women?

MS. BALDWIN. Yes. Women in Crisis provides emergency shelter for a maximum of 30 days, individual family and group counseling to residents of the shelter and to nonresidents of the shelter, police and district justice training, and child care services.

MS. GERE BENICS. How large is your staff?

MS. BALDWIN. We have nine full-time staff and two part-time.

MS. GERE BENICS. Could you also briefly describe the women you serve in terms of their economic, racial, or ethnic backgrounds?

MS. BALDWIN. All right. About 80 percent of the women at the shelter in Hershey are white, about 15 percent are black, and about 5 percent are a mixture of Hispanic and Vietnamese; about one-third are urban, about one-third rural, about one-third suburban.

The greatest majority of the women are between 18 and 40 years old, but we've served women as young as 16 and as old as 64, I think. Well

over 50 percent were either the victims of abuse as children or witnessed marital abuse between their parents as children.

VICE CHAIRMAN HORN. I didn't hear that percentage. What was it?

MS. BALDWIN. Well over 50 percent.

VICE CHAIRMAN HORN. Over 50 percent?

MS. BALDWIN. Yes, 45 percent have no high school diploma and 65 percent are unemployed and income eligible for Title XX assistance.

MS. GEREBENICS. Could you briefly describe in that package the general emotional state of the women who come to your shelter?

MS. BALDWIN. Usually, when the women first arrive at the shelter, they are very much embroiled in the crisis situation that they have just left. They are overwhelmed, they are confused, they're right in the middle of a chaotic situation, and they are not at a point where they are ready to sit down and make major life changes right in those first few days.

We found that if we, in the first few days of their stay in the shelter, just give them a lot of opportunity for ventilation of their feelings and give them some support in just sorting some things out, help them to focus on their own role in the crisis, help them to understand what happened in the crisis, that that is the most helpful support that we can provide in those first 2 or 3 days.

After that period, then we start to focus on future plans and decisions about what they want to do next. Our approach is very strongly to be nondirective and nonjudgmental in our approach to the women.

So our stance usually is to start out by saying, "You're here now. What do you want to do next? You didn't want it to happen, it did happen, but you're here now. What do you want to do next?"

And again, to be very careful in not giving her direction from what we think she should do, but rather, continually reinforcing the message that she needs to decide for herself what she wants to do next, whether that's going to be to return home or to find a new situation.

MS. GEREBENICS. Do you explain the Protection From Abuse Act and other remedies available and either encourage or discourage women to take the legal route?

MS. BALDWIN. We always explain the woman's legal options, although we try to be very careful not to give legal advice. We do not have any legal staff at the shelter. We explain all of her legal options. What was the second half of your question?

MS. GEREBENICS. Whether you encourage or discourage prosecution or use of the act.

MS. BALDWIN. No. As I said, we do not encourage her to take either choice. We let her know what her legal options are. If she is interested in prosecuting under the Protection From Abuse Act, or criminally, we will refer her to an attorney.

MS. GEREBENICS. What is your role in assisting a woman in obtaining social services?

MS. BALDWIN. Again, our most important step is to inform her of the available services, and in support of that information we will provide transportation and accompaniment, if we can, to social services. And I

should add that we do that with legal services, too. If she wants to go to legal services of an attorney, we will make sure she gets there.

MS. GEREBENICS. Are legal and social services fairly accessible to women from your shelter?

MS. BALDWIN. We have a particular problem because we are located in Hershey, which is about 20 minutes away from the main metropolitan area that we serve, which is Harrisburg, so we have some difficulty with that, although we have a driver during the day which has alleviated that problem to a great extent.

I would say that on the whole, given—excluding our transportation difficulty at the shelter, and, as I said, we have taken care of that to a great extent, the social services are available to the women.

MS. GEREBENICS. Do you or can you provide services to every woman who seeks them from your shelter?

MS. BALDWIN. In the past year, I would say that we've had to turn away perhaps six or seven families due to lack of space in the shelter. Our shelter can house 24 persons. By squeezing people in, we can usually fit in 9 or 10 families, although our average number of families is 5.

At some points during the year, if the shelter is very crowded and the person who is calling is not in as extreme need, we may say, "Please call back in a day" or "Give us your number and we'll call you back," but generally we're able to take care of most of the people that—I would say almost all of the people that call.

MS. GEREBENICS. For those that you can't is there another place in the area that you can refer them to?

MS. BALDWIN. We can refer them to either the YWCA in intercity Harrisburg or other shelters around the State. Sometimes that's an answer and sometimes that isn't. Sometimes there might not be space at the Y, for instance, or sometimes the other shelters are too far away.

MS. GEREBENICS. Ms. Farber or Ms. Glover, can one of you briefly explain the services that your shelter provides to abused women?

MS. FARBER. We provide shelter for 30 days, with an additional 3 at the beginning for a period of adjustment, referrals, legal counseling, supportive counseling. We work closely with therapeutic agencies in the city for women who want and need counseling, and we assist in attempts to search for housing, which is difficult, because low-income housing is hard to find in Lancaster.

We refer to the department of public assistance for women who need to get on welfare. We work with many agencies in Lancaster, the police, to whom we have guaranteed that we will give anyone whom they bring in who has been abused a night's lodging if they respond and they—that came about in a training session with the police.

MS. GEREBENICS. Have those agencies, including the police, been generally responsive to the needs of the woman at your shelter?

MS. FARBER. By and large, yes.

MS. GEREBENICS. Could you briefly describe your clientele in terms of racial, ethnic, and economic backgrounds, educational backgrounds?

MS. FARBER. Our residential clientele is mostly low income, but about a third of our clients are what we call "counseling only," who

come in just for referral or long-term solution to a problem, or any of our other services but do not need to stay, and these women are of a higher - often of a higher economic status, and about 10 percent of our resident clients are black and a few less than that are Hispanic. Any other breakdown you want?

MS. GEREBENICS. No, that's fine.

MS. FARBER. Oh, yes, we have a large county population and about 60 percent of our clients come from the city and 40 percent from the county, although it is interesting that the county contingent is increasing.

MS. GEREBENICS. Does your shelter provide services or shelter to any woman who asks for it?

MS. FARBER. We have only space for about 25 women and children, so that sometimes we have to even turn away a physically abused woman and hope that we can place her elsewhere, at least temporarily. In other words, we have a waiting list, which is a bad thing for somebody who needs to get out in an emergency situation.

We also have to turn away emotionally abused women sometimes, simply because our high priority is physical rescue.

MS. GEREBENICS. Are there other options in and around your area?

MS. FARBER. Very few, very few. There are some agencies that occasionally can fund a night or two in a hotel. We sometimes can send somebody to another shelter.

MS. GEREBENICS. So basically, in your screening process, the highest priority is the physically abused and then emotionally?

MS. FARBER. Yes.

MS. GEREBENICS. Do you take repeat clients?

MS. FARBER. Yes, we do. Our shelter staff has a very clear philosophy about repeat clients that's part of our whole attitude toward the notion of abuse, and that is that, to put it simply, that abused women are inexperienced and dependent. And we very often—it's clear nationally, I think, that this is a cyclical process—a woman doesn't leave just once; she leaves several times, and we want to participate in that process. But we would like, in the long term, to be able to destroy that cycle, so that, if we see that after the third time or so, or even after the second, if we have a sense that the woman is just using this as a way station between another round of dependent abuse, the staff can vote and we often vote against an additional stay in the shelter, although we do still continue to counsel her and offer other services, but she can't stay there.

MS. GEREBENICS. Thank you.

MS. MCGARRY. could you briefly describe the services that your shelter provides in Philadelphia and give us some indication of the size of the shelter?

MS. MCGARRY. Our shelter is quite a bit larger than most of the other shelters in Pennsylvania. We are the only shelter that houses women with any number and any age of children for longer than 5 days for the entire city of Philadelphia. Our capacity is roughly 40 to 45 people altogether, which usually means between 12 and 17 families at a time.

Philadelphia is a city of 2 million people, so as you can see, the size of our shelter does not in any way come close to meeting the need in Philadelphia. Our population is primarily about 90 percent DPA recipients, or women who are immediately eligible upon entering the shelter.

Our clients are 60 percent black, 10 percent Hispanic, and 30 percent white. Our average stay is 21 days. We have a limit of 30 days, but that's virtually impossible in Philadelphia given the backlog in the court system and the shortage of low-income housing that's available to women with children.

In terms of services, we provide emergency housing, food. We have clothing available for the children of the women we house. We have some clothing available for the women. We also provide counseling and information and referrals for the women for their children both individually and as a family unit. We do occasionally offer counseling to the entire family, including the abuser, if everyone involved agrees that that's what's best in that situation.

We also provide classroom instruction for the children so they do not have to leave the shelter and transfer to the neighborhood public school. That program is supported by the School District of Philadelphia.

We also provide child care for about 12 hours a day to the children and individual counseling for the children as well as the mothers.

Ms. GEREBENICS. Who in your shelter is doing the counseling? Who are your counselors? What is their background?

Ms. MCGARRY. Well, our counseling is being done by women who are experienced in a variety of fields but who are not necessarily credentialed in the traditional sense. Our family counselor right now is a woman who has several years of training with Dr. Manuchen at the Child Guidance Clinic and has worked in children's programs and drug addiction programs for many years. Our other counseling is done by—tends to be done by women who have either themselves been abused or have been in similar kinds of situations and have had a great deal of experience in the area.

Ms. GEREBENICS. The other directors were talking about waiting lists and backlogs at their shelters. Is that true of yours, also?

Ms. MCGARRY. At this point, we receive roughly 300 calls a month from women specifically looking for shelter. We can only take in about 12 to 15 new women a month, which means that we literally turn away hundreds of women every month, and we do not keep a waiting list for that reason because it would just be too long. What we do is encourage women to call back every day because we don't know when someone is leaving and we have no ability to place them elsewhere.

Most of the women that we house—we give priority to women with children, particularly children that are over the age of eight, or where they have more than two children, which is the biggest need in Philadelphia right now, so that we tend to take in women with large families and with older children. Those are our priorities.

We also give priority to women who have the most limited financial and familial resources. We try to work with her on the phone first to make sure that there is not some other family member or friend who

can take her in, or who can provide her with some assistance, and when we ascertain that this is not possible, then we will accept her. We do not offer any kind of services to women who are not residents because we try to maintain the confidentiality of our address as being one of the only ways we can provide genuine security for the women who are there, and their children, and consequently, we do not encourage a sort of walk-in clientele.

MS. GERE BENICS. Are there alternatives in Philadelphia, alternative places to refer women who are unable to get into your shelter?

MS. MCGARRY. Very, very few. There is one agency run by the Catholic archdiocese which will take battered women, but will only take them if they have two or fewer children and they are under the age of eight, and then the Salvation Army in Philadelphia has space for three families for up to 5 days, so it's very, very limited in Philadelphia.

What tends to happen, as has happened before our shelter existed and which still continues to happen, is that if a woman is in fact so badly abused and so afraid and ends up going to a city agency, she will be referred to adult services, which in fact may be able to put her up at a hotel or some kind of boarding home. But they will take her children and put her children in foster care placement, considering her unable to care for them at that time, which very, very often jeopardizes her ability to get her children back quickly when she's reestablished herself, and so we don't encourage women to do that.

MS. GERE BENICS. What has been your experience in Philadelphia with the legal and social services agencies?

MS. MCGARRY. The situation in Philadelphia is, as I suppose it is in most large cities at this point, very bad. The waiting time for a woman to either getting a case transfer or get an initial check under AFDC is often a wait of up to several weeks, so that she may be in our shelter for 3 weeks before she even receives her first check.

In terms of other kinds of social services, some are more available than others. The housing situation is extremely bad. There is a 2-year waiting list for public housing in Philadelphia, and abused women, at this point, do not have any kind of priority within that.

In terms of the legal system, Philadelphia family court is so backed up at this point, in terms of the act, that at this point, to get a temporary order under the act, which should be—one should be able to get in 24 hours—at this point there is often a wait of up to a week to get a temporary order—and the hearing for a permanent order, which is supposed to happen, under the act, in 10 days, is often not happening now for as long as 3 weeks because of the backlog there.

In other words—this also goes for Legal Services, as well, in terms of what's available for women who cannot afford a private attorney. Essentially, the act opened up a kettle of worms that I'm not sure that anyone in Philadelphia was quite prepared for.

The demand for petitions under the act is very, very great, and none of the systems in Philadelphia are prepared to handle it, neither Legal Services nor family court, nor the police department, and that, again, increases the demand for our shelter services because, if women cannot

get relief under the act immediately, their need for shelter for quite a long time is greater, and so we are really hampered that way as well.

MS. GERIBENICS. Thank you.

Beginning with you, Ms. Baldwin, could each of you describe your outreach efforts, if any, or describe how it is that women find out about your shelter?

MS. BALDWIN. I have a voluntary board of directors, and our public relations committee of that board conducts the following public relations activities: we have public service announcements on the local TV and radio stations; we have brochures; we have posters; we do feature shows on local TV interview panels; we have an extensive speakers bureau and we do approximately a hundred speeches a year and we focus on women's groups and Al-Anon groups where we are likely to meet persons who might be in need of this service. We do inservice trainings with local agencies.

MS. GERIBENICS. Would that be the police agencies?

MS. BALDWIN. That's a specific project that we have this year. That's not been an ongoing thing, but we recently received an award from the Pennsylvania Commission on Crime and Delinquency to undertake police and district justice training.

We are just getting started with that. We've only done one training so far, but we'll be getting into a much more extensive local police and district justice training program.

MS. GERIBENICS. What area will that cover? How many departments?

MS. BALDWIN. Cumberland, Dauphin, Lebanon, and Perry Counties and that would include about probably 30 district justices and maybe 90 police departments.

MS. GERIBENICS. Have the police been fairly receptive to your shelter and responsive?

MS. BALDWIN. It has varied tremendously from county to county and from municipality to municipality. In some counties, the police—or in some municipalities, the police have been very responsive; in others they have not been responsive at all. It seems to depend, in my opinion, somewhat on the philosophy of the chief and the knowledge of the head of the department.

If they know about the Protection From Abuse Act and if they know about Women in Crisis, then we're more likely to get that filtered down to the patrol officers. If they don't or they are not supportive of the program, then there's a lack of responsiveness.

We recently had a family in the shelter where there was extremely brutal assault and the woman was married to a local police chief, so the legal response to her situation left a lot to be desired.

MS. GERIBENICS. How do women in the far, outlying parts of the counties you serve get to your shelter?

MS. BALDWIN. Mostly they get there by asking a family member or neighbor or friend to bring them to the shelter. If they have absolutely no personal resource like that, and usually they have someone that they can get to help them, and again we are usually trying to encourage them to lean on their own resources rather than become dependent on

ours, then if they can't, then we are able to either find a volunteer or staff person or perhaps the local Crisis Intervention, that's a team that will provide that transportation. The police have not been willing to provide transportation outside their own municipality.

MS. GERE BENICS. Ms. Farber, what sort of outreach—how do people find out about your shelter in the area you serve?

MS. FARBER. The other agencies, the social service agencies often refer. We also do speaking engagements and television spots and occasional talk show, public service talk show kinds of things. The medical profession is beginning to be more alert and is sending women, especially from the county. There is still a lot to be done there.

The police are becoming more cooperative. The city police are really, depending on individual variations still—the police are more cooperative. The rural police are a little bit less informed about Protection From Abuse. The most difficult agency I can think of right now in terms of outreach is the district justice system. And when a woman is told that she can file charges by a police officer, she will go to a district justice and be discouraged from filing, or, if she is—if he does allow her to file a charge, I mean, he is likely to—he always tries to make it a summary kind of charge that he himself can dispose rather than have to go through the district attorney's office, and I think that is a systemic matter.

That is, there is pressure from that office on the district justices, but it is also attitudinal. There is a sense that women are going to, or they are told that women are going to withdraw their charges during the waiting time until the hearing and that they might as well drop—not bother to file. And it is also, I've been told, a woman was told in my presence by a district justice that "We don't wash our dirty linen in public."

These are strong feelings, very often expressed, about the place of domestic violence in the family. It stays there, belongs there.

MS. GERE BENICS. Have you done any training, or do you plan to, with the district justices and police?

MS. FARBER. We have been trying to arrange that with Legal Services in Lancaster and the district justices; so far we haven't. With the police, we participated in a 3-day workshop just a few months ago with two other agencies—how to handle and the increasing awareness of the many facets of domestic violence, and that there's a shelter available. And that's when it came about that we guaranteed the police a night's lodging, at least, for a woman if they need to bring her in.

MS. GERE BENICS. Mr. Chairman, I have no further questions at this time.

CHAIRMAN FLEMMING. Commissioner Ruiz?

COMMISSIONER RUIZ. Do the responding police officers in any county or municipality include policewomen at the scene of the initial confrontation between the spouses? Given the chauvinistic reticence of some male officers who may be married or who have girlfriends, not to prejudge adversely their male counterparts, and knowing that they are going to go to a scene of domestic violence, I was wondering whether in response women police officers are usually included?

MS. MCGARRY. Certainly not in Philadelphia where we've had trouble getting the police department integrated with women to begin with, and there is at this point only a very, very small representation of women in the Philadelphia Police Department at all and very few are yet on the beat in the sense of responding to those kinds of calls. As far as I know, there—in none of the districts of Philadelphia, is there an effort made to have a policewoman respond to these kinds of calls.

COMMISSIONER RUIZ. The question was asked in Arizona whether, in response to domestic violence, officers knowing beforehand what to anticipate might have at their disposal psychiatrists, psychologists, persons who could immediately give proper advice? Does that exist anywhere in Pennsylvania?

MS. MCGARRY. You're talking about a crisis intervention team that would respond to such a call?

As far as I know—I mean, other people may know differently—-the city of Erie in Pennsylvania is the only area that I know of that has a team that responds with—

MS. BALDWIN. We have that in Harrisburg, too. In Harrisburg there is a crisis intervention team through the local mental health agency that will go with police if the police call and ask. To my knowledge, though, it is very, very rarely used with domestic violence cases. It is much more likely to be used in suicides or something.

COMMISSIONER RUIZ. With possible amendments to the law, what is the opinion of any one of you with respect to whether that might be an affirmative amendment to require that type of backup? Would it be helpful?

MS. MCGARRY. I certainly think it would be helpful. In terms of the realities of the budgets of most areas, I would assume it would be a fairly onerous charge to areas like Philadelphia, not to come to the defense of the administration of the city, but I suspect it would be very, very difficult in the city the size of Philadelphia.

One of the things that I know, one act I'm familiar with in Ohio requires, as part of their act that is modeled on the Pennsylvania act—they require so many hours of police training in every district in the State of Ohio as part of their act. That would seem to me an in-between kind of response that would be extremely effective.

If we could guarantee that every police officer in the State of Pennsylvania was mandated to undergo some kind of training in response to domestic violence calls, I suspect that would go a long, long way toward easing the problem.

CHAIRMAN FLEMMING. Commissioner Horn?

VICE CHAIRMAN HORN. I'd be interested in your experience in response to the question of alcoholism and what effect you see in terms of the cases that come into your respective shelters. Do you feel that this is a contributing cause to the immediate confrontation? I realize one can say there are power relationship problems; there are deeper psychological problems, etc., etc., but to what extent have you seen alcoholism by the abuser as the directly contributing cause to the abuse which has led to the abused using your facilities?

MS. FARBER. On our intake form we have a question, which asks the abused now if alcohol is a problem for the abuser, and last year I counted 50 percent said yes. Now, that really doesn't tell you what—it is a very subjective answer on her part. Whether you call that alcoholism or not, I don't know. My own opinion is that alcohol is rather a trigger than a cause.

VICE CHAIRMAN HORN. Any other response from the two other shelters represented?

MS. BALDWIN. Our statistics show about 65 percent of the abusers also abusing alcohol or drugs. My estimate would be that about half of those men have a primary alcohol problem and that could be considered a major, if not cause, at least a major precipitating factor for the abuse.

The other 30 percent in there seem to drink, but sometimes they abuse their wives or girlfriends when they're not drinking, and sometimes when they are drinking, so alcohol, I would not think, would be the main causing factor. And then there's about a third where there's no alcohol involved at all, or drugs.

MS. MCGARRY. Our experience is very similar, about 56 percent of the women that we've sheltered have reported a drug or alcohol problem with the abuser. Once again, sometimes the incidents are related to drug and alcohol use and sometimes they are not.

VICE CHAIRMAN HORN. Do you find drugs as a contributing cause, excluding alcohol, etc., are increasing in the number of cases and is there any difference between the ethnic communities on this or is this sort of standard across the board between alcohol, drugs, etc.?

MS. BALDWIN. I don't think we've correlated our statistics according to drug abuse with racial background.

VICE CHAIRMAN HORN. Or alcoholism with racial background? I'm just wondering if we see any significant differences in ethnicity and use of alcohol, drugs, and as contributing cause to abuse?

MS. BALDWIN. As I say, we are not correlating our statistics that way. My impression would be that there is not that correlation.

VICE CHAIRMAN HORN. I'm talking about socioeconomic class also. Do we see a difference between middle-class abusers, etc., and lower-class abusers?

MS. BALDWIN. With drugs and alcohol?

VICE CHAIRMAN HORN. Right.

MS. BALDWIN. I wouldn't think so, but as I said, I couldn't back it up.

VICE CHAIRMAN HORN. So generally, the proportions carry across regardless of ethnicity or socioeconomic class. Is that your experience?

MS. MCGARRY. I think the kind of analysis that you are asking for is a lot more sophisticated than we are able to do at this time, but I certainly would have no way of guessing. I have not seen, in terms of the files that I have reviewed, any increase in reporting of drugs as a problem on the part of the abuser. Certainly, any increase in the amount of, the number of women coming in reporting drug use on their own part as a result of previous trips to hospital emergency rooms, doctors, psychiatrists, mental health centers—that there is a growing

problem among the abusees in terms of drug dependence that's a direct result of their being abused. In other words, they seek treatment and instead of treatment are given drugs to calm them down.

VICE CHAIRMAN HORN. Well, all right now. Is that by prescription, then, we're talking about?

Ms. MCGARRY. Oh, yes, I'm not talking about illegal drugs.

VICE CHAIRMAN HORN. So we haven't seen an increase by the abused in alcoholism or illegal drugs as a way to sort of avoid having to deal with the reality of abuse in the household, but we do see increasing use of prescriptions by doctors to relieve the physical pain that comes with it or the psychological pain.

One last question. I was interested in your comments on the medical profession. To what degree is there an organized attempt by those of you who operate shelters and coalitions with whom you deal in terms of putting on programs for the medical profession at the county medical association, city medical association, State medical association, and has there been overtures and collaborations with these various medical societies to educate doctors as to the problems in this area?

Ms. BALDWIN. Our outreach in that area has been focused primarily on emergency rooms of hospitals. We've done trainings at all of the emergency rooms in the local hospitals. Generally, we found more response from those people than from the standard general practitioner populations.

VICE CHAIRMAN HORN. The reason I ask is, medical societies, like other types of organized human behavior, usually have monthly meetings, often are looking for speakers. In most States there are relicensure requirements for medical, paramedical personnel; often one can put on programs through community colleges, such as this, State universities, private institutions which fulfill those, and I'm just thinking of the degree to which you can package, if you will, your particular area and some of the solutions and what their role might be because, obviously, a private practitioner, a group practice, would often be in a position to discover an abused person. Then the question is to what degree and what, can they help that person and do they know the resources upon whom they can call to help that person?

That's why I'm trying to see what kind of arrangements have occurred between your group and the organized medical profession. Any other responses?

Ms. MCGARRY. No. Ours is also directed primarily at emergency rooms.

VICE CHAIRMAN HORN. Do you think that's enough?

Ms. BALDWIN. I think that the approach that you described would probably be helpful. At this point we're sort of still responding to the overwhelming, first—

VICE CHAIRMAN HORN. The crush of people that want your service?

Ms. BALDWIN. Yes, and we know that we're going to hit the main right at the ERs, so I would see that as a 2-year priority sort of thing rather than this week.

VICE CHAIRMAN HORN. I merely suggest that, when you go back to Lancaster, Philadelphia, and Hershey and Harrisburg, that you take

your friendly local executive director of the medical society out to lunch and get on their program.

CHAIRMAN FLEMMING. Commissioner Saltzman?

COMMISSIONER SALTZMAN. In your estimation, in your perspective, has the Protection From Abuse Act met the needs of abused women, the legal needs at least?

Ms. BALDWIN. Are you asking me specifically?

COMMISSIONER SALTZMAN. Down the line if you wouldn't mind.

Ms. BALDWIN. It's certainly a great improvement over the criminal remedy that was available before 1976. I don't know that I could say—that's a real broad question—it certainly has not met the needs of all battered women. It's been an improvement in what was available before.

The two biggest problems that I would cite with the Protection From Abuse Act are, first, the lack of information about the act to local police officers and district justices. I think that still a great majority of the police officers are not familiar with it, and I think that's a major deterrent in using the act because then women don't find out about it. I think there's a lot of need for education among lawyers, too. We've had numerous contacts with private attorneys that either are unfamiliar with the act or choose not to use it.

The second biggest problem that I would see is the enforcement procedure. As I mentioned earlier, we have always informed the women that come through our shelter about the Protection From Abuse Act and the legal remedy that it offers. We've had a number of cases in the last year where the woman went ahead with the legal proceeding and got the protective order; the order was violated and then not enforced. So then we felt that we had almost misled the woman in giving the impression that this was going to be a sound legal remedy.

COMMISSIONER SALTZMAN. Enforced in terms of what, the judge?

Ms. BALDWIN. Well, for instance, the woman that I mentioned that was married to a police chief moved to a new residence. The abuser went to the residence, raped her four times, and left, and the police did not arrest. That was a—in addition to being rape, that was a violation of the Protection From Abuse Act, and they had a copy of the Protection From Abuse Act at their police department.

Their next step is to use that copy of a protection act as a warrant, essentially, and arrest on the basis of indirect criminal contempt. They did not. We've had that happen, I'd say, at least six times in the last year.

VICE CHAIRMAN HORN. Did I hear you correctly say it involved a police chief?

Ms. BALDWIN. Yes.

VICE CHAIRMAN HORN. Was that the reason no enforcement occurred, or was it—

Ms. BALDWIN. I can't speculate—my guess is it was very much—it was very closely related. I certainly can't say for sure. It seemed to us that it was the big reason.

COMMISSIONER SALTZMAN. What we're driving at, is there a general pattern on the part of the police department of failure to enforce?

MS. BALDWIN. There has been in our area and, again, I think a lot of it is a lack of clarity about the legal procedure. There's—I think Barbara Hart mentioned earlier there is not a procedure for arrest with indirect criminal contempt. It doesn't fit into either summary, misdemeanor, or felony. There's a lack of clarity about how to actually make the arrest. That's what some police departments have said to us.

COMMISSIONER SALTZMAN. Any other comments?

MS. FARBER. In Lancaster we find that it is useful, but as Deb said, it's not useful. It can't be used in all cases of domestic violence.

Also, we're experiencing a gap in the act. It doesn't cover spouses who have already been separated, and—I mean a judge won't grant an order if the parties are living apart. It's in the act that they must be residing together and, therefore, if she's moved out but he still is harassing her and abusing her, she can't use the Protection From Abuse Act, and she has to seek other remedies, some of which are criminal, and I've already spoken to the fact that criminal procedures don't work very well in Lancaster County for domestic issues.

Another problem is that in terms of filing on weekends and in the evenings when a district justice is supposed to write out petitions, again, that's a nonexistent possibility in Lancaster, even though it's in the law.

MS. MCGARRY. In Philadelphia I think the act could have tremendous significance, given the shortage of housing and emergency housing facilities. The act could certainly enable women to get back into the family home with minimum disruption to their lives and the lives of their children.

Unfortunately, at this point, family court is only able to handle, and, at that, it is not handling them within the time frame of the act—they are only able to handle 90 petitions a month at this point. You know, in our legal clinic in Philadelphia, we get walk-in 30 to 50 women a day looking to have such a petition filed for them under the act, many, many, many of whom are eligible under the terms of the act, but there is neither the legal representation nor the ability of the court to handle that kind of volume. So the court ends up handling about 90 a month, which in Philadelphia is simply not enough, and it makes the act not nearly what it could be.

For women who are able to get it through—and for some women it is extremely effective in providing good solid protection. In Philadelphia, I think, in terms of the enforcement issue, there are many, many police officers for whom that order represents the clear guideline to go ahead and arrest, and they feel very comfortable with that. They are much more comfortable with that than a situation where they don't have such an order, and they go ahead and arrest.

The problem is, after the police officer makes the arrest, where does it go? We have family court judges in Philadelphia who are refusing to hear violations of their own orders and saying it should go to municipal court judges. Municipal court judges are saying, "This is not my order. Why am I enforcing it?"

So there is a terrible problem with enforcement at that end. It is a bigger problem in fact than at the level of the police officer making the arrest.

CHAIRMAN FLEMING. Commissioner-designate Ruckelshaus?

COMMISSIONER-DESIGNATE RUCKELSHAUS. This question is addressed to all of you. What happens to the women when they leave your shelters? How do they leave, physically, and where do they go, and do you have any capacity now, recognizing how stressed you are for followup, with any of these women? Do you see them again or stay in touch with them?

MS. BALDWIN. People have—everyone here has mentioned the tremendous lack of low-income housing, and that's one of the most overwhelming obstacles that is faced by many of the battered women that come through our shelter.

About 55 percent of the women that came to Women in Crisis in 1979 returned to the same living situation that they were in when they came to the shelter, although I would add there that they—that just because they returned doesn't mean that the situation is unchanged; they may have initiated counseling; they may have a protective order, but in any event they did return to that same residence.

Forty-five percent found some form of new housing. Our followup at this point is limited to telephone contacts with the women after they leave the shelter to find out what's happening and to see if they need any additional service.

We found, though, that the population is often pretty transient, and after 6 months it is hard to get a hold of maybe as many as 50 percent of the women who have been in the shelter, so our followup is limited by those factors, but low-income housing is really almost nonexistent. So that women who leave the shelter are either buddying up with other women or going with their mother or their father or other probably less than desirable situations where they eventually wind up back with either that abuser or another abuser because of the lack of housing.

MS. FARBER. What we figure on is about 50/50.

MS. GLOVER. Basically, the women who leave our shelter in Lancaster for the past year, anyway, it's been roughly 53 percent were self-supporting. Now, that self-supporting doesn't necessarily mean ideal alternatives, but what it does mean, she did not return to the abuser at that point. Later on down the line, she very well might have moved in with him or another male.

Thirty-five percent of the people who left the shelter did return to the same situation. Sometimes they have received counseling, but 9 times out of 10, the women who return to that situation—we will see them again at the shelter.

COMMISSIONER-DESIGNATE RUCKELSHAUS. Ninety percent of the 35 percent?

MS. GLOVER. Pardon me?

COMMISSIONER-DESIGNATE RUCKELSHAUS. Do you mean 90 percent of the 35 percent who go home will come back to you?

MS. GLOVER. Yes, I do.

MS. MCGARRY. In Philadelphia we do not do any kind of planned followup. It is part of the continuation of the way we deliver services altogether. We do not force the women to use any of our services, and we also do not contact them after they leave. We stay in contact with quite a few of the women who have an ongoing need for additional services. They need help straightening out welfare matters, legal matters, and so on, and we stay in contact with quite a few.

We have not seen the repeat that other shelters have, the repeat clients coming back, but one of the problems with that in our situation is that since we are full so often, one of the reasons we may not be seeing them back again is that they simply, when they call, cannot find the space to come back in, although, if we know, one of us of the staff that's dealt with her, knows that that's who it is on the phone, we will make an effort to squeeze her in because she's a known entity; we know what we're dealing with. But that may be one of the reasons we are not.

We are seeing about a third of the women going on to find other housing of their own on their own in some way. Clearly, the best situation for most of them is if two or three of them can leave together and find some sort of cooperative housing situation. We feel that's the best for them in terms of not only their income but also in terms of support, emotional support, friendship, and so on.

We find that the women we house—many of them have very rarely been out of the neighborhoods in which they lived most of their lives, and it is very, very difficult for them to move to a new neighborhood. And if they can do that in the company of women they've already lived with, that's a big help. We have about 10 percent that go home with a protection order, another 10 percent that go home with some kind of counseling initiated, and about 20 percent that simply just go home.

We also see—I don't know if that's peculiar to Philadelphia—we also see quite a number of women who want to stay long enough at the shelter to save money to go back to relatives in another part of the country, maybe because Philadelphia is a city where people tend to come to from another part of the country, often from rural southern towns, and if they can stay with us long enough to save the bus fare back for themselves and their children, they will do so. And that, very often in my mind, is a very good solution to their problem because they're getting away from the abuser and going back to a community where there are built-in supports for them and their children.

COMMISSIONER-DESIGNATE RUCKELSHAUS. When you all sit down and do your planning with your staffs, what would you identify as the two most pressing needs that you have in your shelters?

MS. MCGARRY. For the shelters or for the women?

COMMISSIONER-DESIGNATE RUCKELSHAUS. I assume money and staff and space are probably the things you all deal with. For the women, what else do you find you would like to be able to extend them, like the law to extend to them?

MS. MCGARRY. Housing. Housing for them and their children in a situation where they do not live in fear every day, that they are not in

a high rise project, where they can live in a community where their children can walk the streets in safety and go to a decent school and, at least in Philadelphia, there aren't very many places where women who come to our shelters can leave and go where going back to him is not usually a preferable alternative.

COMMISSIONER-DESIGNATE RUCKELSHAUS. Thank you.

Ms. BALDWIN. I would support that. One other secondary need that I would see for the women would be for some real good community education, assertiveness training, active listening, just real good mental health programing—I hesitate to use the term “mental health” because I don't want to suggest that the women are chronic mental health clients or anything like that, but I think that some real good communication skills and some preventive programs would be a real big asset, helping people increase their self-awareness, their self-esteem, high school diplomas.

COMMISSIONER-DESIGNATE RUCKELSHAUS. Thank you.

CHAIRMAN FLEMMING. Do you have any other comment?

Ms. FARBER. Yes, I agree that would be very helpful and, even more so, some kind of practical training for jobs. I have another thing, too, and that is that the reaching of the abuser. The shelters are not really the best outfit to deal with abusers. They don't willingly come to us for assistance, and we've been working with other agencies in order to provide a more neutral avenue of approach to the men and it is difficult.

CHAIRMAN FLEMMING. Commissioner-designate Berry?

COMMISSIONER-DESIGNATE BERRY. Ms. McGarry, I think you noted that you like to keep the address of your shelter somewhat confidential as a protective device. I wondered how, in fact, do either of you keep persons who have abused women from coming to the shelter and finding them and abusing them again? I mean, what do you do then in any of your cases?

Ms. MCGARRY. One of the things that we have found when men have found us, and I'll just answer this quickly, is that often when they are faced with not one cowering woman but six women who are standing there saying, “What do you want?” and being very direct, very clear, and not afraid, they turn around and walk away very embarrassed, and if they stay at all, they're there to convince you that they never did what she said they did, even though without even saying anything, they know what she's told you, so how he knows to say he didn't do it is interesting, but that's been our experience.

COMMISSIONER-DESIGNATE BERRY. Is that generally true for the rest of you?

Ms. BALDWIN. We keep the location of our shelter confidential, too. We have a more serious problem with security because we're located in the country, and that has had some tremendous benefits as a program for the residents because it is a real soothing, restful environment, but it is isolated.

We've had about three incidents in the last year where abusers have either actually found the shelter or been very close to finding it and in all cases were armed. Our process is to call the police as soon as we

know that there's even a problem. to put them on alert, and then, as soon as we see a car, and we do have a real long driveway, an alley, we call the police, and we've had an excellent response from our local police department, just a really excellent response. They've always been there in one, two, or three minutes, so we've never had any serious problem, but it is a real concern.

MS. FARBER. We have an elaborate security system, and the police come very quickly, but we feel relatively comfortable there and although we don't advertise our address, but rather our telephone number, most of the husbands certainly do, or abusers know within 24 hours where their wives are, and, in most cases, we really encourage this considering it a hardship for somebody to have his spouse and children just up and gone, so we've had a couple of broken windows and that happened last summer. So I guess we can expect some more.

And we also have what turned out to be called our drive-in window where we feel safer talking to somebody who is in a rage on the sidewalk side of the shelter; that works very well. The rage spends itself and maybe we can give him a card to Family and Children Services.

COMMISSIONER-DESIGNATE BERRY. So I get the impression that where police officers have had training, that you had very good responses, or at least that helped the responses that they would make to women who had such problems, but that you generally believe that there were some problems with the judicial system. Do you think, if there were training for judges, that this might help the situation, or at least some training activity related to the act and to domestic violence?

MS. BALDWIN. Yes. Oh, yes, very definitely. In fact, as I mentioned earlier, many of the district justices—and they are the lowest rung, as Barbara said earlier, of the judiciary—did not even know of the act. The court administrator in one of our counties was not familiar with the act.

What became apparent to us when we first started our recent grant for police and district justice training 2 months ago was that there was no systematic procedure for making sure that all of the key people knew about the act after it was passed. I don't know who was supposed to do that in the system, but whatever happened, at least in our courts, a lot of people got missed. I had a recent meeting with West Shore police chiefs, and I would say that of the 30 police chiefs there, maybe 6 of them had never even heard of the Protection From Abuse Act.

CHAIRMAN FLEMMING. One question that I'd like to address to all three persons representing shelter programs: what are your principal sources of financial support? What do you rely on for financial support? We can start with Philadelphia.

MS. MCGARRY. Well, Philadelphia is probably the best funded program in probably this part of the world. We are funded primarily two ways. We get money from the city of Philadelphia through the children and youth department of the welfare department that pays for all children's services, which is how we're able to provide clothing and so on for the children as an alternative to foster care placement for families in crisis. It is an approach that the State legislature has recom-

mended through Act 148 that an emphasis be placed in providing services to children in providing them in the context of the entire family and not in isolation, so we fall into that category.

Our funding for the residents, the women, comes from Title XX through the State department of welfare, and then the rest of our other monies come from private foundations, local United Way, and so on.

CHAIRMAN FLEMMING. How long have you been receiving funding under Title XX?

Ms. MCGARRY. Eight weeks. We've been well-funded for 3 months. We're just very new.

CHAIRMAN FLEMMING. How long has your shelter been operating?

Ms. MCGARRY. Three and a half years.

CHAIRMAN FLEMMING. Okay, how about you?

Ms. GLOVER. In Lancaster our shelter is pretty different from most in the State of Pennsylvania being that we are a community action program, which is a Federal program. Right now, what funding we receive is through the community action program under CSA, which is Community Services Administration; DCA, which is the department of community affairs, which is a State agency; and Title XX.

We've had Title XX funding since February of '77—'78.

CHAIRMAN FLEMMING. Do you receive any support from the private sector?

Ms. GLOVER. Yes, we do. We get donations from various church groups. Once a year we get a large donation, about \$600 or \$700 from a town fair in Lancaster, but basically it is just like 50 or 100 from church groups or women's organizations, and we've been open for 4 years in August.

CHAIRMAN FLEMMING. Do you receive any local public funds, any public funds from local government?

Ms. GLOVER. We don't at this point, but we hope to by next year.

CHAIRMAN FLEMMING. Okay.

Ms. BALDWIN. We've been open for somewhat over 4 years and we have a multiple base of funding sources. We have seven different government contracts. Our biggest is Title XX. Then the commission on crime and delinquency, which is that special law enforcement training grant; CETKO, which is CETA funding; one of our county mental health, mental retardation, Dauphin County child care; Dauphin County drug and alcohol, and Cumberland-Perry drug and alcohol. Then we are a member of our local tricounty United Way, and we've applied also to the Lebanon United Way, and then we receive grants from local foundations and individuals and churches and service organizations.

Ms. MCGARRY. I would like to say that I think we are three of the four oldest shelters in Pennsylvania, and we are the exception, not the norm, in terms of the security of our respective funding. The length of time we've been open without interruption is certainly unusual, and I wouldn't want anyone to think what happens with the three of us is what happens with other shelters in Pennsylvania. It's just not the case.

Ms. BALDWIN. Because, if I could just add one more thing, on a State and national level, there has yet to be any legislation which

mandates that there should be shelter services for victims of domestic violence. It is proposed, but there's nothing that's been enacted, so that we can go to all these various funding sources, but it is up to the discretion of our local administrators and boards, and we're usually the last programs in the door. We're the last one in the door for drug and alcohol money, for Title XX money, for all of the various sources because we've never been earmarked anywhere.

CHAIRMAN FLEMMING. We want to express our appreciation to all of you for being here with us and sharing with us the experiences that you are having in dealing with a very, very important problem. Thank you very, very much.

Counsel will call the next witnesses.

Ms. GEREENICS. William A. Hewitt, Capt. Richard Gibney, Sgt. Peter Brooks.

[William A. Hewitt, Richard E. Gibney, and Peter J. Brooks were sworn.]

TESTIMONY OF WILLIAM A. HEWITT, DIRECTOR OF PUBLIC SAFETY, HARRISBURG; RICHARD E. GIBNEY, CAPTAIN, PATROL AND TRAFFIC DIVISION, HARRISBURG POLICE DEPARTMENT; AND PETER J. BROOKS, SERGEANT, PATROL AND TRAFFIC DIVISION, HARRISBURG POLICE DEPARTMENT

CHAIRMAN FLEMMING. Appreciate your being here.

Ms. GEREENICS. Would each of you, beginning with you, Mr. Hewitt, state your full name and title for the record?

MR. HEWITT. William A. Hewitt, director of public safety, city of Harrisburg.

Ms. GEREENICS. Captain Gibney?

CAPTAIN GIBNEY. Richard E. Gibney, captain of the patrol and traffic division, Harrisburg Police Department.

SERGEANT BROOKS. Peter J. Brooks, sergeant, patrol and traffic division, Harrisburg Police Department.

Ms. GEREENICS. Mr. Hewitt, could you tell us, briefly, how long you've been in your position and what responsibilities that position holds in terms of the department?

MR. HEWITT. I have been in my present position since October 1979, director of public safety, responsible for the command and control of police and fire services in the city of Harrisburg.

Ms. GEREENICS. And what specifically is your responsibility for setting, if any, for setting policy within the department?

MR. HEWITT. Total responsibility. The city council, of course, establishes general policy for the operation of all departments. We implement that policy and that of our own which carries out the council's policy.

Ms. GEREENICS. Have you established any rules, regulations, or policies specifically related to domestic violence?

MR. HEWITT. Yes. Typical of most modern police departments, domestic violence is a particularly sensitive area. The rules and regulations pertain to ensuring that—and it's the only kind of incident that

carries this—that an officer doesn't go to the scene of a reported domestic disturbance alone; he must have a backup, and, thereafter, the rules and regulations prescribed as for all incidents, the use of force, the calling for crisis intervention persons, the handling of persons who may be accused of crimes, subsequent investigations and the people's rights involved.

MS. GEREENICS. Has your department instituted any specific training courses on domestic violence or participated in any?

MR. HEWITT. We have, and we are continuing to do so because of the nature of the problem. Sergeant Brooks and Captain Gibney can speak more specifically to the courses we most recently presented.

MS. GEREENICS. Do you think the training within the department in general areas like crisis intervention is sufficient to cover domestic violence? Would you like to see more training specifically related to that?

MR. HEWITT. Well, as I think Sergeant Brooks will relate—members of the department know that I'd like to see more relating to it. In the case of Harrisburg, we happen to have the philosophy and the thrust that will see that it is carried out.

It would probably be better if every State had a mandated law and the funds for mandated inservice programs which would include that subject. As it happens, it's an accident of our philosophy and thrust that we do it. All police departments don't because they don't have the mandate to do it.

MS. GEREENICS. Captain Gibney, how long have you held your position as head of the patrol?

CAPTAIN GIBNEY. Approximately 1 year. I was promoted to captain in June of 1979.

MS. GEREENICS. What responsibility do you have for developing policy, or applying—teaching that policy, applying that policy?

CAPTAIN GIBNEY. Well, as far as policy, that's handled by the director. We are responsible for making any recommendations to him relative to policy within the patrol and traffic division.

MS. GEREENICS. Can you tell us—and I'll get to Sergeant Brooks later about the actual practice—but can you tell us what happens within the department when a call comes in, a domestic violence call?

CAPTAIN GIBNEY. Yes. It is received in our communications center, and our city is divided into seven districts with vehicles assigned to each one. The dispatcher will dispatch one of the cars in that district to the area. As the director said, we require—at least, we request them not to go in on their own unless it is an absolute necessity.

And once they arrive, they are instructed to calm the situation, to keep control, to protect the participants, and to try to keep it out of the legal field and to recommend outside agencies to handle the problem. We also ask them to try to separate the participants for the time being, if possible.

MS. GEREENICS. Are the officers aware of shelters and alternatives like that?

CAPTAIN GIBNEY. Yes, they are. And again, we'll get back to Sergeant Brooks. We have created a training program relative to that.

MS. GERE BENICS. Can you estimate the percentage of your calls that are domestic violence calls?

CAPTAIN GIBNEY. Yes, ma'am. 1979, according to my records, we had 7,514 domestic calls.

MS. GERE BENICS. Out of a total of?

CAPTAIN GIBNEY. Out of a total of approximately 70,000. We are talking about 10 percent of our calls are domestic calls.

MR. HEWITT. You might want to note, madam, if I may, it is my intuitive feeling, and I don't have any scientific research to back it up, it is probably a very lowly reported incident. I would guess the actual incidents of domestic violence covered by this, the Pennsylvania act, is probably five times greater than the actual calls.

MS. GERE BENICS. Is there anything specifically you would attribute that to?

MR. HEWITT. Well, I'm not a sociologist, but some people like to handle their own things. In some cases, different kinds of families, depending upon their socioeconomic structure—it is an every other Friday payday thing, which is somewhat common and customary and expected. That's been my experience in a number of different places, and if you ever were to develop a profile, you would probably be able to come up with one, but I would guess it spans the entire socioeconomic structure. It is not limited to the sick, lame, lazy, poor, or everything else. It happens at the highest levels of finance.

MS. GERE BENICS. Captain Gibney, these 10 percent of your calls, do they represent 10 percent of your workload, also, or do they involve more than that?

CAPTAIN GIBNEY. No. I wouldn't say they involve more than that. I would say probably 10 percent, according to the figures that we have.

MS. GERE BENICS. One final question from you. How does the department learn of Protection From Abuse Act, orders under the Protection From Abuse Act?

CAPTAIN GIBNEY. Well, as I said, Sergeant Brooks will explain that in detail, but what we have done in this last training program that we've had, we've had copies of Act 218 run off and issued to each police officer in the city of Harrisburg, and we have discussed them not only at Sergeant Brooks' training programs but also at our rollcall training programs, which occur six times a day, and I do agree that we should have more training in this field.

MS. GERE BENICS. Thank you.

Sergeant Brooks, will you describe the training program that everyone has been referring to?

SERGEANT BROOKS. Sure. In January of this year—and thanks to the assistance of a group of ladies that I could not begin to say enough good things about, namely, the Women in Crisis organization—after several conferences with them, we developed a training program for police officers. The program consisted of 3 hours of training for members of the patrol and traffic division. These are the fellows that respond to the calls of this nature.

The training program covered approximately 90-some-odd percent of the entire division. Those that were missed probably were because they were on vacation, days off, sick leave, things of that nature.

The training program consisted of introducing the officers to a history and a study of violence, who some of the participants in the violence were, what some of the symptoms of this violence were. Namely, we dealt largely with alcohol, tried to determine percentages of domestic problems that alcohol is in fact involved.

We also spent a great length, a good portion of the class in a complete study of the Protection From Abuse Act. The reason that the Harrisburg Police Department is so much interested in the Protection From Abuse Act is because—I'm sure you've all heard the old adage about police responding to a domestic problem and they don't do anything, nothing is accomplished. Now, unfortunately, these myths are due because there are certain limitations within the law when police officers do respond to these types of crimes.

The advantage of the Protection From Abuse Act—in my opinion a great piece of legislation—is that it stops the violence now, immediately. It's not like a criminal complaint where someone can wait, hang on edge for 180 days for a case to come to court. I'm sure you're aware of the guidelines of the Protection From Abuse Act. It comes about quickly.

There are certain resolutions that can be made by a county judge; however, since I'm talking about this particular point, there are some provisions in the Protection From Abuse Act that I think should be more closely looked at, namely, after a protective order has been violated and a defendant is charged with indirect criminal contempt, and that is subject to a year imprisonment and \$1,000 fine.

I've noticed in the act itself that the guidelines say that by agreement the abusing party may be remanded to psychological services, psychiatric services, drug abuse programs, alcohol abuse programs.

In my judgment, when we have such an important act where we can stop the violence so quickly, potentially stop it so quickly, that once we have that abusing party we don't know enough about him. The Women in Crisis ladies will tell you that. It is very difficult to find out information about an offender, and when you have this particular act available to you, follow through on it, make it mandatory rather than send somebody to jail, remand him to psychiatric services, drug programs, alcohol programs.

MS. GEREENICS. What relationship in the training does the criminal system play? Do you see that as a complementary system to the Protection From Abuse Act or two exclusive systems?

SERGEANT BROOKS. No, not really. We see that as a very viable alternative for us. In the past, where a criminal act had occurred, namely, an assault, as the law clearly states, if you didn't see the violation, you couldn't immediately remove him from the house. However, now that we have this particular act, we have particular guidelines, sets of instructions we can offer to the officer—go in there and defuse the situation, then mediate the situation and, if you fail in that, make a referral.

And we're in the process right now—I understand Mr. Hewitt is formulating a proposal so we can get little wallet-size packets with all the listing of all the social services agencies available to help people. You know, when a woman finally makes a call on a domestic problem, you have to ask yourself, "How many times did she go through this before she finally made the effort, before she finally picked up that phone and made that call?" And by God, when she makes that call, there better be somebody there that's going to help her. And if it takes a referral, which in large part it will take a referral, we have to have that information readily available to us. We are in the process of formulating a proposal so we can get that type of information readily available to the officers. We have procedures now in my inspection on the street of the effectiveness of the training programs. I have seen officers, when they are in a domestic problem, pick up the phone and make the referral right there. The Women in Crisis organization has counselors available 24 hours a day. They have never, ever, to my knowledge, turned down a request from the Harrisburg Police Department, and I know we make a lot of referrals to them.

MS. GEREBENICS. What is your assessment of the officers' response to the training itself?

SERGEANT BROOKS. Again, I've attempted to conduct some inspections of that. For example, last week, prior to coming to this hearing, I checked our docket book and I noticed that there were either three or four arrests made for the indirect criminal contempt for the Protection From Abuse Act. However, I would want to make certain that everyone within the criminal justice system is totally familiar with the Protection From Abuse Act.

As you know, when someone violates that, he is entitled to the laws of criminal procedure. He must be arraigned. From the cases that I've seen, once that act is violated, the district justices, to the best of my knowledge, are invoking some pretty heavy bail. They're not simply letting them out on the street again.

MS. GEREBENICS. When you instruct the officers, do you give them any standards or guidelines as to when arrest is the appropriate remedy as opposed to using the act or both?

SERGEANT BROOKS. We have on occasion—we have brought both. As a preliminary charge, if there's not bodily injury, quite often you will see an officer file a charge of harassment, one who continually bothers, annoys, strikes, kicks, shoves—that is on a citation. Now, unfortunately, as a consequence, or fortunately, that he brings the charge, but, unfortunately, when you're trying to locate or identify the number of domestic problems that you do in fact have, that may be very misleading because you may receive a call to a residence about a loud radio or a loud party when in fact it is a domestic problem. When you try and locate that within your UCR reporting system, it comes under a different UCR.

As a consequence, there is a domestic problem that goes unnoticed or unidentified. I think the figure is high. I've heard some different percentages, but it is high, and it's becoming higher, and the reason I think it is, is that as more help is made available to people, you are going to

get more of these calls. So the idea is for us to be able to follow through, to have the resources to follow through, the materials that we need and the additional training.

MS. GEREBENICS. What are the specific factors that would lead to an arrest on a bigger charge, say, a civil assault, aggravated assault?

SERGEANT BROOKS. Bodily injury.

MS. GEREBENICS. Of what nature?

SERGEANT BROOKS. The impairment of some bodily function or substantial pain as is described in the crimes code. You mean, an indictable charge, yes?

MS. GEREBENICS. What would your procedure be then? If a simple or aggravated assault had occurred and an officer went to the scene, would they still talk to them about Protection From Abuse Act?

SERGEANT BROOKS. Oh, absolutely. Again, the emphasis that I placed on the Protection From Abuse Act is for the very reason that you're mentioning it. There's a workable alternative. As you see in the Protection From Abuse Act, the word "abuse" is defined exactly as the "assault" is in the crimes code. It's the same definition.

MS. GEREBENICS. Let me go back to a background question. Did you receive special training yourself in this area?

SERGEANT BROOKS. Yes, I did. I attended a seminar by the Pennsylvania Coalition on Domestic Violence. It was a week's seminar and I was very, very much impressed with that, and some of my material would be a cut-down version of what that course offered me, as well as my experience on the street. I've been to a few of those.

MS. GEREBENICS. How long have you been an officer?

SERGEANT BROOKS. I'm starting my 11th year next month.

MS. GEREBENICS. Do any of you have any further thoughts on any improvements you would like to see in the department's handling of domestic violence cases?

SERGEANT BROOKS. The one suggestion that I would like to make is that there be an improvement in the referral network. For example, if somebody has an alcohol problem and as a consequence of a domestic problem the police are called there, I would like to see some type of task force formed to identify these domestic problems when they are in fact related to alcohol problems.

In addition to that, I would like to see in the area of public awareness, public service—I don't know how long you've been in this area, but unfortunately, our public services announcements come on at 4:30 in the morning. Now, women—those that are confined to the home as housewives—they watch soap operas, and I think if we could possibly get the networks to give up a little time and present some public service messages in line with what we can do to prevent domestic violence, that it might go a long way in having the problem truly surfaced so that we can get help to these people.

MS. GEREBENICS. Mr. Hewitt, would you have any specific changes you would like to see?

MR. HEWITT. I think it's been articulated well. I would remind you perhaps of the obvious, that these kinds of incidents are underreported.

They will probably increase some in correlation with the downplay of the economic system. I think it will be highly correlated.

MS. GEREBENICS. Captain Gibney?

MR. HEWITT. You will have occasion to see that the better job the police do in getting illegal drugs off the street and more incidents of use of alcohol and that will then also increase the domestic violence situation.

MS. GEREBENICS. Captain Gibney, did you have any further thoughts?

CAPTAIN GIBNEY. What I would like to see—I would like to see more of our police officers have the opportunity to go away and obtain more of this training. In fact, I talked to your committee when they came in our office several weeks ago, and I know of some police departments who have men assigned in nothing but domestic quarrels and domestic problems, and I think this is great if you can really afford that, but, unfortunately, we can't afford that kind of a luxury, but I think when we talk about grants and about money being spent on different occasions, I think here is a case that we can show you that 10 percent of our calls and our time is spent on domestic quarrels. I think that this would be a big advantage to us.

MS. GEREBENICS. How many of your officers have attended the training that Sergeant Brooks is referring to with the coalition?

CAPTAIN GIBNEY. Offhand, I would say probably 80 of our patrol and traffic officers, of which we have 112. And that's a guess.

MS. GEREBENICS. Thank you.

Mr. Chairman, I have no further questions at this time.

CHAIRMAN FLEMMING. Commissioner Saltzman?

COMMISSIONER SALTZMAN. Mr. Hewitt, you mentioned crisis intervention. What does that include? What kind of crisis intervention does the police department call upon or effectuate?

MR. HEWITT. Well, there are different agencies in the city. Some known just like Crisis Intervention that, after the legalistic and mechanistic items have been handled, or in the process being handled by the police officer at the scene, try to get to the corrective measures, which is a part of prevention, asking why and trying to determine how you can prevent the symptoms or detect what caused the symptoms.

It involves relocation sometimes, hospitalization, even referrals to employment. What are the other items that we've run into that don't fall within a law enforcement realm of responsibility so far as a mechanistic or legalistic things are concerned, but nonetheless at 3 o'clock on a rainy morning, when a family is in crisis, we have to call on these agencies to assist the officer.

Sergeant Brooks, do you have the other agencies that we've called upon at those times?

SERGEANT BROOKS. There are a couple of other agencies and, fortunately, in Dauphin County they are real responsive to the police needs, such as the rape crisis organization and the crisis intervention organization. We have an alcohol program. We find fellows on the street that simply can—there's no need to be incarcerated. There's a home for

them and there's a program that they must voluntarily sign up for—sometimes it's successful; sometimes it's not.

COMMISSIONER SALTZMAN. When there is a battered woman, does the police response generally seek a diversion into a crisis intervention situation, or is it the priority of the policeman to enforce the law as indicated in the Protection From Abuse Act?

MR. HEWITT. The priority, Commissioner, if I may before Sergeant Brooks responds, is to restore order and prevent further injury to the parties, mentally or physically.

COMMISSIONER SALTZMAN. In the process of attempting to restore order, you know, he has calmed them down, what next step would he tend to take, given guidance, I assume, by the department through the advice to initiate something under the legal system or the diversionary system?

MR. HEWITT. Diversionary, because you hope at the lowest level of domestic violence—well, let's take a for instance. I've gone to domestic disturbance calls where the outcome was for the husband and wife to cry on each other's shoulders after the officer arrived to maintain the peace and to cry on each other's shoulders and making up was sufficient at that time, even though somebody might have been slapped, kicked, or whatever. On the other extreme, the situation is so distraught that the legal procedures must be followed, and that is what is desired by one or both of the parties.

COMMISSIONER SALTZMAN. Can I ask you, Mr. Hewitt, to comment on the general impression we've received from those who are active in the situation and the earlier witnesses this morning, especially, I guess, from the women's point of view, that the diversionary mechanisms do not really ameliorate the situation, that they are more in favor of law enforcement, that beating a woman is a criminal act, and that the law enforcement process ought to take priority over the diversionary?

MR. HEWITT. Well, I guess that's a philosophical debate. This particular act incorporates all the *mala prohibita* and *mala permissi* aspects that could be included or excluded in some law.

We try to restore the peace and enforce the law, and whichever requires, is required in a given case is done.

The law itself is a tremendous tool. Absent that law, we'd have no tools, and we'd have only diversion capability, some of which aren't always available.

COMMISSIONER SALTZMAN. If a policeman sees someone on the street that is being assaulted, generally after restoring the peace, will he seek to implement diversionary tactics or law enforcement?

MR. HEWITT. If it is a felony attack, he has no choice; if it is a misdemeanor, threatening words and gestures, he can maintain the peace without making the arrest or citing them.

COMMISSIONER SALTZMAN. Well, let's say it's the same thing in our home situation where there is a felonious assault. Does he tend to view it as that or just different than what he'll see and how he'll view when it occurs on the street?

MR. HEWITT. He would have to write the report, and we would have that adjudicated by our check and balance, which is the district

justice and the court system. When it gets to that point and the victim opts not to prosecute, testify, or whatever, that's probably a decision of the court system and not the police officer on the scene. Your example was felonious assault.

CHAIRMAN FLEMMING. Commissioner Ruiz?

COMMISSIONER RUIZ. Yes. It's been suggested at another hearing that female officers would be valuable in assuring that a woman victim of domestic violence would state her part of the altercation to a more sympathetic ear in making her eligible to the referred or a referral shelter. If you are formulating proposals, recommending that the parties be referred to follow up support services, have you in your proposals set forth the need for more policewomen on the force, considering that in the area we are probing, it's always a male versus female situation?

MR. HEWITT. If I understand your observation, and pseudo question, sir, I would say it would be a dangerous philosophy to say you would want female police officers just for that purpose. I cannot predict, nor can anybody, what happens 24 hours a day, 7 days a week, and the entire force must be trained and sensitized equally to ensure that whomever is available does the right thing at the right place and time.

COMMISSIONER RUIZ. I didn't necessarily mean that there would only be one female officer for that purpose. How large is your force?

MR. HEWITT. 160 sworn officers, sir.

COMMISSIONER RUIZ. How many females do you have?

MR. HEWITT. Approximately eight.

COMMISSIONER RUIZ. Would you recommend an increase in female police officers, given that 10 percent of your calls are male versus female calls?

MR. HEWITT. I would recommend them based on employing the best person for a law enforcement job, regardless of whether we end up with 159 women officers. I would not recommend it based just on the domestic disturbance calls alone because, again, I say it is dangerous to try to specialize people for that, just that purpose, specialize 160 of them.

COMMISSIONER RUIZ. Isn't it true that 10 percent of your calls are calls relating to domestic violence?

MR. HEWITT. Yes, sir.

CHAIRMAN FLEMMING. Commissioner Horn?

CAPTAIN GIBNEY. If I may—excuse me for one minute. When you say domestic violence, sir, I think maybe we have a little difference of opinion. I'm telling you that we had 7,500 domestic quarrels, and that doesn't mean it got to the violent stage or that there is somebody beating somebody. That just means that when we get the call through the communications center we have a domestic problem.

Getting back to your other question, we have tried to place our girls, our female police officers, on platoons so that there will be some available at all times. As the director said, I don't agree that we should send them in on every call, but what we do is, if it gets to the point that somebody needs treatment at the hospital or so forth, we'll make sure that there is a female police officer who is on duty to try to handle that call if she's available.

COMMISSIONER RUIZ. Don't you have with you civil court orders sometimes and take them to the scene to see if they are being complied with on a complaint of one of the parties or the other?

CAPTAIN GIBNEY. No, we don't have—we have those available in our communications center. What we'll do is, if we get on a call and we find out that Joe Blow is involved, we'll call in and see if we have any kind of an order on Joe Blow. If he does, then we pick him up for violation. But we don't have those available out in the street: they are available in the communications center.

COMMISSIONER RUIZ. You take that order out to the place where there has been a complaint? For example, let's assume that the wife has an order of nonharassment. She has the order in her possession. She calls the police department. The police department responds.

You don't have to check in your office as to whether there be or not be an order. She has the order in her possession. There is no domestic violence at the time that you arrive, but there has been harassment. With respect to that response, what proportion of the police officers that make a response to that complaint are male or female?

CAPTAIN GIBNEY. I would say they are probably mostly male.

COMMISSIONER RUIZ. This is what I wanted to know.

VICE CHAIRMAN HORN. If I might pursue, Director Hewitt, in that sort of rough figure, the 10 percent of the calls seem to involve domestic quarrels, not necessarily violent but might be. Have we got an estimate within the department as to the number of that 10 percent of calls in which charges are actually filed? Do we have any sort of rough estimate on that?

MR. HEWITT. No, sir. At this point in time our record system would not be able to track that from the original call to its final outcome and when charges were filed. Sergeant Brooks is daily on the street. He might be able to say intuitively from his experience.

SERGEANT BROOKS. It is not uncommon for an officer to respond to a domestic problem, and after making a referral to initiate the criminal process through a harassment citation, which is a summary offense, and the matter is resolved at the district justice level subject to appeal, of course, to the county court, and you don't get too many of those.

But, yes, citations are initiated and arrests are made.

VICE CHAIRMAN HORN. Are the citations one-third, one-quarter, one-half, less than that, or do we have 10 percent? Do we have 10 percent of the calls being domestic quarrels, possibly violence, and of that 10 percent maybe only in 10 percent are citations brought? What's your feel for that?

SERGEANT BROOKS. My intuitive feeling is that it would be much higher than 10 percent, much, much higher than 10 percent of these calls that the officers go on that they do issue citations.

VICE CHAIRMAN HORN. Is it your intuitive feeling that it is higher than 25 percent?

SERGEANT BROOKS. I really can't answer that. However, we're working on a proposal to adequately identify those number of cases that we do prosecute either through summary offenses or indictable cases. That's our problem, that we cannot adequately identify them.

VICE CHAIRMAN HORN. Does the Harrisburg Public Safety Department, Director Hewitt, have any statistics on other types of crime, alleged crime, as to the degree to which a call results in a citation? Do we have any comparison base to look at other categories such as murder, burglary, robbery, rape, etc., and relate that to number of calls versus citations filed by police in domestic quarrels and violence?

MR. HEWITT. Yes, sir, we can retrieve that in either gross or specific terms, depending upon the question and what you wanted to compare what to, and time frame chronology.

VICE CHAIRMAN HORN. I think the Commission would appreciate just as laying a framework—and I assume your annual reporting statistics, in an attempt to secure resources from city government, etc., would reveal some of this—if we could have your annual report of data which includes, I assume, charges by category or some lumping of categories and, if it also includes the actual citations brought by category, I think that would be of interest to the Commission.

MR. HEWITT. Perhaps, sir, you would like to have your counsel to couch your idea in terms of a specific question and also in terms of data.

VICE CHAIRMAN HORN. If counsel will follow up with that, Mr. Chairman. If we include that in this part of the record, I'd appreciate it.

CHAIRMAN FLEMMING. Without objection, it will be done.

MR. HEWITT. What few departments have, and we don't have yet, is a tracking system that goes also through the courts, for that matter, through the correctional system.

VICE CHAIRMAN HORN. I wanted to get to that point because, what you mentioned there is a recurring national problem, as any person in law enforcement understands, that the failure of the victim to prosecute—you mentioned, often at that point, becomes a problem of the courts.

I wonder—and I think it does, just need confirmation, and what you are doing about it, if anything—how that also becomes a basic problem for law enforcement in terms of the attitude of the police officer on the beat. If they know that they bring a charge and the effort it takes to write out that report, etc., and then they know the abused pulls back on willingness to testify, and they weren't present at the time, etc., to what degree have you found, regardless of the Pennsylvania act, that this does affect attitudinal behavior of police officers, who are largely male, in their willingness to enforce the law and to bring a charge equivalent to an assault charge which, in your discussion with Commissioner Saltzman, one might expect to be brought if on the street, as opposed to in the home, even though it is a misdemeanor rather than a felony.

MR. HEWITT. Well, sir, I've been in the business 28 years and what I've been taught throughout those years is a police officer neither wins nor loses a case; he restores order and enforces whatever law is required to be enforced.

Sergeant Brooks, Captain Gibney may have some local and more current feelings in that since I haven't been on the street for a while, but I don't detect in a police officer's training nor in his supervisors any

win-lose situation with respect to his attitude in handling whatever law may be there.

VICE CHAIRMAN HORN. You see no difference, then, in how the police officer enforces the law, given a particular situation in this domestic quarrel/domestic violence area, than how he or she might enforce it in another area based on subsequent behavior in a courtroom, either by the reluctant witness, the withdrawn witness, the judge, whatever?

MR. HEWITT. No, I don't, and of course, there are exceptions, and when I detect an officer who displays that kind of a differential feeling, he is subject to retraining because that attitude is unacceptable.

VICE CHAIRMAN HORN. Sergeant, do you wish to add to that at all?

SERGEANT BROOKS. Usually, on the initiation of summary charges at the scene of a domestic problem, the district justice won't even subpoena the officer. He will handle the citation with the parties that are involved. That's when the offense is determined as summary.

As far as the attitudes of the particular officers, I think since the advent of the Protection From Abuse Act it has improved immensely because you have to be at the scene of these things, knowing that your options or alternatives are really, really limited as far as restoring order, and then to have an act of this nature come along, it really gives us hope.

VICE CHAIRMAN HORN. So you have seen a change in attitude by the police officer on the beat as a result of this act?

SERGEANT BROOKS. As a result of this act, officers are now looking for the causes, trying to refer them properly rather than just dealing with Band-aid remedies, the symptoms. Alcohol is a problem—that's a symptom; it's not the problem—so the referrals give us the opportunity to fulfill some objectives.

People are now getting help and they will continue to, hopefully. As long as the organizations like the Women in Crisis group don't get burnt out, if they don't get their funding.

CHAIRMAN FLEMMING. Commissioner-designate Berry?

MR. HEWITT. While he's changing the tape, I might mention that we had a slip of the tongue a while ago. We have police officers both male and female; we don't have any girls.

COMMISSIONER-DESIGNATE BERRY. Captain Gibney, when you were giving us the statistics about what percent of the calls related to domestic quarrels, you said about 10 percent, and I think you were asked about what percentage of the time of police officers would be spent on such activities, and you said, oh, about 10 percent, if I understood you correctly.

And I wondered about that because, based on other information, it seems to me that police officers always maintain that they spend an inordinate amount of time on a domestic altercation when they go out on a call, sometimes even more time than on other kinds of matters and have complained generally in other police departments about spending more time on a domestic situation, but you seem to equate the percentage of calls with the exact percentage of time the force would be

spending in general on domestic matters. Did I understand you correctly? Do you think it is about 10 percent?

CAPTAIN GIBNEY. Yes, that's what I say, and we'll be coming up with these other figures. I'm sure that we can go back over our IBM cards and find out just how much time we do spend on these calls.

COMMISSIONER-DESIGNATE BERRY. The other thing is, I noted that in January, if I understand correctly, there was someone, a man who killed his wife and at the time she had a protective order on file with the police department; is that correct?

CAPTAIN GIBNEY. I'm not sure.

COMMISSIONER-DESIGNATE BERRY. Are you familiar with that case?

SERGEANT BROOKS. Yes, that's correct, and also, if I might add, I believe that particular family was dealing with several other social service agencies.

COMMISSIONER-DESIGNATE BERRY. Right. Well, I only point that out because if that is the case, do you think that based on the kind of training and the other matters that you told us about here today that something of that kind could not happen in the department now? Could something like that happen now?

SERGEANT BROOKS. I think one of the advantages of the Protection From Abuse Act—if you look, there was a study done in Kansas City where they studied all of their homicides, and they were able to find out that in 85 percent of the homicides, over this 2-year period that they studied, the police were called there at least once, and in 50 percent of their homicides over this 2-year period the police were called five times or more, five times or more and, unfortunately, the tactics apparently available to the police in Kansas City were not as precise as the ones that we now have available to us, so in answer to your question, I think it is going to help prevent that type of action. That was a rare occasion.

For example, as I began to state before I came up here—last week I checked the docket and there were three or four violations of indirect criminal contempt because fellows felt that it was okay to violate that court order, and what the judges in Dauphin County are saying is, "No. No, it is not okay." And what the district justices are saying is, "No, it is not okay to violate that court order." So we are taking these people off the street.

However, as I emphasized before, we don't know enough about these fellows. What makes them do—is it medical reasons? How about people with high blood pressure, are they prone to get more excited, prone to use violence? Is it within the court's jurisdiction to attempt to treat these medical problems as well as emotional problems, as well as alcohol problems? That's the direction we have, and things like that on Woodbine Street that you mentioned won't happen again. We will be able to prevent them.

COMMISSIONER-DESIGNATE BERRY. Mr. Hewitt, I was struck by the way in which you answered Commissioner Horn's question about whether a police officer might feel a little disconsolate in situations where he or she knows that having gone to the scene of a domestic quarrel, or something that on the street would have been regarded as

an assault has taken place, perhaps, if the outcome is that there is no real citation or prosecution, that the police officer never feels he's in a winning or losing position, and he would behave in exactly the same way in a case like that, over and over, as he would in one there was a citation. I was struck by it.

It seems to me there would be a human response that, if the outcome of your work results in a prosecution occasionally, that one might feel a little bit different about it. But you seem to be entirely persuaded that there would be no difference in the response at all. I was struck by that.

MR. HEWITT. The context of the question had to do with an outcome of a court case of whether or not prosecution was asked for or required. I think it is a mistake to have a philosophy of a police officer feel he either wins or loses every time he goes on a call. His role is not to win or lose; it's to restore peace and enforce the law. If he is tied to the outcome of presence or absence of prosecution, or a guilty finding or acquittal, too much emphasis on that would lead him to see things that aren't there.

Going the other direction tends to emphasize the objectivity, protecting the innocent, finding out who is guilty, restoring the order, and I think it is a much better way to go.

SERGEANT BROOKS. If I might add to that, also, the officers have been instructed, any situation that you come upon, the uppermost point in your mind in trying to restore order is attitude. You can control that situation with your attitude.

If you go into a domestic problem, it starts out on somebody's front porch. Emphasizing your authority, you're in trouble—each and every time you're in trouble. We don't do that. We try to emphasize that.

MR. HEWITT. That extends right through the philosophy with the outcome of the court of prosecution or not. If you go to a scene and you want to prosecute somebody and you want to take them to court and you want to win there, that's part of the attitude Sergeant Brooks speaks of. You approach it in that way, and that is the kind of a police department I wouldn't want to have.

CHAIRMAN FLEMMING. Commissioner-designate Ruckelshaus.

COMMISSIONER-DESIGNATE RUCKELSHAUS. Yes, I would like to ask Captain Gibney—I think we had reference earlier when you were making your opening statement about preference to keep these kinds of domestic cases out of the court system, not to make an arrest if you can avoid that, to seek other remedies. I wonder if you could develop that with me a little bit.

I'm also interested in knowing if the officers know when they go to a scene quickly enough, to use it in their assessment of what remedies are available to them, whether or not this is a pattern, whether this has happened before, or what their previous disposition has been.

CAPTAIN GIBNEY. There again I think it would be very advantageous for us to have people, officers that we could assign to nothing but this, just to control those problems that they would know within their own filing system, within their unit. Every call that went out on a domestic

quarrel, that they are sent on all of them. This is the ultimate in my opinion

Getting back to your question about how they feel when they go on the scene—in my statement about keeping him out of the legal system—I must agree with that because it has been so often that charges are brought—violations of the law under the criminal code—and the next day they are back together and, consequently, we're stuck with somebody who we have arrested and we know there's nothing going to be done. Nobody is going to show up, and the district justices become upset and they scheduled the case for a hearing and nobody shows, and then they have to discharge the case anyway.

Now, I'm not inferring there that I like to keep it out of the criminal system, if it is to that degree that we feel it should be, but I don't think, as the director and the sergeant both said, that, if we go there with the intent of making an arrest, that's the answer, because that isn't definitely the answer.

Our problem is to calm the situation and see if we can settle without bringing in the criminal violations, if it's that degree of a problem, but we have seen so many of them, and I have seen women—and we could go over a lot of stories—but I have seen women that were literally beaten to pulp, and before the police officer left there they were fighting the police officer.

Now, these people are not going to appear. They don't want anything done. For our police officers to go in there with the intentions of making an arrest, as the sergeant said, we're going to have problems, but the main thing with domestic violence is, when you're dealing with so many different types of people and so many different circumstances, and everybody reacts differently and everybody's problems are different, it's really hard to set a policy that this is what we're going on to do on domestic violence calls. You just can't do that.

COMMISSIONER-DESIGNATE RUCKELSHAUS. I understand the incredible demands that are made on your officers when they arrive on the scene and all the different values they have to weigh and make some decision right on the spot, but we have heard repeatedly from people running shelters, from women who are involved in crisis intervention, that very often the abusee, the woman who has been beaten, is discouraged from filing any kind of a criminal charge regardless of how many times this has happened to her for the very reasons you cite, and they are perfectly valid from the police department's point of view.

From her point of view, any kind of reinforcement at all, any kind of support from the arriving police officers might have given her the courage to go ahead and make that step and remove herself from that situation. If she finds that she's being steered away from that, and once again into "Let's see if you can't work it out," she's just setting herself up again for something else further down the line.

CAPTAIN GIBNEY. I would have to question that, really, because I think mostly, in all honesty, that when the policeman gets there, if he finds a lady that is willing to prosecute, I'm sure that they're going to accept that prosecution, but I'm just as sure there aren't that many that are going to fall in that category.

COMMISSIONER-DESIGNATE RUCKELSHAUS. Thank you.

CHAIRMAN FLEMMING. In connection with the calls that you have received relative to domestic violence, have you run into very many situations where older persons have been the victims of domestic violence?

SERGEANT BROOKS. No. In answer to your question, I can give you no. Occasionally, and it is also covered under the Protection From Abuse Act, occasionally you might have a daughter and a son with the parent living that they abuse. Rarely does that happen. The senior citizens are unfortunately victims of our street crime while they're walking the streets, pocketbook snatches.

CHAIRMAN FLEMMING. Your understanding of the new laws, the Protection From Abuse Act, that it would cover older persons who might be the victims of domestic violence?

SERGEANT BROOKS. That's very clear in the act, sir.

MR. HEWITT. It has been my experience, sir, if I may, to elaborate on that, elderly victims of abuse is probably a situation where it is more covert than in any other—neglect of getting the father his new teeth, his new glasses, a hearing aid, making sure they have their medicine, proper medical attention, can be done more subtly, and it is still abuse, but I would believe that to be the case.

CHAIRMAN FLEMMING. The House of Representatives of the Congress Select Committee on Aging just within the past 2 weeks has held some hearings on this particular issue and has identified the fact that it is an issue in a fair number of communities throughout the country.

On this question of prosecution, do you have any problem in terms of your relationships with the district attorney's office as far as domestic violence cases are concerned? We have run into that in some situations.

MR. HEWITT. None whatsoever in Dauphin County and the city of Harrisburg, to my knowledge, sir.

CHAIRMAN FLEMMING. The police department has been dealing with domestic violence for many, many years. It is clear that at long last society generally is beginning to give some attention to the issue.

You have commented very affirmatively on your relationships with the Women in Crisis organization, the contributions that they have made. As I recall it, they said that they've been operating about 4 years.

As you think in terms of the county, as you think in terms of the city of Harrisburg, are there other institutions in the community that show a real concern relative to this particular issue and show a willingness to cooperate with you, in fact, have some real desire to cooperate with you in dealing with the issue and, if so, what are those institutions within the community?

SERGEANT BROOKS. One of the advantages that we have—the city of Harrisburg has a crime prevention program. It is headed by agent Bob Taylor and, within this particular organization, agent Taylor views all of these social service agencies as crime prevention resources; for example, he will use the RSVP, a particular organization for senior citizens. He'll present crime prevention programs to them, the thrust of

that being teaching them ways to remove the opportunity for someone to commit a crime against them.

In answer to your question, yes, there are. There are too many to enumerate that are involved in some of these programs. However, with that thought in mind about removing the opportunity for people to commit a crime against you, it is my feeling that, if we can be successful in having that opportunity removed, somewhere along the line we're going to be successful in having some of the youngsters not have the opportunity to learn criminal behavior, and I think we have a responsibility to get pointed in that direction.

Look at the schools. Are there any crime prevention programs in schools? Should not the schools be involved in formulating these programs to teach to students since we have so many problems with youngsters that are involved in crime not getting the discipline at home? We simply can't abandon them. We have to do something, and this is an area that I think we might want to look into.

CHAIRMAN FLEMMING. Backing up just a moment, are there churches in the community that have shown a real concern relative to this particular issue and have shown that concern by sitting down with the police department and in effect asking the police department how they can cooperate with you in dealing with the issue in a more effective manner?

SERGEANT BROOKS. When I headed the city of Harrisburg's crime prevention program, I did have churches involved. Their involvement consisted in large part of making their facilities available to the police department to present our programs, programs in the prevention of rape, programs in the prevention of street crimes, prevention of house burglars, robberies, many different programs. Out of the 66 different talks that I gave while I was the city's crime prevention officer, churches were involved in many of those, doing the advertising, providing the support, providing the facilities.

MR. HEWITT. On an even more current basis, I have, without having advertised the fact, five ministers of different faiths who will be available 24 hours a day, 7 days a week, for a dual role: one of them is to deal with officer stress and the other for the crisis kinds of things that an officer feels the need for a minister at a scene. This program is a third of the way completed, and we'll implement it as quickly as we can meet with those ministers to set their days of the week. So they have expressed an interest.

CHAIRMAN FLEMMING. Are there any other institutions in the community that have shown a real interest in this area of domestic violence and are doing something practical about it to the knowledge of the police department? The illustration you've just given me on the churches is the kind of thing I'm interested in. I'm just wondering whether or not there are any other institutions, organizations within the community that see this as a major issue and are anxious to be of constructive help in resolving the issue.

SERGEANT BROOKS. In answer to your question, I'm not sure that these organizations view domestic violence as a major issue. As you know, most of these incidents occur behind closed walls. There are still

people that have the attitude that a man's home is his castle, and whatever he does behind that particular wall is okay. Again, I alluded earlier to some of the public awareness programs for the very reason that you're asking that question.

CHAIRMAN FLEMMING. Right. In other words, you think that we've still got some distance to go as far as public awareness is concerned in order to get the support of other organizations within the community in dealing with some of the specific issues that arise in this area, or specific cases that develop in this area?

SERGEANT BROOKS. Precisely.

CHAIRMAN FLEMMING. Mr. Nunez?

MR. NUNEZ. One question to Sergeant Brooks. Do you devote your full time to this activity or do you have other responsibilities?

SERGEANT BROOKS. I have other responsibilities. I am a platoon sergeant. I direct, patrol, coordinate, control the activities of 17 or 18 men that are out in the street as well as supervise the two supervisors that are on the platoon.

MR. NUNEZ. Captain Gibney, you've referred several times to the fact that it would be useful to have several full-time police officers working in the area of domestic violence. My question to you is whether you, have you made any specific application to the city council for additional funding, or have you perhaps pursued this with possible Federal grants?

CAPTAIN GIBNEY. No, sir, we haven't. We had discussed it and this really just came to light more so after we had our training schedules with Sergeant Brooks, and we have been working with the district attorney of Dauphin County relative to this, too, but the answer to that question is no, we haven't gone to that degree.

MR. NUNEZ. Do you intend to?

CAPTAIN GIBNEY. Yes, sir.

MR. HEWITT. Just for your edification sir, if I may, Captain Gibney mentioned that as an optimum, and certainly we aim for optimums, but to stick something in your ear for practical terms, at an average annual wage of \$16,500 per year, to keep one officer off the street for any special purpose requires we hire 5.2 people, given their holiday vacation and sick leave schedule. If you multiply that out, one person sitting in the middle of that stage 24 hours a day throughout the year is \$86,000, so that is a consideration that we have to keep in mind when we do anything special.

CHAIRMAN FLEMMING. We want to thank you for coming here this morning and providing us with the benefit of the experience that you have had, the experiences that you are having in this area. Thank you very, very much.

The hearing will be in recess until 1 o'clock.

Afternoon Session, June 17, 1980

CHAIRMAN FLEMMING. The meeting will come to order. Counsel will call the first witness.

Ms. STEIN. Will Richard Lewis come forward please?
[Richard A. Lewis was sworn.]

TESTIMONY OF RICHARD A. LEWIS, DISTRICT ATTORNEY, DAUPHIN COUNTY

CHAIRMAN FLEMMING. Thank you. We appreciate your being with us.

Ms. STEIN. Mr. Lewis, would you please state your name, position, and length of time you have been in that position for the record?

MR. LEWIS. My full name is Richard A. Lewis, L-E-W-I-S. I'm the elected district attorney of Dauphin County, and I've been in office since January 7, 1980.

Ms. STEIN. Do you have any previous experience in prosecution?

MR. LEWIS. I've been with the Dauphin County District Attorney's office as an assistant district attorney since 1972.

Ms. STEIN. Could you briefly describe for us the jurisdiction and responsibilities of your office as district attorney?

MR. LEWIS. The district attorney of any county in Pennsylvania is the chief law enforcement officer of that county and, as such, has the main responsibility of prosecuting the criminal cases in our court system, but secondarily, certainly, has an obligation to advise and assist local police departments in legal matters pertaining to criminal law in cases they are investigating.

Ms. STEIN. And I take it some of the cases that you might be called upon to prosecute or to advise about would be offenses growing out of domestic violence, or abuse, by one spouse or another?

MR. LEWIS. That is correct.

Ms. STEIN. Does the staff of your office receive any training or other special information or materials on domestic violence?

MR. LEWIS. The staff receives training on handling prosecutions of all types of cases; included in that, naturally, would be the presentation of a case in court regarding a matter growing out of a domestic violence dispute, whether it is an assault or some other type of domestic violence.

As far as material, I should say that in the last year or so, that type of material has been more available to prosecutors, courts, police, and so forth because of the advent of an entire body of organizations dealing in domestic violence.

Ms. STEIN. I understand that you brought with you today some copies of documents called "legal newsletters." Could you explain to us what they are?

MR. LEWIS. Oh. I have to apologize, I wasn't aware that I was required to bring those. Basically, I'll explain them and, if you wish copies, I can certainly forward them to you.

Basically what our office does on a basis of perhaps every 6 to 8 weeks—we try to send out what we have termed a "police bulletin." It is sent out to all the police departments in our county, and all the

district justices, and other agencies that may profit from this type of publication. It is just in memo form. It is a compilation of some of the recent cases that have come down from our appellate courts in Pennsylvania, or Federal courts as well, or changes in the rules of criminal procedure that have been promulgated by the Pennsylvania Rules Committee out of the Pennsylvania Supreme Court, and is just simply an advisory memo to local police departments of changes in the law.

MS. STEIN. Mr. Chairman, I'd like to ask that when these newsletters are provided for us, that they be received as exhibits in the record.

CHAIRMAN FLEMMING. Without objection, that will be done.

MS. STEIN. Could you estimate for us approximately how many complaints are filed with your office for prosecution in a year, complaints of all types?

MR. LEWIS. Of all types? First of all, I think I should give you some background. Initially speaking, complaints are not filed with the district attorney's office or any district attorney's office in Pennsylvania. The procedure on our State level is for the local police to go out and conduct an investigation and perhaps make an arrest if they feel the situation warrants that.

The next step is that the case—any misdemeanor or felony case must then go to a preliminary hearing in front of a magistrate, a duly elected magistrate, called a district justice, and each county has several district justices.

Here in Dauphin County we have 12, I believe. That magistrate must conduct an initial hearing known as a preliminary hearing. If that magistrate feels that there is a *prima facie* case, in other words, if sufficient evidence exists to justify him sending the case into court, it is then sent in to the district attorney's office. So I can only give you figures as to how many cases we process a year, but not how many charges are filed by all the various police departments in front of all the various district justices.

MS. STEIN. Would the district attorney's office participate at all in the proceedings before the district justice or would they be handled by the police department?

MR. LEWIS. Naturally, they are more than likely handled by the police department. We have deputy district attorneys available when we're not in court to go out to the offices of the various district justices and conduct hearings on the part of the Commonwealth, because we don't have that many staff attorneys—we only have eight staff attorneys in the office, and so it makes it rather impossible to cover all the hearings, but what we try to do is we go on requests, either by the police, if they feel they have a particular case where the facts are unclear and they require assistance from our office, something like that—we will send an attorney out to conduct a hearing on behalf of the Commonwealth.

MS. STEIN. Could you give us, then, statistics for those cases that are referred to your office by the district justice for prosecution? How many in a year would your office handle?

MR. LEWIS. All right. Well, that varies from year to year, naturally. In a given year, we have approximately a minimum of 2,000 cases that

come into the office. I don't think the figure would ever get over about 2,300 or 2,400. It certainly may but, generally speaking, I think it hovers around 2,000.

MS. STEIN. Could you estimate for us how many of those cases would involve incidents of interspousal abuse?

MR. LEWIS. I would be very surprised if the figure exceeded 10 percent.

MS. STEIN. What is the most common charge in interspousal abuse cases prosecuted by your office?

MR. LEWIS. You made a distinction in your question, and I would like to clarify it a little if I may. The most common charge that seems to be brought in any domestic violence situation is the charge of harassment. Harassment is kind of a catchall. It can deal with almost—it can deal with a variety of criminal conduct. It can involve situations that occur in a domestic setting, it can involve situations that occur in a neighborhood setting, and probably other settings as well.

The charge of harassment is a summary offense. In other words, that can go to the district justice and the district justice is the final arbiter—except for possible appeals—is the final arbiter of that case. In other words, the district justice decides guilty or not guilty.

MS. STEIN. To interrupt you for a moment, if the charge were harassment, it would be disposed of at the district justice level without involvement probably by your office?

MR. LEWIS. That is correct. So otherwise, the cases that we get—the most common charge is some type of assault. And in Pennsylvania there are two types of assault: aggravated assault, where the prosecution has to show there is serious bodily injury, or at least an attempt to commit serious bodily injury; and the second charge would be simple assault, where the Commonwealth must show there is at least some bodily injury.

MS. STEIN. Now, who would determine which of those charges would be brought in a given case? Would that be the district justice or would that be your office?

MR. LEWIS. Initially speaking—okay, if it is a police prosecution, the charge is filed by the police officer, and he has to make a judgment whether the injuries suffered by the victim constitute serious bodily injuries or whether they are simply bodily injuries. So he is the initial determiner of what charge he is going to file.

Now, something else that I think got left out in our discussion. In Pennsylvania, a person has a right to file what is known as a private complaint, and that very often does occur, and it very often does occur in domestic violence situations, but it can occur naturally in any other situation as well where the victim can go to the district justice and file a charge, but in a private complaint, the complaint must be approved by the district attorney in the county before the district justice will issue the formal papers charging the person.

MS. STEIN. Before the district justice would decide whether to refer that case for prosecution in the court of common pleas?

MR. LEWIS. Right. In other words, before the person is arrested. In other words, once the victim comes in and says, "Well, okay, I'm the

victim of an assault by my husband" or "by my neighbor" or what have you, the district justice takes the information, prepares a formal criminal complaint, okay, and sends it into the district attorney's office for approval.

The district attorney—at least the way we handle it in Dauphin County—we contact the victim, request that the victim come in for an interview to meet with the deputy district attorney, and the deputy district attorney, after talking to the victim and possibly other witnesses, decides whether there is enough there to bring a charge.

Then the deputy district attorney decides what charge should be brought, whether it is the charge that is stated by the district justice or whether, perhaps, the evidence shows some additional charge or some lesser charge or some greater charge for that matter, and then it is returned to the district justice.

If it is approved, it is returned, and then he issues the warrant or the formal papers to have the person arrested or sent a summons, whatever is called for.

MS. STEIN. All right, now, when you interrupted yourself to refer to this private complaint procedure, you had mentioned that the police officer makes the original decision technically as to what charge to file.

MR. LEWIS. Correct.

MS. STEIN. Then there comes a time when the case comes before the district justice. My original question was who would determine what the final charge is as between simple assault and aggravated assault? Would it be the district justice or your office?

MR. LEWIS. Okay, the district justice conducts a hearing and, if he feels there is a prima facie case on the charge that is brought by the police officer, he then sends that case into court. He doesn't say guilty or not guilty; he says "I find a prima facie case" and sends it into court.

If he feels that there is not a prima facie case on the main charge—suppose the police officer brought an aggravated assault charge and the district justice feels that there is really no evidence to show that the injuries were serious, the district justice can decide, "Well, a prima facie case has been made out of simple assault," and he can then forward that case into court; and of course, it has to go before the judge, jury, what have you, for the final determination of whether there is a case there.

MS. STEIN. But would that decision of his be binding on your office as to what was charged?

MR. LEWIS. It certainly is binding on us to prevent us from raising the charge. In other words, if a district justice sends in a case of simple assault, we cannot change it to aggravated assault. We cannot upgrade the crime. We can put in lesser counts in the information and in the indictment, but we can't put in greater counts.

MS. STEIN. When your office is determining whether the facts of an assault warrant prosecution for aggravated assault or simple assault, what standards do you use?

MR. LEWIS. Well, naturally, we want to discuss all the facts and circumstances regarding the incident. Naturally, in Pennsylvania, there

is a right for a person to use force in some situations. A person has a right to use force in self-defense and to protect property and so forth.

So we have to get a feel for the facts to make sure that what happened here was not justified force. That's just a precaution. It seldom happens that it is in a domestic violence situation, naturally, but, nevertheless, you ask those routine questions to determine all the facts and circumstances.

Then the main determinant of what charge is to be brought or if it is to be approved is the extent of the injuries, naturally. Simply touching someone or pushing someone where there are no injuries does not constitute a charge of any type of assault; it may be harassment or some other type of charge, but it is certainly not an assault. So we want to get all the facts and circumstances involved in the episode. We want to determine the extent of the injuries. We want to see if there were any mitigating or aggravating circumstances in the case, and then make our determination based on those facts.

MS. STEIN. What degree of bodily injury would you generally require in order to charge aggravated assault?

MR. LEWIS. Well, aggravated assault under the law indicates that it must be some serious, protracted loss of any bodily member or organ or some type of serious type of injury. For instance, a broken nose or—a broken nose may not be an aggravated assault, okay—a broken jaw, certainly, more than likely would be, all right?

So you have to look at the type of injury; you have to examine the medical reports. Sometimes we even have to talk to the doctor to see how serious the injuries were.

MS. STEIN. Does the prosecution of spousal violence cases present difficulties to you that are not found in other types of assault cases?

MR. LEWIS. Yes, they certainly do.

MS. STEIN. Can you explain for us what type of problems they present?

MR. LEWIS. Well, generally, I think there are two types of problems. Number one, there seems to be a hesitancy on the part of the police to get themselves involved in a domestic violence situation. I think the old idea of the sanctity of the family unit and outsiders are not to interfere perhaps has some part, plays some part in this discussion, and the police are sometimes reluctant to enter into a family dispute. They feel sometimes that they are choosing sides. I think that is a hesitation. I have seen that hesitation decrease in recent years, but nevertheless I think it still exists. That is certainly one problem.

Another problem is the problem of the victim of domestic violence. Many times, admittedly sometimes out of confusion because, naturally, stepping into the criminal justice system can be a very trying experience, as I'm sure you realize, but sometimes out of confusion, out of fear of retribution, out of other types of fears, I would imagine, sometimes the victim all of a sudden withdraws the prosecution.

In other words, the victim has gone to the police or gone to the district justice, filed a criminal complaint, the matter has had a hearing and set up for court, and all of a sudden the victim comes in and says, "My husband and I," or "My boyfriend and I," whatever the situation

may be, "are now back together. We're living happily. Everything is rosy. I no longer want to go through with the charge."

And that presents a very difficult problem to the prosecution, it presents a very difficult problem to the police because now they have put some time into this case and brought a prosecution, the case is set for trial, it is on the court list, and all of a sudden the victim does not want to testify. So that's a traditional problem.

MS. STEIN. How do you typically deal with that problem?

MR. LEWIS. Well, naturally, we want to be absolutely 100 percent sure that the victim of any type of violence, whether it's domestic violence, or any type of violence, naturally, is under no duress or under no threat or anything along that line to reduce these charges, not reduce but withdraw the charges, I should say. We want to make sure that it is a completely voluntary choice with no coercion and so forth.

Very often, very often, if it is anywhere near a serious type of assault, what we will do is we will insist that the victim come into court under subpoena, if that is necessary, and on the record, under oath, in front of the judge and in an open courtroom, state their reasons for wanting to withdraw these charges, because many times it has happened that a victim may want to withdraw the charge and then 2 weeks later they call and say, "Is it too late to institute the charges again, because I got hit again. Is it too late to do something?"

So, in order to make sure everything is clear, is on the record, we have the victim come into court and under oath indicate to the judge that she wishes to withdraw these charges.

MS. STEIN. If she does so, will the charges then be dropped?

MR. LEWIS. I think the judges in our court have gone to great lengths to inquire, to make sure, to be 100 percent certain that the victim is voluntarily doing this, and if that is the case, then usually the charges are allowed to be withdrawn.

MS. STEIN. What impact do you feel that the Protection From Abuse Act has had on the caseload of your office with regard to spousal violence cases?

MR. LEWIS. Well, I think you have to remember that the Protection From Abuse Act is purely a civil remedy. It is certainly a very effective remedy but, nevertheless, it is a civil remedy in nature and it does not, in its course of going through the court system, does not ever come into the district attorney's office.

In other words, by statute, the district attorney has no place in the Protection From Abuse Act procedures. The only place we do have is sometimes we act as an advisory agency for the police on the different problems that do come up with the Protection From Abuse Act. But we have no authority; we don't set the cases up. We don't instruct the police what to do, and we don't enter into the hearing or anything like that.

By law, we are not part of it. But to go back to the core of your question, what effect it does have, I think it has reduced somewhat the flow of domestic violence cases in the criminal justice system. By that, I'm saying it has certainly given the victim of domestic violence another alternative. It has given the victim of domestic violence perhaps a

better alternative than going through the criminal court system and perhaps punishing the defendant, which may or may not cure the problem.

Ms. STEIN. Why do you feel it is a better alternative?

MR. LEWIS. The whole theory of the domestic violence situation is to keep the family unit, to keep the household intact, minus the person who is causing the violence. So under our theory, under the criminal justice system, if a woman would bring a charge against the man for some type of assault—a husband or a boyfriend, whatever, for some type of assault—even if the person is sent to jail, he's right back in the household again. Sometimes these matters continue over a period of time, but the Protection From Abuse Act will effectively remove the injuring party from the premises and allow, if there are children involved, the children to be in the home unit as well as the mother and so forth.

So I think from that standpoint it is very effective.

Ms. STEIN. If an order excluding a spouse from a home is issued in a Protection From Abuse Act case and then is violated, it is my understanding that the sanction for that violation is criminal contempt proceedings; is that correct?

MR. LEWIS. That's correct.

Ms. STEIN. Does your office have any role in these proceedings?

MR. LEWIS. No, we do not.

Ms. STEIN. Some people have indicated that they have problems with the idea of imposing an essentially criminal sanction for violation of a civil statute. Do you have any opinion of whether that is a problem or not?

MR. LEWIS. Well, the appellate courts, I think, in Pennsylvania will ultimately decide that issue and I think, you know, if applied wisely and fairly by the courts, which I'm sure it is, I don't see any problem in imposing a criminal sanction. However, like I indicated, I'm sure these cases are ready to be heard by some of our appellate courts here in Pennsylvania, and whether or not that procedure is a valid one is going to be decided by the appellate courts. We'll just have to wait and see.

Ms. STEIN. Thank you very much.

I have no further questions.

CHAIRMAN FLEMMING. Commissioner Ruiz?

COMMISSIONER RUIZ. Does the magistrate set bail upon a police complaint?

MR. LEWIS. Yes, sir.

COMMISSIONER RUIZ. In the metropolitan area from whence I come—which is Los Angeles County—the district attorney has taken an active role in what is referred to there as “child concealment” or “child stealing by the father” as a form of harassment and making a desperate mother come to terms.

Ordinarily, a person cannot be convicted of kidnapping his own child, so there is a remedy wherein a mother can procure, from the civil side of the calendar, a forthwith order wherein the police may intercede in aid of the civil process or quasi-criminal process to arrest the husband who is holding the child as a hostage.

Could the police officer in this county procure a civil arrest warrant issued by the court in support of the forthwith order, which could be habeas corpus, and take the charged husband to the civil judge, or would the police officer take the person to the magistrate for disposition in the setting of bail?

MR. LEWIS. We attack the problem in a different manner here in Pennsylvania. We have a criminal statute that covers some of these situations, certainly not all, but covers some of the situations. In other words, the statute is called Interference with Custody of Children, and as long as there is some type of order granting custody to one parent, it then becomes a criminal charge, a criminal violation for another person, even if they are a parent, to interfere with that custody.

So, in other words, in a marital split-up situation, or divorce, whatever you have, if custody is awarded by the court to the mother, for instance, and the father comes back in the still of the night, or in broad daylight, or whatever, and takes the child from the mother, that constitutes a criminal violation in Pennsylvania, and a criminal charge called interference with custody of children, which is—I'm trying to remember—either a very high misdemeanor or very low-grade felony—one or the other, can be brought and it is often brought in this jurisdiction.

COMMISSIONER RUIZ. It goes to the criminal side of the calendar, then?

MR. LEWIS. That's correct. Yes, sir.

COMMISSIONER RUIZ. And the civil side of the calendar desists from further going on with—let us say—there is no order, then, from the civil side of the calendar on that.

MR. LEWIS. No, not in that. The police have a right to bring that charge, interference with custody of children. It is a purely criminal charge and that sometimes takes care of the problem.

COMMISSIONER RUIZ. All right.

CHAIRMAN FLEMMING. Commissioner Saltzman?

COMMISSIONER SALTZMAN. Mr. Lewis, what improvements would you like to see in the manner in which the State of Pennsylvania deals with the issue of the abused woman, the battered woman relative to legislation, your office, and how it serves to respond, and police enforcement in general?

MR. LEWIS. Relative to legislation, I think the Protection From Abuse Act is a very progressive piece of legislation. I was certainly happy to see it here in Pennsylvania. There are kinks in it. There are little procedural problems that we're having, like any new piece of legislation, naturally, and I think those kinks have to be worked out.

Hopefully, in the next few months or year or so when we get some guidance from the appellate courts on exact procedures, I'm sure those things have a way of working themselves out. Right now there are just a lot of areas where the police just aren't sure of what the proper procedure is in a given set of circumstances under the Protection From Abuse Act.

We attempt, when possible, to work them out with them. But until there is some guidance, we don't always have the right answers either. Sometimes we feel we are stumbling in the dark on properly advising

the police, until we get that guidance from the appellate courts in Pennsylvania.

Legislatively speaking, naturally, I think the alternatives under the crimes code and the different criminal charges that exist—this charge that I just mentioned a brief minute ago, the interference with custody of children, it seems to at least have laid a foundation of alternatives for the victim of domestic violence. There seems to be an increase in the number of shelters here in Pennsylvania. Certainly in Dauphin County—we have a shelter here and I think that is certainly a positive benefit.

The area of concern I have is simply this: number one, I think that we have to concentrate more on making it known to the victims of domestic violence that they do have these alternatives in the system. I think it is surprising that very few people realize that there is a domestic violence shelter here in Dauphin County or that there are several here in the central Pennsylvania region. Very few realize the alternatives they have under the Protection From Abuse Act.

Naturally, the shelters and the various organizations are prepared to give advice, but the general public, I feel, does not know to call for the advice. They don't know that this type of help is available.

COMMISSIONER SALTZMAN. Whose responsibility would it be to publicize, project what is available?

MR. LEWIS. Well, that's a difficult decision. I certainly don't want to stick the blame on anyone. I don't want to put it on Washington nor do I want to put it on Harrisburg, either. But I think all of us have to examine that problem, focus our attention on ways to publicize these difficulties a little more, and to make the victims of this type of violence aware of some of the alternatives and recourses that they do have.

Lastly, I think a lot has been done in the last several years to educate the police about the problems in domestic violence, and I think that naturally has to continue and be constantly upgraded as much as possible, because, let's face it, they have the very, very difficult job—and I think we have to understand that from the outset—they have the very, very difficult job of stepping in sometimes to a potentially volatile situation, and sometimes the training that they have or don't have can determine the outcome of that situation, whether a person in the household is going to be injured, whether the police officer is going to be injured, and so forth, so we cannot ever underemphasize that need.

COMMISSIONER SALTZMAN. One final question: I asked at an earlier panel representing the police department, when a policeman observes an assault in the street, there is an immediate arrest, I assume. When this takes place in the home, there are diversionary solutions rather than an immediate arrest. Why the difference, and ought not a criminal act, even though it is done in the home against a woman, be treated in the same manner that it is treated in all other situations?

MR. LEWIS. First of all, you have procedural rules that you have to follow. The legal system has entered into the situation here. First of all, if a police officer observes a crime, he has a right to arrest on the spot without a warrant. If he does not observe the crime, he has no right to

arrest on the spot without a warrant, so that changes the fact situation right there

Secondly, there still exists—and I don't think we can ever forget it—simply that attitude problem that I think the police have, and perhaps everyone in the criminal justice system has, to tread softly when you're walking into someone's home to solve the household problems.

COMMISSIONER SALTZMAN. When there is a criminal attack, I'm asking, shouldn't it be treated the same way as in any other circumstance?

MR. LEWIS. Yes, it should be, correct, but you're asking me why it isn't. Okay, I'm trying to give you some reasons why it isn't, sir. I can agree with you in theory that it should be.

COMMISSIONER SALTZMAN. So do you think that this is a lack on the part of the police department, a failure on the part of the police department, to enforce the law?

MR. LEWIS. No, I don't think it is a failure on the part of the police. I think you have to understand their role in this. First of all, a police officer entering into a domestic violence situation cannot put himself in a position of judge and jury to determine who is at fault. Sometimes you have a domestic violence situation where the fight is going both ways.

COMMISSIONER SALTZMAN. What happens on the street when the police observe a criminal activity?

MR. LEWIS. You keep using the word "observe."

COMMISSIONER SALTZMAN. Let's say they observe it at home, even under observation or lack of observation. I'm saying that what emerges here, and in another area where we had a hearing, is that the police treat the situation of a battered woman differently than they will treat any other situation, and I think that's a problem.

Here is a criminal activity and it should be dealt with in the same manner, it seems to me, and I think the other are the rationalizations—it appears to me at any rate—that permit the situation to be perpetuated and to even be the source for the situation where a woman is battered, where it is okay to commit violence against a woman as long as she's your wife.

MR. LEWIS. Sir, I think you have to realize that police in this situation, certainly, I think, have an obligation to handle the matter, if they feel that a criminal charge does exist, to bring the charge, or at least to instruct the victim as to how to bring the charge. They certainly have that obligation.

I think, generally speaking, they are meeting that obligation. You have to also look at the other fact that there is a great hesitancy on the part of the victim to actually get involved in the criminal justice system.

How many times do the police say, "Do you want charges pressed?" and does the victim say, "No"? You asked that it be treated the same, but it's not the same.

The same thing happens out on the street. If the policeman comes upon the scene of a fight that he did not see, he does not go around arresting everyone. He has to investigate it further to see who is at

fault, sometimes advises the same type of situation, sometimes advises the participants of their right to go to the district justice and file criminal charges.

Again, the police officer should not put himself in a position to be the judge and the jury to find out who specifically was at fault. I think he has to take reasonable steps, naturally, to try to solve the problem if he can. If not, he doesn't want to put himself in that position. He certainly wants to advise everyone of what rights they have in the criminal justice system.

CHAIRMAN FLEMMING. Commissioner Horn?

VICE CHAIRMAN HORN. I was interested in your comment that more should be done to educate the public as to the alternatives available to them in this area, and I know your office was greatly concerned about preservation of the rape crisis center, which was not able to be worked out, through no fault of your office, but apparently in the delay of the county commissioners acting.

What intrigued me this morning was that Sergeant Brooks in his testimony stated, much as you have, that much more needs to be done to let the public know the alternatives which are available to them and the resources that battered women can call upon. He expressed concern that instead of having public service announcements during perhaps afternoon television or soap operas or whatever, that too often public service announcements appear at 4:30 in the morning.

You are a leading officeholder in the county. I wonder to what extent you and other public figures, such as yourself, could talk to the television/radio media to have a campaign which a lot could engage in, in order to get home to people, or at least make available, the information as to the alternative services that are available at some hotline crisis number or whatever, or has this already been done and the Harrisburg police simply don't know that it is going on.

MR. LEWIS. I think that type of service goes on continuously. There are sporadic announcements. I've heard them over television or radio or through the other media, advising persons of this service, but they are sporadic in nature. They are certainly not concentrated to any one group or at any one time.

As you said, sometimes they do appear at off-times. We have certainly an advantage in this area that perhaps some other areas of Pennsylvania don't have. We happen to be in the capital city of Pennsylvania, and, as such, there are—besides the local organizations here in Dauphin County—there are numerous State agencies.

For instance, we have the women's shelter. Besides having the women's shelter here, we have the State headquarters for domestic violence right here in Harrisburg, which I think perhaps gives us an added advantage of some resources.

Periodically—I know when the shelter first began there was quite a bit of attention on the shelter and its services by the news media, but, naturally, they have to cover all the news and certainly cannot concentrate on that time and time and time again.

Perhaps what can be done is some type of approach to the news media to at least, at regularly stated intervals, whether it is every

month, 6 months, or every year, or whatever, to kind of get that message out on the public service announcement system as well to keep it flowing.

I know the local newspapers have, in the past, done articles on the domestic shelter situation here in Dauphin County and other counties as well, but sometimes that just doesn't seem to be enough to gather the kind of continuing interest and make everyone fully aware of these services. Telephone books and other publications that are put out by some agencies have these phone numbers in them, but, nevertheless, for some reason, the person in the street still is not aware of the service. Perhaps it is that the person in the street feels that they are not in need of the service and 6 months down the road, when they are in need of it, they naturally forgot all about the newspaper article they read.

CHAIRMAN FLEMMING. Commissioner-designate Berry?

COMMISSIONER-DESIGNATE BERRY. I have no questions.

CHAIRMAN FLEMMING. Commissioner-designate Ruckelshaus?

COMMISSIONER-DESIGNATE RUCKELSHAUS. Yes. Mr. Lewis, I notice here there seems to be a perception that the application of the act is uneven from county to county, perhaps more frequently used in one county than another, and I suspect that's one of the things that the Task Force on Domestic Violence intends to address. Could you share with us your perceptions of why these differences occur and what exactly the task force has in mind to bring about a more uniform use of the act?

MR. LEWIS. You're talking strictly the Protection From Abuse Act?

COMMISSIONER-DESIGNATE RUCKELSHAUS. Yes, the Protection From Abuse Act.

MR. LEWIS. And you are wondering why it is not used in some counties or not used as much in some counties? Very honestly, ma'am, I find it very difficult to answer that, why it is not used in some counties. It certainly is a great solver of this type of problem. It certainly allows the courts a lot of leeway in settling a problem, and the district justices as well, and it is certainly a great benefit to the police. I find it very difficult to understand why a county would not use this remedy more often.

COMMISSIONER-DESIGNATE RUCKELSHAUS. Well, let's assume the reasons aren't very good, but what are they?

MR. LEWIS. I really don't know. I think your survey will show that it is used very often here in Dauphin County, and so I'm at a loss to understand why it is not used in some counties. I really don't know. I find it very difficult to answer.

COMMISSIONER-DESIGNATE RUCKELSHAUS. Would that be a commitment on the part of the police or a resistance on the part of the courts or—

MR. LEWIS. I imagine it could be a variety of factors. I haven't had any experience in a county that does not use it, and I'm not sure what is causing the problem of implementing that legislation.

COMMISSIONER-DESIGNATE RUCKELSHAUS. Thank you.

CHAIRMAN FLEMMING. In one of your opening comments you referred to an increase in the organizations dealing with the issue. I think I'm quoting correctly.

MR. LEWIS. That's correct, yes, sir.

CHAIRMAN FLEMMING. And the impact that that's had on the situation. What type of organizations do you have in mind that have come into this picture?

We, of course, have had testimony already from the organizations that support shelters, such as the one here in this particular county. Are there other organizations that have developed an interest in the issue and have begun to relate themselves to the issue in a positive and constructive way within the community or within the county?

MR. LEWIS. The main organizations that seem to deal with this problem are naturally the ones that have been mentioned in our discussion already—the Women in Crisis organization, Pennsylvania coalition Against Domestic Violence, and the rape crisis organization plus their statewide organization, Pennsylvania Coalition Against Rape. They seem to be the four most active in this area, and I know the local YWCA seems to have some activity in this area as well, perhaps because they sponsor, now sponsor, the rape crisis program here in the Dauphin County area. Perhaps the reason why—but among those organizations, I think they are the ones I'm speaking of, especially the women's shelter and the rape crisis center that have just emerged in the last several years and are getting stronger all the time, and I think are more and more asserting themselves and speaking out on the issue.

CHAIRMAN FLEMMING. As a county community leader, do you feel that it is important for the community to take cognizance of the organizations that have brought the shelters into existence and do everything possible to get them on a solid foundation from a financial point of view so that they can continue to render this kind of service?

MR. LEWIS. Well, naturally, when you talk about finances and funding, you always run into a little bit of problem and a little bit of a controversy, but, nevertheless, simply speaking of community support, I agree with you wholeheartedly. There should be solid community support behind organizations such as this that foster these types of programs because they do have a definite need.

We've seen in recent years the assistance that the rape crisis program here in Dauphin County has rendered to the prosecution of cases in our courts. They've been of invaluable assistance, and it is a shame to see their organization get tied up in funding problems, and they can't continue with the same strength that they had before.

You know, I certainly hope the same thing doesn't happen to the women's shelter. The statistics, I think, in Dauphin County, or any county across the State, show that there is a definite need for that type of service, and correct, we cannot always turn to government for funding of these things; sometimes the community has to recognize the problem and take on the burden themselves.

CHAIRMAN FLEMMING. Well, Mr. Nunez, do you have anything?
[No response.]

CHAIRMAN FLEMMING. We definitely appreciate your coming here and spending this time with us and sharing your observations with us. Thank you very, very much.

Counsel will call the next witnesses.

MS. STEIN. Would John C. Dowling, Paul Hardy, Joseph Pinamonti come forward please?

[John C. Dowling, Paul H. Hardy, and Joseph Pinamonti were sworn.]

TESTIMONY OF JOHN C. DOWLING, JUDGE, COURT OF COMMON PLEAS, DAUPHIN COUNTY; PAUL H. HARDY, DISTRICT JUSTICE, HARRISBURG; AND JOSEPH PINAMONTI, DISTRICT JUSTICE, HARRISBURG

CHAIRMAN FLEMMING. We appreciate your being with us.

JUDGE DOWLING. May I say something? May I make a remark before you ask me questions, Mr. Chairman?

CHAIRMAN FLEMMING. Certainly.

JUDGE DOWLING. I am disturbed by the manner in which I have been summoned before this body. I do not speak personally, but as a member of the judiciary of the Commonwealth of Pennsylvania. I feel that State judges deserve some consideration and should not arbitrarily, without consultation and notice, be subpoenaed for a matter of this nature.

I have had to leave my courtroom in the midst of an important trial to honor this subpoena. I have always cooperated with any legitimate inquiry concerning the judicial system and indeed, upon request, spent some time informally, I think informatively, with persons concerning this study. My cooperation was repaid by the unannounced visit of a process server. Thank you.

CHAIRMAN FLEMMING. We appreciate your being very frank and sharing your reaction with us. I think probably it has been explained to you by counsel or other members of our staff that under the law under which we operate, when we do hold a public hearing, all witnesses are subpoenaed and all witnesses are put under oath. We do not make exceptions to that particular rule. That's a procedure that has been followed by this commission now for a period of 22 years.

We appreciate your being here with us at this time in order to share with us the insights that you have relative to what we feel is a very important issue.

JUDGE DOWLING. On that point, if I may also add, I was here under subpoena at 1 o'clock, so I had the opportunity to listen to Mr. Lewis, our district attorney. I thought he covered the subject exhaustively. I really don't know what I can add, but I'll be happy to answer any questions you have.

CHAIRMAN FLEMMING. Counsel will proceed with any questions that she has and we will turn to the members of the commission.

MS. STEIN. Could we begin perhaps by asking you please to state your name, your position, and how long you have been in your present position, all three of you, beginning with you, Judge Dowling?

JUDGE DOWLING. John C. Dowling. I am a judge of the Court of Common Pleas of Dauphin County. That's the 12th Judicial District of the Commonwealth of Pennsylvania. I've been a judge for 10 years.

JUDGE HARDY. I'm Paul H. Hardy. I am a district justice in the city of Harrisburg and I have been in that position since 1970.

JUDGE PINAMONTI. District Justice Joseph Pinamonti. I am a district justice in Harrisburg and I have been in that position for 4-1/2 years.

Ms. STEIN. Thank you.

Judge Dowling, would you please describe your duties and jurisdiction as a judge of the Court of Common Pleas in Dauphin County?

JUDGE DOWLING. Well, in Pennsylvania, county judges have statewide jurisdiction. We are trial judges. We try cases throughout the Commonwealth of all types, criminal and civil. We have complete trial jurisdiction within the Commonwealth.

Ms. STEIN. So cases involving domestic violence that included criminal charges of assault or aggravated assault would come before you?

JUDGE DOWLING. Oh, yes, and the civil process. They would all come before us.

Ms. STEIN. Can you tell me how many cases the Dauphin County Court of Common Pleas handles each year of all types?

JUDGE DOWLING. Of all types of cases?

Ms. STEIN. Yes. Can you give us any estimate along those lines.

JUDGE DOWLING. No. I don't know what—well, I'm thinking our civil docket, we're certainly around 2,500 in number, 5, 6—I don't know, over 5, 6, 7,000. I have no idea. We have six judges. That's a wild guess. I don't know.

Ms. STEIN. Could I ask you perhaps—

JUDGE DOWLING. Probably more.

Ms. STEIN. —how many cases of domestic violence would appear before your court over any time period you would care to use?

JUDGE DOWLING. Before my court?

Ms. STEIN. Yes.

JUDGE DOWLING. Not the court in the county, just my court?

Ms. STEIN. Yes.

JUDGE DOWLING. You see, I am a juvenile judge. I don't get as many as some of the others. I don't know—involving some aspect of domestic violence?

Ms. STEIN. Abuse between spouses.

JUDGE DOWLING. Oh, just—50.

Ms. STEIN. Fifty in what time period?

JUDGE DOWLING. In a year.

Ms. STEIN. In a year, and you indicated that you feel you get fewer such cases than your fellow judges?

JUDGE DOWLING. I'm the juvenile court judge and that relieves me of some other duties. I think perhaps some of the other judges handle more. I handle only civil and criminal jury trials in juvenile court, so some of the what we call the miscellaneous matters I don't handle. Most of those cases fall into miscellaneous court.

Ms. STEIN. How many other judges are there?

JUDGE DOWLING. Five other judges.

MS. STEIN. Thank you. Now, when you give this estimate of 50, are you referring to both criminal and civil matters?

JUDGE DOWLING. Involving spousal—

MS. STEIN. Spousal abuse, yes.

JUDGE DOWLING. Yes—and that's an estimate, very rough estimate.

MS. STEIN. With reference to the criminal cases involving interspousal violence that come before you, can you tell me how many of those cases actually go to trial?

JUDGE DOWLING. Now, by trial, do you mean jury trial or bench trial?

MS. STEIN. Either type of trial in the court of common pleas.

JUDGE DOWLING. Of the 50, perhaps 15. That might be high.

MS. STEIN. Okay. Under the Protection From Abuse Act, if a woman wishes to seek the assistance of the court in excluding an abusing husband from the home, what procedure must she follow?

JUDGE DOWLING. Well, she follows the procedure set forth in the act.

MS. STEIN. Can you outline that for us, briefly?

JUDGE DOWLING. I brought the act with me if you want—she files a petition, alleging abuse, with counsel; almost always she has a lawyer. We have legal aid and they bring in—it is a petition in which she alleges—if she alleges that she's in danger of serious bodily injury or death, why, we can give her an ex parte hearing and take some action immediately, but it is initiated by a petition.

MS. STEIN. In those cases that have come before you where an abused woman is seeking an ex parte order excluding the spouse from the family home, what standards do you use in deciding whether to grant the order?

JUDGE DOWLING. The ex parte order?

MS. STEIN. Yes.

JUDGE DOWLING. Well, we grant that. Really, there's no hearing. Of course, the attorney brings it in and I read it, and if it alleges serious bodily injury, we accept it on its face.

MS. STEIN. So you would at that point grant an ex parte order.

JUDGE DOWLING. Usually, yes. It would have to allege something that amounts to serious bodily injury, but, if she says in the petition she's in danger of her life and so forth, we grant it. Of course, we must schedule a hearing promptly, but it is done simply on the averments in the petition, which I think raises some interesting constitutional questions. I think the whole act is constitutionally suspect.

MS. STEIN. Could you explain to us what you think the constitutional question is?

JUDGE DOWLING. Well, right there, the authority you're given under the act—on mere petition you can exclude a spouse from the home, put him right out. He doesn't have a chance to tell his side of the story. It may be a totally different picture when you get into court. I don't know whether that is equal protection or not. I haven't had any where the man came in and accused the wife, but I guess we could have that situation.

MS. STEIN. You could have that situation, then—

JUDGE DOWLING. But that bothers me, really. I think it is a tremendous responsibility or authority for a judge, on the basis of a petition, to simply give the action desired.

Normally, in court, when you come in with a petition for an ex parte injunction, you must put up a large bond. You must have a very, very extraordinary case to get it ex parte. Ex parte, as of course you know, means without any hearing, without the other side having an opportunity to express themselves, so it is an extraordinary remedy.

Ms. STEIN. How long would the ex parte order that you issued in these proceedings without a hearing remain in effect?

JUDGE DOWLING. We must hold a hearing within 10 days.

Ms. STEIN. So at the time the hearing is held, both sides are permitted to be present and tell their side of the story?

JUDGE DOWLING. Oh, yes.

Ms. STEIN. And then based on that hearing, what powers do you have?

JUDGE DOWLING. Then we can either make what you might call the preliminary order permanent for up to 1 year, or as many times happens, they embrace and walk out and it's all over.

I might mention, of the hearings scheduled, two out of three are not held; they're settled. They get together. He either leaves and says he won't bother her—he agrees to sign a consent order. But one out of three actually goes to a hearing.

Ms. STEIN. So of the ex parte orders that you issue, you would say only one out of three goes to a hearing?

JUDGE DOWLING. Goes to the 10-day hearing, that's right. He gets a lawyer and he decides that if that's the way she feels, he'll stay away and let her alone and so forth. One out of—at the most—one out of three.

Ms. STEIN. And will these ex parte orders typically include a direction that the husband remain away from the home?

JUDGE DOWLING. Yes, that's usually the main thing; not assault his wife, not break the law, not beat her up, etc.

Ms. STEIN. If a protection order has been granted under the Protection From Abuse Act and then is violated by the offending spouse, what procedure is followed by the petitioner?

JUDGE DOWLING. My colleagues can tell you better than that, but they go to jail. Right, gentlemen? They put them in jail.

Ms. STEIN. Would that case come back to you—

JUDGE DOWLING. Oh, yes.

Ms. STEIN. —or would that come to the district justice?

JUDGE DOWLING. If they violate the order, under the act they are then in contempt of court, and the police have the authority with simply a copy of the order to pick them up and place them in jail.

Another interesting point, I think, constitutionally, but they put them right in jail and the law says, as I recall, we must hold a hearing promptly. Maybe it is a week before we hold a hearing. In the meantime, he is in jail. Did he violate the order? I don't know. His wife said he did, but he hasn't had a chance to prove it until he gets to court.

MS. STEIN. When he does get to court and comes before you, then what procedure takes place?

JUDGE DOWLING. Well, then I listen to it, and if he did violate it and he's been in jail a week, we usually tell him not to do it again and let him go. You can't keep him in forever. If he says in the rare case, "I don't care what you say; I'm going to go back into the house," then he goes back to jail. Usually, a few days in the lockup—they calm down.

MS. STEIN. And so you would say that the sanction that is usually imposed in that case would be the time already served? Is that an accurate summary of what you've said?

JUDGE DOWLING. Yes. They can do 6 months, but that would be a rare choice.

MS. STEIN. Can you tell me, turning back for a moment to the criminal assault action in a case of domestic abuse, what sanction is generally imposed in the case of conviction for assault?

JUDGE DOWLING. Well, it depends in many—assault, simple assault could be up to 2 years. It would depend on the degree of harm caused, whether he has a prior record, how the victim feels about all those factors. If it is a simple assault where there is no serious injury and it is a first offense, you would not normally impose a jail sentence, but you can.

MS. STEIN. Would there be a fine or would there be any action at all?

JUDGE DOWLING. Yes, there would be a probation, certainly, and possibly a fine. You're talking now of domestic—between spouses only?

MS. STEIN. That's correct.

JUDGE DOWLING. A lot would depend on whether they are now back together or are they getting a divorce. What's the family situation? How does the wife feel about it? It doesn't do much good to put the breadwinner in jail, necessarily. I can't generalize anymore than that.

MS. STEIN. Do you believe that the Protection From Abuse Act is an appropriate and effective remedy for domestic violence?

JUDGE DOWLING. I think it is serving a purpose, but I really have concerns about it. I don't know that it's been tested yet in the appellate courts. I think it was—something was needed, certainly, for that crisis situation, but I think it, in and of itself, can be abused and is abused.

A woman can come in and allege all sorts of things that may not be true and put the husband out; or if she does have an order, have him placed in jail. It itself is subject to abuse, certainly. But something was needed and I think it is working as well as perhaps can be expected.

MS. STEIN. Thank you, Judge Dowling.

Justice Hardy, would you briefly describe for me the structure of the minor judiciary and the duties and jurisdiction of district justices in Dauphin County?

JUDGE HARDY. Well, we are elected by the people and, of course, we are elected in my particular instance in the 10th, 11th, and 14th wards of the city of Harrisburg. We have criminal jurisdiction in all summary violations, and, of course, most all criminal cases are initiated

before us. The same with civil cases under \$2,000 are initiated before us, \$2,000 or under—that's about it.

We have county-wide jurisdiction when we are sitting at night court which we sit in every 12th week. We pull that. Of course, we have 24-hour duty then. In other words, it's from 5 o'clock in the evening until 8 o'clock in the morning, so we are there to handle any cases which the police might bring in, serious cases or anything like that. We have county-wide jurisdiction as far as issuing search warrants in Dauphin County, so that's about the limit of our jurisdiction.

MS. STEIN. Could you give me an idea of how many cases of domestic violence, abuse between spouses, come before you in a given time period?

JUDGE HARDY. Well, as a matter of fact, I've never had an abuse case yet to come before me. Now, I've had harassment cases, and, of course, these harassment cases are usually between wife and husband or husband and wife, and the thing is, they're usually settled most times in our offices. They are a summary violation and we have a lot of them withdrawn. Most of them are withdrawn. I would say probably 100 to 150 a year may come before us.

MS. STEIN. I see. So you are saying you have never had a case under the Protection From Abuse Act come before you?

JUDGE HARDY. No, I've never had one in my office nor when I was sitting as night district justice downtown.

MS. STEIN. But you have had cases of interspousal abuse come before you when the charge was the summary offense of harassment?

JUDGE HARDY. That's harassment, yes, ma'am.

MS. STEIN. Do you have any leeway in deciding what charge should be brought in these cases; that is, whether harassment should be charged or whether it should be an assault case and sent to the court of common pleas?

JUDGE HARDY. Yes. When they walk in, of course, this is what we call a walk-in complaint, and we have the complaints there for them to sign, and so forth. After we interview them and swear them to these complaints, they sign them. At that time, we decide whether it is harassment, simple assault, or aggravated assault or whatever it may be.

MS. STEIN. What criteria do you use in making that decision?

JUDGE HARDY. Well, I usually interview the person and look at him and see what kind of marks they have or how they've been threatened or how they might have been beaten or whatever, whether they require hospital attention or not.

MS. STEIN. Do you take into account whether this may have happened before, or whether it is a first time or repeated occasion?

JUDGE HARDY. Yes, that's taken into consideration.

MS. STEIN. Do you take into consideration whether the woman may have filed charges before and then not followed through on them?

JUDGE HARDY. Absolutely.

MS. STEIN. What effect would that have on your decision?

JUDGE HARDY. Well, it wouldn't have any effect insofar as taking the complaint, I would take the complaint, but it's to the point where, if

she's a person that continuously comes in like that and then withdraws the charges, of course, you become a little skeptical of the complaint.

MS. STEIN. What would be the nature of your jurisdiction under the Protection From Abuse Act?

JUDGE HARDY. Well, that would be mostly on the weekends we would have that, down at night court, and at that particular time they would file a petition, and we would keep them out of the place for the weekend and schedule a hearing for them the first thing Monday morning before one of the county common pleas judges.

If an order is already in effect, they do—the police in the city of Harrisburg will fill out a complaint. Now, there's been a little different—I think that our county judges have a different feeling on that. Judge Dowling says they should take them and incarcerate them right away. I think Judge Wickersham—not Wickersham, but Caldwell feels there should be a complaint filed by the police, and we should give them a hearing and give them an opportunity to post bail before we incarcerate them, so that's what we do.

MS. STEIN. Now, you said you, yourself, haven't had occasion to exercise this jurisdiction?

JUDGE HARDY. Yes, I've had the occasion at night court down at City Hall, but I haven't had the occasion of filling out any of the petitions or anything.

MS. STEIN. Oh, I see. What procedure did you follow on that occasion?

JUDGE HARDY. Well, they would arrest the defendant and bring him in there to night court, and we would type out a complaint, or the clerk would type out a complaint. We would read it to him and then we would set bail.

Usually, if it is a real serious case and the police usually—we rely on their opinion in this matter—we would maybe incarcerate him with maybe \$10,000 bail, until the first thing Monday morning, to keep him out of the home and off the street.

MS. STEIN. This is a case where there was an order existing that has been violated?

JUDGE HARDY. Yes.

MS. STEIN. In the case where a woman comes in and there is no order issued but she's asking for him to be excluded from the home, and it is at night or on a weekend, what happens?

JUDGE HARDY. Yes. If it would be the weekend, we would let her fill out the petition, and we would incarcerate him and schedule a hearing the first thing Monday morning, within 72 hours.

MS. STEIN. I see. Okay, thank you very much.

JUDGE HARDY. You're welcome.

MS. STEIN. Justice Pinamonti, on the average, can you estimate for us how many domestic violence cases you see in any given period of time?

JUDGE PINAMONTI. For the year of 1979, approximately 225 cases. This is between boy/girlfriend, husband/wife.

MS. STEIN. How are those cases usually charged?

JUDGE PINAMONTI. Either as one of three: either they are summary offenses where there are harassment charges, misdemeanor, simple assault, or felony as aggravated assault charges. They are filed by one of two, either by the police department or by a private complainant, which is the victim themselves.

MS. STEIN. Now, those are the three options that are available, but which is the most common charge that results?

JUDGE PINAMONTI. The harassment charge, which is filed either by the police on a citation or by the victim on a private criminal complaint.

MS. STEIN. Could you estimate what percentage of these cases are filed as harassment charges in your experience?

JUDGE PINAMONTI. About 50 percent of that 225.

MS. STEIN. On those cases that are charged as harassment, what is the maximum penalty allowable by law?

JUDGE PINAMONTI. On a summary offense, which is the jurisdiction of the district justice, we can incarcerate them for up to 90 days in jail and a fine up to \$300 plus the cost of the complaint.

MS. STEIN. What is the sanction that normally is imposed in these cases?

JUDGE PINAMONTI. As far as a fine or—I don't understand your question.

MS. STEIN. What is the most typical fine, or is incarceration usually ordered, or is that unusual? Is it usually a fine and, if so, in what range does it tend to be?

JUDGE PINAMONTI. The first offense, usually, the way I handle it, the defendant has the opportunity to plead one way or the other, either not guilty or guilty. If he pleads guilty, usually, the first offense, I will impose a \$25 fine and the cost of the complaint, which is a total of \$51.

More severe the second or third offense. At that point even if they want to plead guilty, I want to hear what happened. I get into a hearing and, at that point, then I will impose a fine and perhaps jail time. A lot of times, what I'll do, I'll fine the defendant \$100 if I find him guilty and impose a 30-day jail sentence, which I defer pending good behavior on behalf of this defendant. If in fact he should go back in the house and either fight with his wife or his girlfriend, bring him back for the third instance, at that point I would have him picked up and incarcerated in the Dauphin County jail.

MS. STEIN. Have you ever had an occasion to incarcerate a man for abuse of his wife?

JUDGE PINAMONTI. Yes, ma'am, many times.

MS. STEIN. Is that typically for the offense itself or for failure to pay for his fine and costs?

JUDGE PINAMONTI. Usually not for the fine and costs, we give them adequate time to pay it, as long as they are paying on a steady basis. It would be for the second or third offense when they go back, continuously bother boyfriend/girlfriend, husband/wife.

MS. STEIN. What is the normal period of incarceration in that type of a case?

JUDGE PINAMONTI. Depending again on how severe the charge, 15, 20, 30 days, sometimes 90 days.

MS. STEIN. Have you experienced a marked problem with women filing charges and then dropping them in cases of this type?

JUDGE PINAMONTI. Yes, I have. Normally, we have a procedure that I do not talk to the person filing the charge. Usually, as a rule, I will read the complaint—whatever they have filed in there—and I will swear the affiant to the information on the complaint, and they sign it and we proceed.

I usually leave this up to a secretary who doesn't feel one way or the other. She takes the information down. She doesn't have to hear the case later on. I feel if I hear anything—what this person is saying—at that point I am becoming prejudiced, because I'm hearing their side of the story and I'm not hearing the other side, so my secretary—in all cases, she will take all the information, and she's good at this point from figuring out whether it is play time or whether it isn't.

The affiant swears to the information. We proceed with the case.

MS. STEIN. Now, you say you've found a number of occasions when women have dropped the charges?

JUDGE PINAMONTI. About 50 percent or better. In an instance where the woman would come in and drop the case, they would withdraw it and they would pay the cost.

MS. STEIN. Have you adopted any procedures to deal with this?

JUDGE PINAMONTI. Yes, ma'am. We keep a running record of anyone who files a charge. We have a little index card on everyone and, if the victim filed a charge and withdrew it, the second time they would come in to file a charge we would take the charge if it sounded legitimate, and at that point they would have to pay the cost of the complaint in advance. This is a little deterrent as to playing games with husbands and wives, which they do quite often.

MS. STEIN. Have you instituted any sort of a waiting period in this type of case?

JUDGE PINAMONTI. Okay. What we do, if people call over the phone and they want to make an appointment, or they call and want to charge their husband, their wife, or boyfriend, depending again on the severity, if we feel it is severe, they come in immediately; if we don't, what I do is we set an appointment for them 2 or 3 days down the line, a little thinking time, a little cooling-down time; otherwise, our percentage of 50 percent or better withdrawing would be up about 90 or 95 percent.

MS. STEIN. Do you do the same thing with people walking in as you do with people calling?

JUDGE PINAMONTI. Depending on the severity, yes.

MS. STEIN. Have you ever had occasion to use the Protection From Abuse Act?

JUDGE PINAMONTI. When on night duty, at three different occasions the police department—they had arrested a person on information from the person who filed the action that it was a violation of the act and the police had arrested the person, three different occasions.

MS. STEIN. Now, those were occasions where there was already an order in effect under the act?

JUDGE PINAMONTI. That's correct.

MS. STEIN. Have you ever had occasion to use it when there was no order in effect yet?

JUDGE PINAMONTI. No, ma'am.

MS. STEIN. Have you or have the district justices been instructed in any way in the use of the Protection From Abuse Act?

JUDGE PINAMONTI. I feel the instructions of the law are quite vague as far as all the victim would have to say is that he was near my house or something and then the police would immediately pick this person up. I don't think constitutionally that's proper.

If in fact all the woman does is she calls and says, "My husband was here; he is not supposed to come near me," or something, he may only be a block away or two blocks away. I've heard different cases where he was with another girl three blocks away, and she had called the police, police had him picked up, and I arraigned him on this particular charge. A complaint was not filed. We just used the judge's court order as far as he was supposed to stay away, and I explained to him what his rights were; he could call an attorney if he wanted to. He would have to post bail.

I set the bail at \$20,000. At that point, constitutionally, he has a right to get out of jail—that he isn't incarcerated because he didn't kill anybody. He does have a right to be on the street if he can post the bail to be out there, and because of the \$20,000, he knows how severe it is at that point, what it would cost him to get back on the street, so I think at that point he would not go back and bother this person.

MS. STEIN. Again, you're talking there about the case where an order has already been issued?

JUDGE PINAMONTI. That's correct.

MS. STEIN. When a woman comes in complaining of abuse by her spouse and it's the first step—nothing had happened prior to that time—do you tell her about the Protection From Abuse Act or bring it to her attention in any way that this is an option for her to pursue?

JUDGE PINAMONTI. I instruct her as far as what her choices may be. A lot of times she wants it done right now. She wants to file a charge now. She doesn't want to go to her attorney or to go to legal aid because she feels it is a long drawn-out process.

MS. STEIN. That's all the questions I have, Mr. Chairman.

CHAIRMAN FLEMMING. Commissioner Horn?

VICE CHAIRMAN HORN. Gentlemen, is there a District Justices Association in Pennsylvania where all of you get together, perhaps at annual conventions?

JUDGE HARDY. Yes, there is.

VICE CHAIRMAN HORN. I would assume there is. There are such associations in most States. Has the issue of this Protection From Abuse Act ever been a featured panel or portion of that annual convention?

JUDGE HARDY. No, it has not. There have been other things that have been discussed at these conventions, but that particular act has not come up.

VICE CHAIRMAN HORN. Would you agree that, given the sort of unique nature of this act in terms of American law, the concerns that

had been expressed by judges in and out of this hearing room about worrying—and Justice Dowling mentioned some of this—about perhaps unconstitutional aspects of some of this act, that the district justices and the other judicial conventions held in this State annually ought to devote some major time to, one, familiarizing their clientele with the nature of the act, the procedures, the problems under the act, and coming to grips with what are the problems in that act? Do you think that's a worthy objective?

JUDGE HARDY. Yes, I do. That's the reason whenever I am on night court I put bail, and if they can make the bail, I release them because I don't want to be sued in Federal court for incarcerating them without any bail. It's that simple.

VICE CHAIRMAN HORN. How does one get—you are active members of this association. I just wondered what can be done by justices such as yourself at the grassroots dealing with these problems to get that on the agenda and have some major time devoted at an annual meeting?

JUDGE HARDY. There probably wouldn't be any problems to getting it there. The only thing we'd have to do is talk to our solicitor, and I feel sure he would make arrangements to have somebody there knowledgeable to explain it to us and so forth.

VICE CHAIRMAN HORN. Do you have any feelings on that, Justice Pinamonti?

JUDGE PINAMONTI. Yes, I do. We have a mandatory—that we go to school once a year for approximately 36, 40 hours, and I think perhaps they should initiate X amount of time then where they can instruct us or at least get a feeling across the board so all of the district justices are doing the same thing.

VICE CHAIRMAN HORN. Who makes that decision as to the content of your 30-plus hours of schooling?

JUDGE PINAMONTI. That's the supreme court.

VICE CHAIRMAN HORN. Supreme Court of the State of Pennsylvania?

JUDGE PINAMONTI. That's correct.

VICE CHAIRMAN HORN. In this State does the supreme court equate with the highest State court? In New York it isn't, so I'm just curious.

JUDGE HARDY. Yes, the supreme court is the highest.

VICE CHAIRMAN HORN. Judge Dowling, I wonder, do the judges of the court of common pleas have similar associations statewide?

JUDGE DOWLING. We have a State Conference of Trial Judges, yes, to which all trial judges belong.

VICE CHAIRMAN HORN. Has this act been a major topic at any of these conferences?

JUDGE DOWLING. No.

VICE CHAIRMAN HORN. How does one get this type of act on the agenda of that conference?

JUDGE DOWLING. If one wanted to, I suppose they would seek out the officers or the executive committee and ask to be placed on the agenda. We have quarterly meetings and then we have an annual convention. This has never been discussed.

VICE CHAIRMAN HORN. Given your concerns that you expressed on the record with regard to the equal protection problems of the act, do you think it would be a good idea for the judicial conference to have such a discussion?

JUDGE DOWLING. No. It's simpler—just someone take an appeal to the supreme court. Why spend all the time discussing it and conferring and studying it? Simply take the appeal and have the court decide it. I mean, it is a problem but we have other problems which are—I think this is one of the minor problems, very minor. I don't think it merits any great concern.

VICE CHAIRMAN HORN. Well, it is minor unless you're beaten up.

JUDGE DOWLING. It has constitutional—unless you're one of the fellows in jail, it's minor too.

VICE CHAIRMAN HORN. Well, I'm thinking about the wife beaten up.

JUDGE DOWLING. That is right. We can't stop that. We can only punish the husband that beats her up. We certainly have the weapons to do that. I'm more concerned with the other side, a little bit with this *ex parte* part of the business.

VICE CHAIRMAN HORN. I find if one enforces the law, often it results in changes of behavior. It may not change attitudes, but I really don't care much about attitudes, as long as I've changed behavior.

JUDGE DOWLING. That's my whole philosophy of life. I think you're right. I think it should be a deterrent, absolutely. But I don't know what the statistics are—whether we've had less wife beating since we had the act or not—I wonder.

VICE CHAIRMAN HORN. It doesn't seem like anybody is gathering any statistics. I asked the Harrisburg Police Department, the department of public safety this morning, the degree to which they can tell me, based on calls to the communications center, referrals to the district, showing up at the scene, in how many of those instances did that lead to a charge, and then following through the criminal justice system. Nobody seems to really have the tracking mechanism by computer or whatever to really answer your questions, our questions, anyone's questions of concern. I just wonder is there an attempt by the judiciary in Pennsylvania, or all this LEAA money that's gone over the years to the States to set up some central statistical system so you can answer some of these questions?

JUDGE DOWLING. I don't know what specific question you're referring to.

VICE CHAIRMAN HORN. I'm saying, do you think it is a good idea to have the statistical information within the criminal justice system, be it the judicial, corrections, or law enforcement aspect, so we would know the answers to the questions you've raised as to the degree to which charges are brought, the degree to which convictions occur, the degree to which there are repeat offenses? Does the enforcement of the act slow down the recidivist, etc.

JUDGE DOWLING. It would be helpful.

VICE CHAIRMAN HORN. I would agree it would be helpful. Getting back to that annual judicial conference and your comment that you feel perhaps this problem isn't as weighty as some others of the judges'

concern, and perhaps there ought to be a decision on the constitutionality or unconstitutionality—is there a problem by the nature of how this act is structured in ever getting that case up to a level where constitutionality can be determined by an appellate court?

JUDGE DOWLING. No.

VICE CHAIRMAN HORN. Or do you see this could be taken to the next step, providing somebody would raise that?

JUDGE DOWLING. Yes, there's no problem, no procedural problem.

VICE CHAIRMAN HORN. Okay.

CHAIRMAN FLEMMING. If I could just follow up on that for a moment. Is there any case on the way up now in the State system where the constitutionality has been challenged that you know of?

JUDGE DOWLING. Not that I'm aware of, but there could well be.

VICE CHAIRMAN HORN. The question I think is, is the case moot by the time it reaches the appellate court because of the length of time it takes to act in the appellate court and, if you're talking about 10-day hearings—one year this or whatever—the ship has long since sailed from the port.

CHAIRMAN FLEMMING. We had our attention this morning called to a decision in the Pittsburgh area. Are we going to get further testimony on that?

MS. STEIN. That was at the court of common pleas level, not at the appellate level.

CHAIRMAN FLEMMING. I know, but is that case being appealed? Do we know whether that case is being appealed?

MS. STEIN. No, it is not being appealed.

COMMISSIONER-DESIGNATE BERRY. It is moot.

VICE CHAIRMAN HORN. Is it mooted for the reasons I state, of the time factors involved?

MS. STEIN. No, it is not in that case. I think that will probably not prevent the eventual determination of constitutionality because of the doctrine of a case that evades decision yet would recur again so frequently that the court would take it up even if there was a mootness situation.

CHAIRMAN FLEMMING. Going back, Judge Dowling, to the point that troubles you, namely, the *ex parte* proceeding. Is the law worded in such a way that when a matter is presented to you and you have some qualms about signing the document without having testimony, is the law worded in such a way as to prevent you from taking some testimony before you sign that document?

JUDGE DOWLING. Oh, yes.

CHAIRMAN FLEMMING. You just have no discretion there?

JUDGE DOWLING. Oh, no, I do. I don't have to accept it.

CHAIRMAN FLEMMING. You could go ahead and say you've got some doubts?

JUDGE DOWLING. I'm looking for the wording. At least that's my opinion that I could. "The court may enter a temporary order as it deems necessary to protect the plaintiff or minor children from abuse upon good cause shown in *ex parte* proceedings," so it is discretionary—"may."

CHAIRMAN FLEMMING. Is the fact that it is discretionary have a bearing on the constitutional issue?

JUDGE DOWLING. It would have a bearing.

CHAIRMAN FLEMMING. In other words, if you had some real doubts, you could —

JUDGE DOWLING. Oh, yes. Well, it is hard, but unless you had, as the justices say here, some woman—you have two petitions before and they made up in court. You might hesitate when you get one of those, that type of situation.

CHAIRMAN FLEMMING. I can understand. Commissioner Saltzman?

COMMISSIONER SALTZMAN. I wonder whether each of you, beginning with Judge Dowling, might comment on what you think the influence leading to violence by the husband against the wife—what are the influences that are—is it just a passing incident or is there a syndrome of some sort involved that is not easily—

JUDGE DOWLING. You're asking me why husbands beat their wives, Commissioner?

COMMISSIONER SALTZMAN. What's your view of it?

JUDGE DOWLING. I have no opinion. I wouldn't want to get into that.

COMMISSIONER SALTZMAN. Is he a sick man, do you think—

JUDGE DOWLING. Oh, no. Well, sick—I mean, there are a myriad of causes—economic problems, they're upset—they're upset, they're unhappy. There the wife is around so they take it out on her. That's a sociological problem that I don't think I'm particularly qualified to discuss.

I might mention I do handle—we have in our divorce court—we have masters and we sign divorces. I probably sign 200 or 300 divorces a year that I have to glance over, and I would say that beating appears in 80 to 90 percent of the allegations of beating of the husband in 80 to 90 percent of the divorces in the city so that it would appear to be relatively widespread.

Why it is done—a lot of reasons: maybe they watch TV and the wife doesn't look as good as the people on TV; lose their job, they drink—it's usually connected with drinking; alcohol—in 90 percent of the time they are drinking when they do it.

COMMISSIONER SALTZMAN. Would any of you like to add something to that?

JUDGE HARDY. No, I was only going to comment on that. I think alcohol has a big thing in it. I think that, like the judge says, money, finances, and you have to remember that in different areas, like one of you had asked the district attorney why some areas have very few abuse cases and other areas have a lot. I think it depends upon the area. We're in a capital city here, and of course, in a capital city you have a cross section of a lot of people, different people, and there is, I guess, a lot of alcoholism and things such as that.

COMMISSIONER SALTZMAN. We've had testimony—that is, testimony in another hearing—that alcoholism is not that prevalent. In your experience is it?

JUDGE HARDY. Oh, yes, the ones that I handled, as far as harassments go and so forth, it's been alcohol. The husband comes home drunk and starts to fight. We have quite a few cases where they are not married— they're just living together and the husband has maybe another girlfriend and he has his clothes at both houses and there's fighting there and so forth.

I mean, there's so many different things entering into this, you just can't pinpoint any one thing.

COMMISSIONER SALTZMAN. Well, we also had testimony this morning that it would appear that a person who is a batterer experienced that in his home as a child.

JUDGE HARDY. It's a possibility, very much so. Absolutely. I would think that that has a lot to do with it. I handle all the truant cases in the city of Harrisburg through the Harrisburg School District, and we run anywhere from maybe 1,100 to 1,400 cases a year and, of course, for those children—a lot of them come from broken homes—a lot of them come from where there's just the one parent at the house, the home. A lot of them are children that—their parents are on public assistance and everything.

I mean, there are so many things. There are no jobs for them. I don't know. You could go on for hours on what this might be, but under those truant cases they have to miss at least 3 days of school before there is a complaint filed, and you take 1,000, that's 3,000 school days missed out of a total of 180 days of school—so it is hard to say what causes all of this.

JUDGE DOWLING. If we're going to inquire as to why husbands beat their wives, we're liable to qualify for one of Senator Proxmire's Golden Fleece Awards. It reminds me of—they had a study on why people escape from jail. But the other point you mentioned about abuse—I handle child abuse cases as juvenile judge, and the majority of parents who abuse their child have been abused themselves, which may tie in with the point you made earlier.

JUDGE PINAMONTI. Percentagewise, the problems are 35 percent economic, 35 percent other women, 15 percent alcohol, and 15 percent children.

CHAIRMAN FLEMMING. Okay. Commissioner Ruiz?

COMMISSIONER RUIZ. Judge Dowling, I know you are not an appellate court judge, but you may be one of those days.

JUDGE DOWLING. I doubt it.

COMMISSIONER RUIZ. Do you feel, on the constitutional question, that the fact that property rights are not involved in the ex parte motions and orders relating to interspousal altercations, that the law may not, on its face, be unconstitutional because of the narrowness of that? In other words, you mentioned the fact that there are certain injunctions, bonds, holding of the status quo, etc., that in this case ex parte orders are made. Does the fact that there are usually or there are no property rights involved give you a feeling that perhaps the law may be constitutional?

JUDGE DOWLING. Well, that's a factor. Of course, I don't know what you might consider being excluded from the home as a loss of a

property right. Let's say you can exclude the person who owns the home. The husband may own it and you put him out; it is a temporary loss, but perhaps that's a property right.

COMMISSIONER RUIZ. Perhaps.

JUDGE DOWLING. Perhaps, that would be a factor.

COMMISSIONER RUIZ. Do you, in your duties, handle both law motions and trials as well?

JUDGE DOWLING. Handle what, sir? Well, I handle trials, yes. What other kind?

COMMISSIONER RUIZ. Law and motions, orders to show cause, preliminary injunctions.

JUDGE DOWLING. Yes.

COMMISSIONER RUIZ. Do you feel it is best for a court to go through the entire process of preliminary motions, etc., to a final disposition of a trial in a domestic action? Do you feel that one—

JUDGE DOWLING. One judge to follow it through?

COMMISSIONER RUIZ. One judge to hear the matter from the beginning to the end.

JUDGE DOWLING. Yes, certainly.

COMMISSIONER RUIZ. Are there any advantages in having one judge hear law and motions, preliminary injunctions, orders to show causes, and not be involved in the motion aspect of it and then ultimately just hear the trial on the merits for final disposition?

JUDGE DOWLING. Well, yes. I guess he could be more objective if he hadn't been exposed to any of the prior proceedings.

COMMISSIONER RUIZ. He would be more objective?

JUDGE DOWLING. Yes.

COMMISSIONER RUIZ. Thank you.

CHAIRMAN FLEMMING. Commissioner-designate Berry?

COMMISSIONER-DESIGNATE BERRY. Judge Dowling, if I understood your testimony earlier, you believe that this Protection From Abuse statute is, in some part at least, unconstitutional, of doubtful constitutionality.

JUDGE DOWLING. No, no. Well, I said, I think there's some constitutional—that it's constitutionally suspect.

COMMISSIONER-DESIGNATE BERRY. Are you familiar with this case, Boyle against Boyle, that was decided in Allegheny County?

JUDGE DOWLING. Was that on that issue? What did it hold?

COMMISSIONER-DESIGNATE BERRY. In which the court upheld the constitutionality of it.

JUDGE DOWLING. Who wrote the opinion?

COMMISSIONER-DESIGNATE BERRY. Justice William Colbert.

JUDGE DOWLING. This was a common pleas decision? Is that the one they mentioned earlier? Is it going up?

COMMISSIONER-DESIGNATE BERRY. I have no idea.

JUDGE DOWLING. That's interesting. No, I am not familiar with it. I think I did know that there had been several lower court opinions that had upheld its constitutionality.

COMMISSIONER-DESIGNATE BERRY. We heard some testimony earlier today that some justices who have asserted that the law may be consti-

tutionally suspect do not permit complaints in their court, using this as a cause of action, that they simply say that they're not interested in having anybody bring anything into their court, and that they usually proceed on assault cases or harassment or however. If you think that it is constitutionally suspect, why don't you do the same thing? Why are you signing orders?

JUDGE DOWLING. Well, a law is presumed to be constitutional. I can't disregard the law. I was, as I mentioned, I was disturbed about being subpoenaed, but I came. I'm here and I'm going to stay here until you let me go, but I can't do anything about that.

I have my own feelings about a lot of the laws. I may not like them. I may be concerned, but my first duty is to carry out the law, and until an appellate court says an act is unconstitutional, it is constitutional.

COMMISSIONER-DESIGNATE BERRY. Right. Well, in that same vein, Justice Hardy, you said that when you were on weekend duty or at night court—I've forgotten which—that when people came in with domestic violence disputes—that, if I recall correctly—the way you put it was, you let them make bail and let them out, if possible, and this was all within the ambit of the constitutionality issue of the statute, how confusing it was. Did I understand you correctly?

JUDGE HARDY. That's correct. In other words, I wouldn't say whether it is constitutional or not. I'm just trying to protect myself, that's all. If they bring somebody in there, I'm just not going to put them in jail. I'll set bail and, if they can't make the bail, then I'll put them in jail.

COMMISSIONER-DESIGNATE BERRY. I see. So Judge Dowling is not protecting himself as well as you're protecting yourself.

JUDGE DOWLING. Well, it isn't fair to say that because I have judicial immunity, up to a point. But I checked—I don't have immunity from subpoenas. But I have judicial immunity for any act like that. I'm not all that concerned.

COMMISSIONER-DESIGNATE BERRY. Thank you.

CHAIRMAN FLEMMING. We're—Mr. Nunez?

MR. NUNEZ. No questions.

CHAIRMAN FLEMMING. We do appreciate your coming and giving us the benefit of your insights growing out of the experiences that you are having in this area. Thank you for your contribution.

COMMISSIONER RUIZ. Judge Dowling, did you ask for a witness fee?

JUDGE DOWLING. That's a thought. How about mileage? I must have driven 3 miles.

CHAIRMAN FLEMMING. You're entitled to it.

Counsel will call the next witnesses.

MS. STEIN. Would Frank Giordano and Calvin Baker come forward, please?

[Frank Giordano and Calvin Baker were sworn.]

**TESTIMONY OF FRANK GIORDANO, CHIEF, CARLISLE POLICE DEPARTMENT;
AND CALVIN BAKER, SERGEANT, CARLISLE POLICE DEPARTMENT**

CHAIRMAN FLEMMING. We appreciate your coming.

Ms. HOOPES. Beginning with you, Chief Giordano, would you each please state your name and title for the record?

CHIEF GIORDANO. I am Frank Giordano, chief of police, Borough of Carlisle. I've been a policeman for 27 years, been chief for the last 13 in the same department.

SGT. BAKER. My name is Sergeant Calvin Baker of Carlisle Police Department in the Borough of Carlisle. I've been a policeman for 19 years and sergeant for about 8.

Ms. HOOPES. Chief Giordano, can you tell me how large is the city of Carlisle?

CHIEF GIORDANO. Population about 18,000 the last census.

Ms. HOOPES. And the size of the police force?

CHIEF GIORDANO. Twenty-seven persons.

Ms. HOOPES. Can you tell me a little about how the patrolman enforcement policy of the department is established; for instance, what role is played by the mayor in the establishment of policy?

CHIEF GIORDANO. The mayor has the complete—he's the head—the police department is headed by the mayor, who is elected by the people of Carlisle, and has complete jurisdiction of the department which has a civil service status. The department is commanded by the chief of police who is appointed by the borough council, working beneath the chief of the patrol division, which is operated by three uniformed sergeants, each in command of a shift, and a detective division which is commanded by the sergeant.

Ms. HOOPES. What role do you play in establishing department policy?

CHIEF GIORDANO. As the executive officer, I make the day-to-day rules and regulations.

Ms. HOOPES. Do other components of the criminal justice system, such as the district attorney and the judges on the court of common pleas, also have a part to play?

CHIEF GIORDANO. Yes, they do.

Ms. HOOPES. Does your department have any written guidelines on how officers should handle incidents of domestic violence?

CHIEF GIORDANO. No, ma'am.

Ms. HOOPES. Does the district attorney periodically provide guidance and advice to the department on legal matters?

CHIEF GIORDANO. The district attorney does provide seminars on the legal matters that come up every now and then, and on March 21, 1978, I've got a written statement from the district attorney's office stating about the Women in Crisis and who to call in Harrisburg and it came out of the district attorney's office in Cumberland.

Ms. HOOPES. With the exception of that letter notifying you of the services of another agency, has the district attorney contacted you or given any guidance to the police department on how officers should handle protective orders under the Protection From Abuse Act for violations of those orders?

CHIEF GIORDANO. No, not as a group. He may have as an individual, but not as a group. If I may elaborate just a little bit on this—as the speaker before us said about the law being vague—and you had a judge

and two district justices up here—what do you think of us poor policemen, you know? So the law has to be more specific so the policeman knows what he's doing out here.

MS. HOOPES. In your opinion, does domestic violence present any special problems for police officers aside from the problems they face in normal—in their normal jobs?

CHIEF GIORDANO. I think it is a special problem because we don't want no one hurt, or we didn't want to see anyone get beat up to the extent where we have a homicide on our hands. We in the police department are concerned. We have a local youth center in Carlisle. We have a crisis intervention center which is based at the Carlisle Hospital that we work closely with.

We are happy for the Crisis—Women in Crisis center for help because this relieves our people where they can do other work which they are supposed to do. But, like I said, the law is vague, and there should be something come down where—we have 67 counties in this State and I'm sure in 67 counties you're going to get 67 different opinions of this law until we get something more definite.

MS. HOOPES. Do you think that police officer training could help to improve the way officers handle these cases and make them more effective in domestic violence cases?

CHIEF GIORDANO. I do. If we know the training centers could establish it, make it part of their curriculum. Also, the funding, which, as you know—Borough of Carlisle not being a large city—well, all police departments now are working with a budget, limited budget. How do we pay these policemen that attend school, but I think it—training would help, yes.

MS. HOOPES. Have any of your officers recently attended training, especially on domestic violence?

CHIEF GIORDANO. Well, I have sent one of my officers to a meeting in Mechanicsburg, or Lower Allen—Women in Crisis—which mostly meet in Harrisburg and I have literature from them now. They meet in Dauphin County. They have a Dauphin County judge; they have a Dauphin County district attorney; they have a Dauphin County district justice which doesn't do me a bit of good for Cumberland County, like I said, because we work under Cumberland jurisdiction. We have to work with the Cumberland County judges. We have to work with the Cumberland district attorney.

MS. HOOPES. Thank you very much.

Sergeant Baker, can you tell me what are your present responsibilities as a sergeant on the force?

SERGEANT BAKER. I run a seven-man shift, 8 hours a day, 5 days a week.

MS. HOOPES. Can you tell me in your experience how do police officers react to cases of domestic violence? Do they feel that they present special problems?

SERGEANT BAKER. Yes, ma'am. We've had a lot of instances where a policeman would go to a husband and wife fight, and the first thing you know the policeman is the main one getting it—both the husband

and wife turn on the policeman, and there's a lot of problems that you get, yes, ma'am.

MS. HOOPES. Can you tell me—are arrests commonly made in these circumstances?

SERGEANT BAKER. I would say no, not commonly.

MS. HOOPES. What would be the drawbacks to making arrests?

SERGEANT BAKER. On a real minor assault where the man beats the woman or the woman beats the man, normally, if we go and arrest the man, the next day they're back walking on the streets hand in hand, whereas my normal way, I handle the situation on a minor assault, we ask the wife or whoever got beat to go make the charge.

MS. HOOPES. Do you believe that police officer training might help to make the officers more effective, or is that not the route that you think should be taken?

SERGEANT BAKER. Oh, training in any aspect of police work would be better.

MS. HOOPES. Is your department able to offer inservice training to the officers in domestic violence or any other area?

SERGEANT BAKER. I have no idea.

MS. HOOPES. Can you tell me what effect does the presence of a Protection From Abuse order have upon the officers' handling of the case? Can the officers arrest for violation of a Protection From Abuse Act order?

SERGEANT BAKER. Up till recently it was very confusing.

MS. HOOPES. What is the case now?

SERGEANT BAKER. Ma'am?

MS. HOOPES. What is the case now?

SERGEANT BAKER. I think we are coming around a little bit more that we know what to do. Do you want me to say?

MS. HOOPES. Yes, please.

SERGEANT BAKER. Normally, the legal aid service either gives us a call or comes in themselves or sends the woman down with this, either a temporary restraining order or the restraining order itself. I was instructed that, if a violation of this restraint would come about, if it was done in my presence—in other words, if the wife calls me and I go to the premises or wherever and the man is there, or the man is beating her or whatever, then I could act on it.

If the woman calls me and says, "My husband is calling me on the phone and bothering me", or "My husband has just been here. He's gone now," then I would advise her to go back from whomever she had as legal counsel to get the restraining order, to then again petition the court and have them make the order again, whether they file a contempt or not.

MS. HOOPES. Where did you get those instructions?

SERGEANT BAKER. From the judge in Cumberland.

MS. HOOPES. Which judge was that?

SERGEANT BAKER. Sheely. That came—I was in a confused state and Detective Warner made the call to Judge Sheely, and I was in the same room and this is what I was advised.

Ms. HOOPES. Did the judge advise you about your status or any danger of civil liability that you might have if you acted otherwise?

SERGEANT BAKER. No, but this was our main concern.

Ms. HOOPES. Do you ever receive a copy of the order directly from the court?

SERGEANT BAKER. Not to my knowledge. Normally, it is, like I said, either the legal aid attorney brings it in or he sends it in with the wife herself.

Ms. HOOPES. If I may ask you a little bit about department record-keeping in these cases—when a call for assistance comes in, how is the call recorded at the station?

SERGEANT BAKER. Any call that we get into headquarters that we act on—like dispatch a vehicle—it is kept in a daily logbook, which is kept for years and years. In other words, the whole story is typed out and wrote down, what occurred, what we did, and what was the outcome.

Ms. HOOPES. Would the entry in this daily logbook indicate whether or not there had been violence?

SERGEANT BAKER. It should.

Ms. HOOPES. Whether there had been an assault?

SERGEANT BAKER. It should. Yes, ma'am.

Ms. HOOPES. Is an incident report filed in every case?

SERGEANT BAKER. I would not say in every case. If a woman would call me on the phone and say, "My husband has just beaten me," then I would send a policeman and if there was no marks on her or, you know, it was her say-so against the husband, and half the time maybe he wouldn't be there, there would not be an incident report made.

If she would come into the police station or we would be dispatched to the scene and she was bloodied all over, then, yes, we would make an incident report on it.

Ms. HOOPES. Is it possible to determine from your daily logbooks how many instances of domestic violence the police responded to in a given time period, say, in a year?

SERGEANT BAKER. There would be a possibility if somebody would go down and go through them all.

Ms. HOOPES. Do you have that number?

SERGEANT BAKER. No, ma'am.

Ms. HOOPES. Mr. Chairman, I have no further questions at this time.

CHAIRMAN FLEMMING. Thank you very much.

Commissioner Ruiz?

COMMISSIONER RUIZ. I have no questions.

CHAIRMAN FLEMMING. Commissioner Horn?

VICE CHAIRMAN HORN. No questions.

CHAIRMAN FLEMMING. Commissioner-designate Berry?

COMMISSIONER-DESIGNATE BERRY. I will only ask just for clarity. Your statement, Sergeant, about training in response to counsel's question, it wasn't clear to me. I think she asked you whether your department had the capability to have training. What I'm more interested in, do you think there should be training for police officers in domestic violence?

SERGEANT BAKER. Yes. Yes, ma'am.

COMMISSIONER-DESIGNATE BERRY. And would there be a need for some in your department?

SERGEANT BAKER. Yes, ma'am.

COMMISSIONER-DESIGNATE BERRY. Thank you.

CHAIRMAN FLEMMING. Commissioner-designate Ruckelshaus?

COMMISSIONER-DESIGNATE RUCKELSHAUS. It seems, then, that there's been some difficulty in Cumberland County about applying the Protection From Abuse Act?

SERGEANT BAKER. No, ma'am. I didn't say we had difficulty. I was just confused as to how the proper procedure was. I worked one last week. If you want me to tell you about it, I'll tell you exactly what occurred.

COMMISSIONER-DESIGNATE RUCKELSHAUS. Please do.

SERGEANT BAKER. We had a woman who went through legal aid who made—she went through the whole bit—she petitioned the court. The petition ordered a temporary restraint and then it was a year restraint order after the hearing. This was in September of 1979.

Last week I was—I won't go into the whole thing, but I went to the house with this year restraint order and found the man on the couch drunk and asleep in this house. And she made the complaint, "I had the restraint order."

I then got him and took him directly to our district attorney and while I was driving him from his home to the district attorney's office, he said he never left the house since the order was made. He's been living there the whole time. Now, all of a sudden she comes up and wants him out, see. So this, to me, is a problem. Why throw this man in jail when he's been living here all this time? Now all of a sudden she wants him out because he's drunk.

I took him right to the district attorney. The district attorney attempted to get a hold of the judge who signed the order. He was unable to do so, so he advised this person to go get his personal things and get out and not to come back.

And I took him home and I again advised him. It was around 45 minutes to an hour later the woman calls again and said, "He's still there." So the policeman—I was then off, but the policeman then went, picked him up, and again called the district attorney, and the district attorney got a hold of another judge and he went to jail.

So we had no problems.

COMMISSIONER-DESIGNATE RUCKELSHAUS. Well, in that case your problem was interpreting what the court wanted you to have to prove in order to get the criminal contempt—

SERGEANT BAKER. I was instructed—if I see it, then I can do it, you know. Otherwise, I couldn't pick anybody else up for a violation of a crime without a warrant if I didn't see it. You understand, and this is why—

COMMISSIONER-DESIGNATE RUCKELSHAUS. I understand the instruction you were given. We've had a lot of interesting testimony today from a variety of groups—women who run shelters, people who spoke on behalf of the Pennsylvania bar and the Coalition Against Domestic

Violence and Harrisburg Police Department and the district attorney. They all seem to think that this was a very useful piece of legislation; it had some glitches in it, but on the whole it was very useful, and it seemed to be a concern that in some cases it was applied well and usefully and when appropriate, and other times it wasn't, and that sometimes this was a disadvantage; it was a tool that was not made available to the complainant.

The advantages of using it—the option of using it was not always explained carefully at the scene, and it would seem to me to whatever extent your police department is able to master and obey all those options to a person who is in difficulty, the better off everybody is.

Now is the question of training that's lacking.

SERGEANT BAKER. Well, I have read the act and I understood it, but what bothered me was the procedure you go about it at 3 in the morning. Okay?

COMMISSIONER-DESIGNATE BERRY. If I may interrupt you just to follow up a point you made—in responding to one of her questions, you, I think, Sergeant, said that in this case you had last week that you were somewhat bothered because the man had been staying there since last September, if I understood you correctly.

SERGEANT BAKER. I wasn't bothered so much that he was staying there, but that she let him stay there after she went to all this trouble.

COMMISSIONER-DESIGNATE BERRY. How did you know he had been staying there? I'm just curious.

SERGEANT BAKER. He told me.

COMMISSIONER-DESIGNATE BERRY. Well, did you have any evidence that he was telling you the truth?

SERGEANT BAKER. His clothes and everything were there.

COMMISSIONER-DESIGNATE BERRY. So you looked and you confirmed that he in fact had been living there.

SERGEANT BAKER. Well, when he went to the closet, when I took him out and put on some clothes, so I gathered his clothes were there, and I personally know the gentleman and know that he has been there.

CHAIRMAN FLEMMING. Commissioner Horn?

VICE CHAIRMAN HORN. What is the experience, gentlemen, that you have in just your feeling about the degree to which alcoholism has a major role in these abuse cases and in your judgment is it cause or simply symptom of what are deeper troubles?

CHIEF GIORDANO. It could be alcohol. It could be debts, you know, money, family but, I think, alcohol is most of it.

VICE CHAIRMAN HORN. Is that your experience, too?

CHIEF GIORDANO. That's the way I feel at this time.

SERGEANT BAKER. Barring somebody that is mentally ill, I would say alcohol is—9 times out of 10, either both are drunk or one is drunk when you answer a call to a husband and wife feud.

VICE CHAIRMAN HORN. Do you have a feel on how often both are drunk?

SERGEANT BAKER. Most of the time.

VICE CHAIRMAN HORN. Most of the time?

SERGEANT BAKER. Most of the time.

VICE CHAIRMAN HORN. And, if one of them is drunk, I take it that's the abuser, not the abused?

SERGEANT BAKER. Sometimes.

VICE CHAIRMAN HORN. Most of the time?

SERGEANT BAKER. Most of the time, yes.

CHAIRMAN FLEMMING. Did I understand correctly that you have a shelter in Carlisle?

CHIEF GIORDANO. We have a phone number and shelter. I think we have a shelter now. We have a phone number to call locally which we will use that—we have Crisis Intervention, who we have used and will continue to use it.

CHAIRMAN FLEMMING. I recall your referring to the Crisis Intervention. Where is that located?

CHIEF GIORDANO. Carlisle Hospital.

CHAIRMAN FLEMMING. You have worked out a cooperative relationship?

CHIEF GIORDANO. It is manned 24 hours a day, yes, sir.

CHAIRMAN FLEMMING. Then, also, you are in a position where you and the members of your staff can refer to the shelter also?

CHIEF GIORDANO. And they do, sir. We have a very good relationship.

CHAIRMAN FLEMMING. Have you come to know the people who operate this shelter, either one of them?

SERGEANT BAKER. I have never had occasion to use the shelter. I know nothing about it, except the phone number.

CHIEF GIORDANO. You're talking about the Women in Crisis?

CHAIRMAN FLEMMING. Yes.

CHIEF GIORDANO. Just the telephone number on that. I'm talking about the Crisis Intervention. We work with them.

CHAIRMAN FLEMMING. You know that?

CHIEF GIORDANO. Yes.

CHAIRMAN FLEMMING. But the shelter, is that located in Carlisle?

CHIEF GIORDANO. I couldn't tell you.

CHAIRMAN FLEMMING. You don't know?

CHIEF GIORDANO. I don't know.

CHAIRMAN FLEMMING. It could be?

CHIEF GIORDANO. It could be in Dauphin County.

CHAIRMAN FLEMMING. It could be the one that's located in Hershey.

CHIEF GIORDANO. Right.

CHAIRMAN FLEMMING. But you haven't had the opportunity of talking with the people?

CHIEF GIORDANO. The last newsletter—I think they were trying to locate one in the Carlisle area.

CHAIRMAN FLEMMING. Right. Well, we do appreciate your being with us this afternoon.

MS. HOOPES. Mr. Chairman. I'm sorry to interrupt. I understand that Chief Giordano may have brought with him a written description of the department, including the EEO statistics on his force. May I ask is that correct?

CHIEF GIORDANO. Yes.

MS. HOOPES. May I have that inserted in the record at this time please?

CHAIRMAN FLEMMING. Without objection, it will be inserted in the record at this time.

MS. HOOPES. Thank you.

CHAIRMAN FLEMMING. We appreciate your coming and participating in the hearing in this matter. Thank you very, very much.

Counsel will call the next witnesses.

MS. GERBENICS. I call Edgar Bayley and Theodore Smith.
[Edgar Bayley and Theodore B. Smith III were sworn.]

TESTIMONY OF EDGAR BAYLEY, DISTRICT ATTORNEY, CUMBERLAND COUNTY; AND THEODORE B. SMITH III, ASSISTANT DISTRICT ATTORNEY, CUMBERLAND COUNTY

MS. GERBENICS. Beginning with you, Mr. Bayley, would each of you please state your full name, position, and time in that position?

MR. BAYLEY. I am Edgar Bayley. I am district attorney, Cumberland, since 1976 and I was the first assistant district attorney from 1969 to date.

MS. GERBENICS. Thank you. Mr. Smith?

MR. SMITH. I am Theodore B. Smith III. I am the full-time assistant district attorney. I've been in that position since October 1979 and I was law clerk on a part-time basis to the district attorney's office from October of 1978 to October 1979.

MS. GERBENICS. Thank you. Mr. Bayley, would you briefly describe the jurisdiction and responsibilities of your office and include the size of the staff.

MR. BAYLEY. District attorney is an elected position in Cumberland County. We have criminal jurisdiction for all offenses that occur in Cumberland of all types. I have a staff of two part-time assistant district attorneys, one full-time assistant district attorney, an administrative assistant, three clerical personnel, and a law clerk.

MS. GERBENICS. Thank you.

Mr. Smith, could you describe the complaint intake process for both private and criminal complaint and police complaints in your office?

MR. SMITH. I'll start out with private. What happens normally—as a result of what you've heard from the police officers—very often they advise someone to file charges privately before a district justice. When the charges are filed, they are referred to our office—assuming it is a misdemeanor charge—it must be referred to our office for approval.

Once it comes to our office, we send a letter to the complaining party asking them to schedule an appointment with me—usually it is me or one of the other attorneys in the office to discuss the case. They schedule the appointment; they come in for the appointment. I get—assuming it is me—I get the facts from the person and, if I feel that what they have said constitutes the crime that they have charged or constitutes a crime which can be the basis of a criminal complaint, I so advise them.

I advise them of all that will follow—what happens when a criminal complaint is approved, where it goes, the preliminary hearing right through the trial, and I give them some idea what may be the outcome of the case also.

I also advise them in almost all cases where it is a possibility that they may also file or have it lowered at the district attorney's office to a summary offense. That's usually—for instance, if they follow simple assault, they could proceed on harassment only and it would only proceed at the district justice level.

I leave that decision whether they want to proceed with a misdemeanor or a summary offense up to them.

Once the complaint is approved, that's it.

MS. GERBENICS. Mr. Bayley, could you briefly distinguish for us the standards that you apply in determining whether a case is a summary case, simple assault, or aggravated assault?

MR. BAYLEY. Well, the crimes code provides the actual standards. Basically, harassment, which is a summary offense, is an assault that does not involve bodily injury or an attempt to cause bodily injury—striking or pushing, or hitting somebody without that intent.

A simple assault in Pennsylvania is an attempt or an act that constitutes bodily injury which is defined as an act that causes serious pain or is an attempt to cause injury of some type. An aggravated assault is your more serious type assault intended to cause serious bodily injury.

MS. GERBENICS. What is the most common charge, for instances of domestic violence, would you say?

MR. BAYLEY. I would generally say a simple assault charge.

MS. GERBENICS. Do you think—does the fact that it is domestic violence case present any special problems to you in your decision whether to take a case or not?

MR. BAYLEY. I don't think so. I think we treat assault cases, whether it is a domestic violence case or assault by somebody on the street or assault between friends, the same way. Whether a case should be prosecuted depends on a lot of factors. The fact there is a domestic situation is only one, and I don't think is any more important than other types of assault cases.

MS. GERBENICS. Something that is currently said—and I would just like your opinion on this as to whether you think it is true in Cumberland County—is that very frequently women in these cases do not pursue the complaint through prosecution?

MR. BAYLEY. I think that's the case. That's the case in a minor assault and lots of times, especially if you're dealing in a first-time situation, what the complainant wants primarily is for the incident not to happen again. Whatever process you take, take it before a district justice as a summary offense, handle it in the criminal court, ultimately drop it, handle it in the criminal court to conviction, if the real solution through the criminal system is it does not happen again and there has been no serious bodily injury, then the case has been properly handled in my mind.

Obviously, to clarify one more point, if there has been a serious assault, assault where somebody is hurt, then it seems to me it is the

responsibility of a district attorney to take the case to criminal conclusion in that regard, and I would say, in those instances, most times the complainant wants that done, although not always.

MS. GEREBENICS. How do you handle those cases in which she would not, once you have decided to take a case?

MR. BAYLEY. Well, if I have decided to take a case, the complainant can be subpoenaed to testify and testifies, you know. There's very few cases that I would decide to take on where the complainant did not want to, although it has happened and it has occurred, but rarely.

MS. GEREBENICS. Mr. Smith, in your initial review, if a woman at that stage—if you have some idea that at that stage she may be reluctant to proceed, what would your response be at that point?

MR. SMITH. It depends entirely on what type of an assault you're dealing with and what type of a woman I'm dealing with. I have said to women, you know, "You've got to be out of your mind to let this keep going on. You ought to do something about it."

At the same time, if it is what appears to me to be a relatively minor thing and she wants to drop it at that stage, it is certainly better in my opinion that she drop it then than she go through with it up to a certain point and then drop it. So, if that's what she wants to do, I will let her drop it there.

MS. GEREBENICS. About how many cases of domestic violence would you see in a year in your office?

MR. SMITH. I gave some off of the top of my head figures to Mr. Chou over the phone in my interview. I believe, probably, what I'm saying is I don't know for sure, but I believe it is something in the area of 50 to 75 per year that come into the office in some way or another.

MS. GEREBENICS. How many of those would proceed, say, under assault charges through a trial?

MR. SMITH. I have no idea.

MS. GEREBENICS. Mr. Bayley?

MR. BAYLEY. It is hard for me to say how many. Most of the cases that are approved for prosecution where the complainant wants to prosecute are completed; in other words, they go to a district justice, they come up, sometimes they're dropped later at the request of the complainant, but most of those are completed.

MS. GEREBENICS. Would you say you get more of your cases through the private criminal complaint process or through the police?

MR. BAYLEY. More through private criminal complaint process.

MS. GEREBENICS. And is there any difference in any standard or anything that would apply to those cases as opposed to the ones where the police have arrested?

MR. BAYLEY. No. Remember that most of the time when a case comes up from a policeman, he has responded to an incident where violence has occurred and he's on the scene and it is serious, and he'll file the charges himself. They come up just like any other case.

In a case where a woman makes a complaint to a local police department, is not physically impaired or concerned—then they come up through the private channels, so the police are out and we get into it.

MS. GERE BENICS. I think we spoke—at the time of the interview you had some strong feelings about the criminal justice system and its adequacy for handling cases of domestic violence. Do you still feel that way, that it is the appropriate forum?

MR. BAYLEY. I think where you have a criminal justice system that is not backlogged and does not have to give priority to homicide cases in lieu of trying burglary cases or whatever, as we do with no backlog, the criminal court system can adequately meet the problems of domestic violence through criminal charges, which I think can be very effective.

Obviously, if you were an overburdened district attorney, you have a backlog and you can't get certain types of cases—especially minor criminal charges are going to fall, and minor assault charges are going to be one of those. I don't think we're in that situation in Cumberland. We have no trial backlog.

MS. GERE BENICS. There are a number of people in the criminal justice system that prefer to use the Protection From Abuse Act and the criminal justice system as complementary systems and, if it supports a protection order, it would also support criminal charges. Do you think that's the proper use of the act?

MR. BAYLEY. Well, my feeling as a district attorney is, if there has been a crime committed, that it is prosecutable under the criminal laws and, if a complainant wants to proceed with it, we proceed with it and, if it should proceed on, we proceed with it. To the extent that a complainant would feel more at ease using the civil procedures of the Abuse Act, of course, that doesn't come through my office.

MS. GERE BENICS. Has there been any noticeable effect in your office in your caseload since the passage of the Protection From Abuse Act?

MR. BAYLEY. Not that I can discern.

MS. GERE BENICS. I overheard Sergeant Baker relating the incident about the violation of the protection order. Do you get involved in that often?

MR. BAYLEY. I, no. Mr. Smith handled that one. We very seldom get involved in the violation of a protection order.

MS. GERE BENICS. Would you know offhand how many times?

MR. BAYLEY. I don't know offhand.

MS. GERE BENICS. Mr. Smith, would you have any idea?

MR. SMITH. I don't know how many times. The one which Sergeant Baker mentioned was the first one I've been involved in since I've been in the D.A.'s office.

MS. GERE BENICS. Did it present any unique problems, any different problems than a case that proceeds through the entire criminal system?

MR. SMITH. Well, that one certainly presented a unique problem in that, after the entry of the order, at least according to the putative defendant, he had been living with the woman ever since and had been in violation of the order with her consent. I feel a certain duty to do justice in my job and I didn't feel like being heavy-handed in telling the police to go throw the man in jail.

So that's the problem that was presented by that one. Of course, after being told by me that, if he was caught there again, he was most

definitely going to end up in jail, and he was caught there again, I had really no question about what to do, although I still went up to the judge, and the judge made the order which resulted in his being placed in the Cumberland County prison.

MS. GEREBENICS. Do you think the act presents any special problems in terms of its simply being a civil statute with a criminal penalty? Does it present any problems to you as a prosecutor? Do you get into it at that stage?

MR. BAYLEY. If there's been a violation of an order that results in a contempt proceeding and we're under the duty to prosecute it, we'll prosecute it. It does not present any more difficulty than a regular criminal case.

MS. GEREBENICS. Mr. Bayley, if we could just go back to your statement before about the effectiveness of the criminal system, could you elaborate on the benefits that you see the criminal system can present?

MR. BAYLEY. Well, if you're dealing with a domestic situation that is not going to be a one-time problem and there's going to be a problem where a woman is in fear, then it seems to me the most effective way or at least the only way, deterrent way, to prevent somebody from beating somebody is to literally have the deterrent of going to prison.

Now, if you prosecute a domestic violence case and, let's say, the person pleads guilty, or is found guilty and is given a period of probation or suspended sentence, if something happens again, it isn't a perfect remedy, but the chances of the same result are remote, and the chances are, in a second assault situation, the court would deal more harshly with somebody, to the extent that that person is made aware what can happen through the prosecution of one case. Conceivably that can be a deterrent to the problem again, so I think yes, there can be deterrence through prosecutions even where those cases originally do not result in jail sentence. After all, jail sentence is the last resort a judge should go to in a case. What you want to do is not have the problem occur again.

MS. GEREBENICS. What kind of time are we talking about from the time, say, a person comes in and files a simple assault charge until the time of trial and sentencing?

MR. BAYLEY. In this county, there are trial terms in February, May, September, and December, so, to the extent that a case occurs, that is the next available trial term.

Once the trial term is completed, how long the judge takes to sentence will depend a lot on presentence report. Maybe he'll have the person enter some type of a program; maybe he'll have alcoholic work occur. In other words, sentencing might purposely be delayed after culpability has been determined. Culpability is determined at each trial term and does not go beyond that point.

MS. GEREBENICS. Do you see any problems in the criminal system with the fact that the person may be out on the streets or may not be any kind of exclusionary order or any kind of stop abuse order?

MR. BAYLEY. I find that problem with murderers and rapists and robbers and every other type. You know, a person in Pennsylvania, except for capital offenses, is entitled to bail. To the extent they can

make bail, they have an absolute constitutional right to be out on the street.

Most assault cases, people will initially be able to make bail. That is a problem, but you can't put people away in jail pending disposition of a criminal charge.

MS. GERBENICS. Mr. Chairman, I have no further questions at this time.

CHAIRMAN FLEMMING. Okay. Commissioner Horn?

VICE CHAIRMAN HORN. No questions.

CHAIRMAN FLEMMING. Commissioner-designate Berry?

COMMISSIONER-DESIGNATE BERRY. No.

CHAIRMAN FLEMMING. Commissioner Ruiz?

COMMISSIONER RUIZ. Other than acts of domestic violence, is there any other type of crime where the victim would tell the district attorney, "I don't want to be further involved," and the district attorney then just dismisses the case?

MR. BAYLEY. Sometimes, yes. Bad check charges might be an example. Minor theft charges might be an example. Say a corruption of the moral of minors case where the problem has otherwise been solved might be an example. Misdemeanor type cases where you have a real victim where the problem has been solved through the initiation of the proceedings might be an example.

COMMISSIONER RUIZ. Would it go so far to say, if you make restitution, we will not prosecute?

MR. BAYLEY. Sometimes, if that's acceptable to the complainant; not always, but sometimes. I won't, for example, routinely drop a bad check charge, but I will sometimes, depending on the facts of the case—if restitution has been made and if the victim agrees.

COMMISSIONER RUIZ. The office of district attorney, then, has a great deal of discretion?

MR. BAYLEY. Under the law the district attorney has discretion to prosecute.

COMMISSIONER RUIZ. Which is the duty of when or when not to prosecute?

MR. BAYLEY. Under Pennsylvania law that's correct, sir.

COMMISSIONER RUIZ. That's in Cumberland County; is that correct?

MR. BAYLEY. That's in every county of the Commonwealth.

COMMISSIONER RUIZ. I see. Thank you.

CHAIRMAN FLEMMING. On the basis of experience both of you have had and are having, do you feel that the issue to which the Commission is addressing itself is an issue that has been receiving more attention within your county and within the communities within your county, let's say, over a period of the last 3 or 4 years than was the case up to that particular time?

MR. BAYLEY. I think the issue of what causes domestic violence is today concerning a lot of people and a lot more is being done in that vein than was before and very properly so.

The issue of whether or not prosecutions occur where people should be prosecuted—I do not foresee any change in those circumstances because that's a case by case basis as the years go by.

CHAIRMAN FLEMMING. But the basic issue itself is getting more attention?

MR. BAYLEY. Absolutely. There are more places for people to go for help. I heard Judge Dowling say—and there's been lots of comments on alcohol. Here, in my experience as an attorney since 1969, I'd say that the majority of all assault cases, maybe 80 or 90 percent and especially domestic violence cases, take place as a result of some form of alcohol abuse and, if you attack that problem, you may be able to attack causes, and that keeps cases out of courts, which is the real key.

CHAIRMAN FLEMMING. Are you acquainted with any of the shelters in this particular area for the victims of domestic violence?

MR. BAYLEY. I'm aware that there are shelters so that in a crisis situation somebody can be protected, yes.

CHAIRMAN FLEMMING. Have you become acquainted with the operation of any one of them, I mean, for example, the one in Hershey?

MR. BAYLEY. Specific operation, no. I know they're available and you can refer people and they will help, and we've had the people come by and give us that information, so that we can relay it when there is an immediate crisis.

CHAIRMAN FLEMMING. You heard the representatives of the police department refer to a crisis intervention service out of the hospital in Carlisle. Are you familiar with that?

MR. BAYLEY. I'm familiar with the fact there is one, yes.

CHAIRMAN FLEMMING. And I gather you feel that is likewise making a contribution to the total problem?

MR. BAYLEY. Yes, I really feel that as far as studying this problem to the extent that things can happen positively to reduce domestic violence, that the key to do that is meet the root causes of the problem before it occurs—that something satisfactory can be done. Once there is domestic violence, that is a court problem and the problem for the State to proceed with in the court system.

CHAIRMAN FLEMMING. Have you had—in your experience—have you had any contact with domestic violence cases where the victims have been older persons?

MR. BAYLEY. I haven't, but Ted says he has recently, so I'll let him answer that.

MR. SMITH. I had one quite recently.

MR. BAYLEY. Very seldom, certainly.

CHAIRMAN FLEMMING. This was a case of the children of the older person being the persons who were responsible for the violence?

MR. SMITH. No. It was her husband and—her daughter of approximately 40 years was willing to take her in, but she was too proud to do that, to go and live with her daughter. I think I managed to talk her into doing that and I also said I would approve charges, but I thought the best thing—the thing which would most likely avoid an assault occurring again—would be for her to get out of the house and live with her daughter, and she was in a position where economically she was able to do that.

VICE CHAIRMAN HORN. Gentlemen, can you answer me this question: you are both fairly young—now you hold prominent places in

your community. You are recently out of law school—one of you 5 or 6 years, one passed the bar last fall. To what degree did either of your law schools prepare you in any way for dealing with family law, domestic violence type issues in an understanding of the law in this area? Were either of you exposed to this in law school?

MR. BAYLEY. I will answer first because I've been assistant district attorney since '69, out of law school in 1964.

VICE CHAIRMAN HORN. You just look a lot younger than you are.

MR. BAYLEY. Well, I studied family law in law school. The study in those days of criminal law was almost frowned upon. Everybody was going to be civil lawyers, so I had very little experience in that regard—that I got in law school—but I learned it on the job. Ted might be in a different situation.

VICE CHAIRMAN HORN. Well, did family law sensitize you in this area, or was this mostly divorce law?

MR. BAYLEY. At that time certainly was mostly oriented towards divorce law and the private practice of domestic cases.

VICE CHAIRMAN HORN. How about you, Mr. Smith?

MR. SMITH. I took a course in family law, which is about the limit of my exposure to family law in law school, and again, it dealt mostly with divorce, custody, and problems with conflicts of laws between States in divorce and custody cases—very little on domestic abuse.

There's some of it which is covered in criminal law, and, of course, criminal law has come into its own recently and because people are more aware of this problem, more domestic abuse cases creep into the law books. Still, I don't think there's any great effort made to prepare you for it in law school.

MR. BAYLEY. Let me add to that. I'm not sure what the law school can teach to sensitize you to a domestic violence case. It seems to me that, if a lawyer, be he a defense lawyer or a prosecutor, is involved in this type of situation, he is concerned for clients and people and handles the matters accordingly, so I think lawyers are equipped to handle problems in this regard.

VICE CHAIRMAN HORN. On that point, if law school doesn't prepare you in some way to deal with what is becoming increasingly recognized as a long-standing national problem which has received very little attention—it has been a closet problem if you will, that very few people were willing to talk about—I think testimony shows in the middle-class, upper-middle-class areas many people are still refusing to talk about it, yet it goes on across the socioeconomic spectrum.

Having said that and pursuing a question I asked the three judges that were on the panel earlier this afternoon, to what extent, if any, has the District Attorneys Association of Pennsylvania had panels on the Protection From Abuse Act, getting into background in this area and so forth?

MR. BAYLEY. Well, since district attorneys are not the prime parties that handle the domestic abuse cases from the civil side, the answer is, no. I think law school—when you teach a person law, you're teaching a lawyer how to solve people's legal problems. Certainly, the lawyer who comes out of law school today is equipped to solve people's

problems in the domestic field, either in the civil side or the criminal side, and the choice of the forum depends on what the problem is.

I don't think the District Attorneys Association has isolated domestic abuse from regular abuse. How you proceed and handle assault cases generally, or physical violence cases—seems to me you're talking about a whole subject and not a part of it, or one more difficult to handle than another.

VICE CHAIRMAN HORN. Do you feel the discussion on the criminal aspects of abuse and assault has been sufficient in terms of the education of D.A.s in this State?

MR. BAYLEY. I certainly think so, yes.

CHAIRMAN FLEMMING. I think you were here and listened to the testimony that came from the police department in Carlisle, and I gather from testimony from that panel, as well as your testimony, that there are close working relationships on issues of this kind between your office and the police department. How about other areas within the county where there isn't a city police department? Does that present any particular problems for you in dealing with cases within this area?

MR. BAYLEY. If you mean are there areas of the county that are isolated from police protection, no. You have townships that have departments, and boroughs like Carlisle have departments; also State police do. But, no, I think there's an adequate amount of police to be able to respond to this type of a situation in a county, if that's your question.

CHAIRMAN FLEMMING. Well, that helps a great deal. I'm just wondering whether you find in the townships, for example, the police departments in the townships, any different approach than you find in a community the size of Carlisle?

MR. BAYLEY. I would say no, I do not find a different approach.

CHAIRMAN FLEMMING. Right, and you feel that they have had the benefit of some training in this area just as the police department of Carlisle has had?

MR. BAYLEY. Yes, I feel that's the case. And I also feel that the police have had sufficient training to make judgments themselves as to whether to initiate, themselves, criminal prosecution, or where to refer somebody to, or whether or not a matter should be referred on a private basis. I think they understand the standards that go into that type of a decision.

CHAIRMAN FLEMMING. It is clear that the police force in Carlisle does have the information that is needed to make certain types of referrals to the shelters and so on and you feel that the police departments in the townships likewise have that kind of information?

MR. BAYLEY. I feel they do. As far as shelter availability, we disseminate that information to them.

CHAIRMAN FLEMMING. Yes.

COMMISSIONER-DESIGNATE BERRY. Mr. Bayley, I noticed that your position on the issue of whether to proceed with the criminal justice prosecutions in the case of domestic abuse was somewhat different from the position of the prosecutor in Dauphin County. The district attorney

in Dauphin County, who seemed to be more favorably disposed toward the Protection From Abuse Act as a way of proceeding—and I noticed in answer to some questions about the issue, you said that the problem of bail and letting people out of jail before trial is something you had in every kind of case, not just this type of case, if I recall correctly.

Why is it that you are much more favorably disposed—if you could reinforce that for me—toward proceeding in the criminal justice normal prosecution for assault or harassment and the like than proceeding under the Protection From Abuse Act statute?

MR. BAYLEY. Primarily, because the two offices, while in adjacent counties, are totally different operations because of what the problems are they have to deal with. Harrisburg, for example, while a fourth class county, I think they have 10 or 12 full-time assistant district attorneys. The city of Harrisburg generates a lot more criminal problems for the county and, therefore, the office is overworked with far more major prosecutions than we are.

I think that, where you are operating in a county as we are, where we simply have no trial backlog, where we can meet and prosecute all cases, minor or major, and I hate to think of differences in the sense of whether a case should be proceeded with or whether it gets attention, where you can do that, then it seems to me we can make some progress on criminal cases and progress to me means not having the incident occur again, and sometimes I think the criminal process can be more effective in that regard.

I can understand the district attorney of Dauphin County relying more on the civil process than the criminal process where he has other more serious or major incidents to be involved in on a daily and a regular basis.

COMMISSIONER-DESIGNATE BERRY. If you let someone out on bail, or if someone is let out on bail, in your county and you are proceeding against them, how long will it be before there is a trial?

MR. BAYLEY. Until the next trial term. For example, the next trial term in Cumberland County is September. Now that doesn't mean the case doesn't get resolved before September. Actually, the procedure is, if someone is arrested, goes out on bail, once the preliminary hearing takes place, the case is returned to court and the person is arraigned with counsel, probably within a matter of not more than 30 days, so the process starts where now counsel is involved. A very important aspect in dealing with a defendant is the defense attorney, himself or herself, and the fact that a trial might not occur in a case that is contested until September doesn't mean that a lot of cases, for example, during the summer that may arise do not get resolved because many cases we resolve on a guilty plea basis. Therefore, the process of working with the defendant starts.

COMMISSIONER-DESIGNATE BERRY. But arguably someone could be out on bail?

MR. BAYLEY. Will be out on bail.

COMMISSIONER-DESIGNATE BERRY. Would be out on bail and could be out for 30 days at least.

MR. BAYLEY. Right now, a person released on bail will be out until September.

COMMISSIONER-DESIGNATE BERRY. Well, I mean it depends on when it happens, but you could have someone out of jail in a case where the woman alleges that she's been assaulted and is afraid and her husband could be out on bail that long.

MR. BAYLEY. Will be out on bail.

COMMISSIONER-DESIGNATE BERRY. Will be out on bail and that doesn't bother you?

MR. BAYLEY. It bothers me, but the constitution guarantees it.

COMMISSIONER-DESIGNATE BERRY. No, I mean if you proceeded civilly, what would be the result rather than proceeding criminally?

MR. BAYLEY. I don't proceed civilly. Conceivably, you could have some cases which could arise to a judicial order faster through the civil process; however, remember that most of your assault cases, unless there is serious bodily injury, will not ultimately result, certainly, in a first offense, in jail to begin with, and, if there is serious bodily injury, in Cumberland County bail will be set high; the person will probably not make it at the district justice level.

The next thing that will happen, once counsel is involved, will probably be to request a bail reduction, and then the question of whether the person goes out will be a judge's decision and he can put some major conditions on that, and often will, if the judge is willing to lower bail. So once again, you've still got the case being worked with even in a serious situation.

COMMISSIONER-DESIGNATE BERRY. So you think it unlikely that the husband would go back and abuse the wife again during the period when he's out on bail, in other words?

MR. BAYLEY. I don't see much of that occurring, but to the extent that it would, then I think that the average district justice would impose substantial bail if it occurred again, and the person would be once again in a situation where they would not be able to be released.

And I might say initially that, if you're not dealing with a serious bodily injury case, or a case where a person is in grave fear of bodily injury in an assault, you simply cannot use the criminal procedure to keep people in jail, pending trial in that type of case. They are entitled to bail and should be released on bail.

In fact, lots of good things can occur if the person starts getting assistance or help while they are on bail, which is often the case also. For example, let's say a defense attorney becomes involved in a case and he knows he's going to have to plead his client guilty and he knows there's a problem. He might well have his client initially start psychiatric counseling, psychological counseling, alcohol work, all those sorts of things that will ultimately impress a judge who ultimately has to decide the case as to what happens to his client. So there can be positive factors even though somebody is out on bail.

COMMISSIONER-DESIGNATE BERRY. All right. Thank you.

CHAIRMAN FLEMMING. Thank you very, very much. We appreciate both of you being with us, giving us this very helpful information. Thank you.

I'll ask counsel to call the next witnesses.

Ms. STEIN. Would Dale Shughart, Harold Sheely, and Meade Lyons come forward, please?

[Dale F. Shughart and Harold E. Sheely were sworn.]

TESTIMONY OF DALE F. SHUGHART, PRESIDENT JUDGE, COURT OF COMMON PLEAS, CUMBERLAND COUNTY; AND HAROLD E. SHEELY, JUDGE, COURT OF COMMON PLEAS, CUMBERLAND COUNTY

JUDGE SHEELY. Before I say anything, Mr. Chairman, I would like to state that I resent very much the manner in which our attendance was requested at this hearing today. A month or so ago, I voluntarily changed my schedule around so I could speak with some females from your division. I gave them that courtesy; however, I was not extended the same courtesy today to appear here.

I think it's poor cooperation between an agency and the judiciary to subpoena the judges to testify here today without even giving them the courtesy of a telephone call requesting a voluntary appearance, and I can assure you in the future, Mr. Chairman, that any members of your Commission that wish to talk to me will not have that opportunity again.

CHAIRMAN FLEMMING. Judge Sheely—

JUDGE SHUGHART. You may want to hear from me before you answer because I have the same complaint. I've been around a little bit longer than most people in this room. This is the first time that I was treated as discourteously as I feel I was treated here. I, too, arranged a schedule to meet with three or four ladies who came and interviewed me without any indication of this type of proceeding.

The next thing I heard I had people parked outside my doorway trying to serve a subpoena on me to come here and to testify. Had I been accorded the opportunity, I think, under normal circumstances, a subpoena would not have been required, and I'm not at all happy with what I consider cavalier and discourteous treatment also.

CHAIRMAN FLEMMING. Well, I'll be very happy to respond to the comment that both of you have made. Under the law under which we operate, when we hold a public hearing, it has been the practice of this Commission for 22 years to always subpoena all witnesses and to place all witnesses under oath. This practice has been followed throughout our history.

We have held public hearings throughout the country as well as in Washington. When the Commission was created, the man who was then serving as President of the United States, President Eisenhower, recommended to the Congress that this Commission be created and that it be given this authority.

He felt that it was essential for the Commission to have this authority in order to help it get the facts, as he put it, on top of the table. Along with my colleagues, we are simply following the precedent that has been followed by the Commission from the beginning. The authority that has been given has proved to be extremely helpful to the Commission in the discharge of its duties and responsibilities.

We deeply appreciate your being here. We feel that all members of the panel are in a position where they can share with us points of view growing out of your experience that will be extremely helpful to us as we endeavor to deal with what we regard as a very basic, fundamental issue in the administration of justice, and the evidence that you present will be evaluated carefully along with all other evidence and will help us in making findings and recommendations which we, in turn, will submit to the President and to the Congress.

JUDGE SHUGHART. I would just like to respond to that. There are two very, very poor reasons for ever doing anything: the one reason is, "Everybody else is doing it this way" and the other one is, "We've always done it this way," and your answer is that you've always done it.

I don't question your right to a subpoena power, but I do question the practice of failing to give the individual a right of appearing voluntarily and without the subpoena. If for no other reason, the cost factor—and all of us ought to be a little careful about cost factor—the people that served the subpoena on me, I'm sure, incurred a day's work and this could have been spared if somebody had simply indicated they wanted to have our presence here.

CHAIRMAN FLEMMING. We appreciate your point of view. It is a case of reasonable people differing. The Commission, as a result of its experiences, has decided to follow this particular practice which we do follow uniformly, and I appreciate the point of view that you've expressed. We just happen to have a different point of view far as that procedure is concerned; however, I'm sure that we do not have any differences in terms of the desire on the part of both of us to endeavor to obtain the kind of evidence that, in turn, will enable us, as a Commission, to have evidence which we can evaluate and which will assist us in making findings and recommendations both to the President and to the Congress.

I'll ask counsel to proceed.

MS. STEIN. Mr. Chairman, at this time it might be convenient to administer the oath to Justice Lyons who arrived after the judges. [Meade G. Lyons was sworn.]

TESTIMONY OF MEADE G. LYONS, DISTRICT JUSTICE, CUMBERLAND COUNTY

MS. STEIN. Could I ask each of you, for the record, please, to state your name, your position, and how long you have been in your present position, beginning with Judge Shughart.

JUDGE SHUGHART. My name is Dale F. Shughart. I am president judge of the 9th Judicial District of the Commonwealth of Pennsylvania, which is comprised of Cumberland County. I have been in this position for about 32 years.

JUDGE SHEELY. Harold E. Sheely, judge, 9th Judicial District, since January 1, 1978.

JUSTICE LYONS. Meade G. Lyons, District justice, Magisterial district 09201. This is my 11th year as district justice.

MS. STEIN. Judge Sheely, could I ask you, please, to briefly describe your duties and jurisdiction as a judge of the Cumberland County Court of Common Pleas?

JUDGE SHEELY. We have jurisdiction over all criminal cases arising in Cumberland County and we have jurisdiction primarily, also, in all civil cases where the acts arise in Cumberland County, although there are some cases where we do have jurisdiction where the acts arise outside this county.

MS. STEIN. So would that include cases of assault or aggravated assault between husband and wife?

JUDGE SHEELY. It would, yes.

MS. STEIN. Would it also include civil actions brought under the Protection From Abuse Act?

JUDGE SHEELY. It would.

MS. STEIN. And would it include divorce actions?

JUDGE SHEELY. It would.

MS. STEIN. Judge Shughart, could you describe any additional responsibilities you may have as president judge of the Court of Common Pleas for Cumberland?

JUDGE SHUGHART. Well, president judge is simply the administrative judge, the person who assigns the workload among the three judges that we have and, generally, is the administrative head of the court staff.

MS. STEIN. Would there be any statistics maintained by your court which would indicate how many cases the court handles approximately each year?

JUDGE SHUGHART. There are statistics. If you're asking me, there are statistics of that kind. I was not requested to bring any statistics. My subpoena form asked me none of that and I am not prepared to do that. The State court administrator and my court administrator would have all kinds of statistics as to the cases coming before us.

MS. STEIN. Could you estimate for us, based on your experience as a judge and what you are told by your fellow judges, how many cases of spouse abuse come before the court each month?

JUDGE SHUGHART. Over what period?

MS. STEIN. I said each month, but you could choose any time period that would be more indicative.

JUDGE SHUGHART. Well, as a matter of fact, we don't have all that many cases that are coming before us on the child abuse and haven't had.

MS. STEIN. This is spouse abuse.

JUDGE SHUGHART. In 1978 we had five petitions filed. Of these we heard two. In '79 we had 18 petitions filed, and we heard 11. In 1980 we've had 21 petitions filed, and we've heard 16.

MS. STEIN. This is for the entire Court of Common Pleas for Cumberland County?

JUDGE SHUGHART. That's correct.

MS. STEIN. And you're referring to petitions under the Protection From Abuse Act; is that correct?

JUDGE SHUGHART. Yes, that's exactly right.

Ms. STEIN. Could you estimate how many criminal cases involving interspousal violence come before the court in any given time period?

JUDGE SHUGHART. No, I would have no way of estimating. Anything I would say on that would be a sheer guess.

Ms. STEIN. All right. In your view, how effective is criminal prosecution in dealing with incidents of violence between spouses?

JUDGE SHUGHART. You are addressing the question to me?

Ms. STEIN. Yes, sir, and I'm referring—

JUDGE SHUGHART. I would say it is very effective.

Ms. STEIN. Are there any problems that are presented by that type of criminal prosecution as opposed to criminal prosecution in other assault cases?

JUDGE SHUGHART. No. The only problem that exists is the problem where the charges are brought frequently and by the time the case gets anywhere, the parties have ostensibly kissed and made up and the case falls by the wayside, and this is not as likely to happen in other cases. Other than that, I see no difference.

Ms. STEIN. And in your opinion, the criminal remedies are effective in dealing with spousal abuse?

JUDGE SHUGHART. Absolutely, because in a criminal case, the court has the power of suspending sentence, pending compliance with certain conditions, and, if there is a violation of those conditions, then a jail sentence can be imposed; and putting people in jail is a pretty effective way of stopping them from committing violence.

Ms. STEIN. Thank you.

Judge Sheely, under the Protection From Abuse Act, if a woman wishes to seek the assistance of the court in excluding a violent spouse from the home, what procedures would she follow?

JUDGE SHEELY. We would hold a hearing.

Ms. STEIN. Well, how would the hearing be initiated?

JUDGE SHEELY. Initiated by a petition.

Ms. STEIN. So she would file a petition with the court and request a hearing; is that correct?

JUDGE SHEELY. That's correct.

Ms. STEIN. Now, if the situation appeared to be one of an emergency nature where she was in danger prior to the time that the case could be heard, is there any procedure she could follow?

JUDGE SHEELY. I think you're aware that the act does provide for an ex parte proceeding, yes.

Ms. STEIN. Have you heard any ex parte petitions for protection orders seeking exclusion of the husband from the home?

JUDGE SHEELY. Several.

Ms. STEIN. Pardon me?

JUDGE SHEELY. Several.

Ms. STEIN. What standards do you use in determining whether to grant a temporary restraining order in those situations?

JUDGE SHEELY. You mean, under what circumstance would I sign an order ex parte evicting the male from the home?

Ms. STEIN. That's correct, yes.

JUDGE SHEELY. Very limited circumstances.

Ms. STEIN. What would be the deciding factors?

JUDGE SHEELY. I think it would be the seriousness of the harm threatened or the harm done.

Ms. STEIN. Can you give us any indication of what factors would have to be present to do that?

JUDGE SHEELY. No, I can't. I'd have to decide it on an individual basis.

Ms. STEIN. But I understand that— that the determination would be made case by case, but can you give us an example of a case that you feel would warrant that type of relief?

JUDGE SHEELY. No, I can't give you an example.

Ms. STEIN. Judge Shughart, have you heard petitions for ex parte relief that involved exclusion of the husband from the home?

JUDGE SHUGHART. I have had them. Seldom have I granted them. I don't know that I ever granted one. My feeling is that, if the circumstances are such that would justify an exclusionary order, we've got to bear in mind throughout this that two people have civil rights and that's one of the things that what little I could hear from what preceded as I sat here is that there is not always a recognition that an individual charged with a crime also has civil rights and, when the questions regarding bail were asked here, under our constitution, an individual has a right to bail except in a capital case, and even in homicides there is a right to bail.

It seems to me that where the circumstances are so severe as to justify an ex parte order, which, in my opinion, might be questionable as to due process, then the use of the criminal proceedings is the one that should be utilized, because, if a warrant were issued and the defendant was picked up, he has full rights to an arraignment, he has a right to have bail fixed and he has other rights. For any individual, as a judge, to issue an order based on somebody's affidavit excluding that individual from his home, this is a very, very drastic situation because I think the individual excluded from the home also has constitutional rights that have to be protected, so that I am not favorable to granting exclusionary orders except under very drastic circumstances, and I don't know that I've ever signed one.

Ms. STEIN. Well, the act does provide for—

JUDGE SHUGHART. I am aware what the act provides for.

Ms. STEIN. —the court to issue such orders.

JUDGE SHUGHART. I am aware of that. I think I voiced my statement to the people who interviewed me some time ago, that I have some serious questions as to the constitutionality of that. I don't think it has been passed on.

Ms. STEIN. Have you ever had occasion to hold the act unconstitutional?

JUDGE SHUGHART. No. It has never been presented to me.

Ms. STEIN. So you never heard argument of counsel on that?

JUDGE SHUGHART. It hasn't been challenged before me. It was challenged in one lower court as far as I know, and the constitutionality of parts of the act was sustained, but it has not been passed upon by any of the appellate courts, to my knowledge.

Ms. STEIN. Suppose you were faced with a situation where the facts were such that they did give rise, in your mind, to a conclusion that the woman was in danger of serious bodily harm if an order of this type was not entered prior to the time that a hearing could be held? How would you handle such a case?

JUDGE SHUGHART. I would handle it as I felt it should be handled. I think that it is improper for me to prejudge a case that didn't come before me or to express an opinion on what would happen. I think that we call cases as they are presented to us as actual cases and not hypothetical situations.

Ms. STEIN. Do you feel that there are the same due process questions or constitutionality questions that you referred to, do you feel that type of question is presented where an ex parte order is sought directing the husband not to abuse the wife further, where the question is not one, in other words, of excluding the husband from the home but directing him to take other actions with respect to refraining from harassing or abusing the wife?

JUDGE SHUGHART. Well, now, I'm not sure I understand your question. I see nothing wrong with telling a man he isn't supposed to beat his wife. All I'm doing is telling him what he knows the law is. So I don't have any hesitancy about saying, "Don't beat your wife anymore."

Ms. STEIN. Would you have any hesitancy about entering an ex parte order that did not exclude the husband from the home but did set conditions on his contact with his wife or things of that type?

JUDGE SHUGHART. I've already answered that question.

Ms. STEIN. Could you repeat your answer? I didn't realize you had.

JUDGE SHUGHART. I already indicated that when you get beyond telling him that he should obey the law, then I think you are into an area where he's entitled to be heard; and I repeat that, if the situation is so desperate, then I think the criminal law should be employed, and I think the criminal law has safeguards for all the parties.

Ms. STEIN. Is there any authority that you are relying on in your position that the law may be unconstitutional or are there any cases or decisions?

JUDGE SHUGHART. I've already stated that—that I know of no appellate court cases on it.

Ms. STEIN. I understand that you know of none on this particular law, but I mean—I assume there must be some authority that causes you to question the constitutionality of the act and I'm wondering what that is.

JUDGE SHUGHART. That is simply the due process clause in the Constitution, which provides that an individual has a right to confront witnesses before any action is taken against him, and any ex parte order is depriving him of his due process rights.

Ms. STEIN. Then do your constitutional objections extend to any type of ex parte order, any order that would be issued without—prior to a contested hearing.

JUDGE SHUGHART. I won't say any order. I don't know what you mean by "any order." I think I've already answered that question to the best of my ability.

MS. STEIN. Well, let me move on then to another question. How effective would you say the Protection From Abuse Act is in dealing with incidents of domestic violence, in your experience?

JUDGE SHUGHART. Let me answer that by giving you an example. Last week Judge Sheely was not available and I got word that one of the cases that he had in a Protection From Abuse Act, and in which, after a hearing, he entered an order excluding the husband from the premises back last October. The police came into the district attorney's office and said the wife complained that this man was in the house in violation of that order and would I do something about it.

After he had been told once to get out in response to the order, he returned to the house. I issued a warrant for him and he was put in jail overnight. The next morning at 9 o'clock, I heard the case. I there discovered that the very afternoon that Judge Sheely entered the order excluding the husband, the husband and wife, outside the courtroom, kissed and made up, and from October 1 until whatever date it was, the 13th or 12th to 13th of June, the husband was living back in the house.

Now, obviously Judge Sheely knew nothing about that and the parties settled the case and then I issued a warrant to terminate their agreement. Now that's what I'm talking about in many of these cases; the estimation is here that we have a number of more cases filed than are ever heard, and it indicates that many of these cases simply go away.

MS. STEIN. Well, my question was how effective you feel the act is in dealing with problems of domestic violence?

JUDGE SHUGHART. Well, it is not going to be effective as long as the parties ineffectuate the act by doing the very thing that we're talking about.

I have no idea how many cases that we, after a hearing, enter a court order, that the parties go out and nullify the order by their own actions. The reason that police hesitate to get into these cases is very obvious because we've had a number of them. I have had them in court where a husband and wife engage in violent conduct, one toward the other, and the police are called in and before it is all over, they teamed up and they are both beating the police, or the police if in some way get the case into court, they deny that anything took place. This is hazardous business.

MS. STEIN. Is it your view that this is the typical or the most common type of domestic violence case, that is, the case where the husband and wife unite against the police officer or agree to go on living together after the order is entered?

JUDGE SHUGHART. I don't know. I don't know. I'm sure, if you ask Judge Sheely about this case of his, he would have said, "Well, you know, I excluded this fellow from the house." He would have thought he was excluded, but despite his order, the parties have been living together in violation of his order for 6 months or more. I have no way of estimating these things, because I don't know what goes on.

MS. STEIN. Could I return to the constitutionality issue for a moment and ask you if you have any problems with excluding the husband from the home after a contested hearing has been held or is it only in the ex parte situation that you believe constitutional questions arise?

JUDGE SHUGHART. You're asking me for a legal opinion on something that I may have to pass upon sometime and I won't attempt to answer that. I don't know.

MS. STEIN. Judge Sheely, could I ask you whether you believe that the Protection From Abuse Act is an appropriate remedy for cases involving domestic violence?

JUDGE SHEELY. I think it is an appropriate remedy. I think the normal criminal process is just as appropriate.

MS. STEIN. Well, neither of them are—they are not mutually exclusive, are they?

JUDGE SHEELY. No.

MS. STEIN. Both of these remedies, according to the legislature, are available to any woman in the Commonwealth of Pennsylvania who wishes to invoke them.

JUDGE SHEELY. I believe that's correct.

MS. STEIN. If a woman wishes to seek enforcement of an order that has been entered under the Protection From Abuse Act, what procedure must she follow?

JUDGE SHEELY. Make a complaint, get a warrant from the court on a contempt. It would have to be a contempt. Is that what you're referring to, where the court has entered an order and the person against whom it is entered violates it?

MS. STEIN. That's correct.

JUDGE SHEELY. That would be a contempt proceeding.

MS. STEIN. What standards or considerations guide the court in deciding what action to take when this type of criminal contempt is alleged?

JUDGE SHEELY. There again, that's a very general question. It would depend on what the acts were. I think—I brought some numbers along. I have had 12 hearings on Protection From Abuse. I think of those 12—I wouldn't want to be absolutely certain on this—I think I have had 2 contempts, 1 or 2.

MS. STEIN. Could I interrupt for just a moment. When you say you've had 12 hearings, does that mean hearings where one party is seeking an order or—

JUDGE SHEELY. That is right.

MS. STEIN. —or hearings after an order had been entered?

JUDGE SHEELY. It would be a total. I don't have them broken down. These were hearings either after an ex parte order or a hearing on the original petition; there were 12.

MS. STEIN. But hearings, not hearings on a contempt?

JUDGE SHEELY. No, that's correct. Of those 12, I have had two people who have come back and said, "He has violated your order," and they wanted a hearing, and there were either one or two of those contempt hearings that I have had. And I think when we come back on that contempt hearing, if I recall the case correctly, why, the parties

got it resolved between counsel and there was no further testimony taken.

VICE CHAIRMAN HORN. Excuse me, Judge, when you say 12 hearings, you mean 12 different cases?

JUDGE SHEELY. Yes, sir.

VICE CHAIRMAN HORN. So whether the hearing was the 10-day hearing or whatever is irrelevant; it's 12 different cases and out of that 2 of them are what you are citing.

JUDGE SHEELY. One or two, yes, sir.

Ms. STEIN. And you said in those two cases what was the result?

JUDGE SHEELY. My recollection was that the issues were resolved by counsel prior to any testimony being taken.

Ms. STEIN. On the contempt?

JUDGE SHEELY. Yes, ma'am.

Ms. STEIN. Judge Shughart, as president judge, you have supervisory authority over the district justices of Cumberland County; is that correct?

JUDGE SHUGHART. That's correct.

Ms. STEIN. What does this responsibility entail?

JUDGE SHUGHART. Well, you got some time? It entails a matter of their quarters, where they are, where they have their offices or their courtrooms. It involves a control over their employees. It involves assignments of the district justices from one area to the other, and general supervisory authority over their behavior in connection with the disciplinary board, or the judicial review board, which handles disciplinary matters.

Ms. STEIN. Judge Shughart, do your responsibilities include any role in disseminating changes in the law to the district justices, making them aware of changes that had occurred in the law?

JUDGE SHUGHART. Well, that I don't think is solely my responsibility. I think the State court administrator's office is involved in this, and the State court administrator's office also provides for refresher courses for the district justices on a statewide basis so that I don't think—I've never thought it was my responsibility if a new act was passed to see that my district justices get word of it because they usually get this directly from the State court administrator's office. There is a State court administrator who—someone on their staff—deals with the district justices, and they communicate directly to the district justices.

Ms. STEIN. Do you meet with the district justices on any regular basis?

JUDGE SHUGHART. Not on any regular basis. We do meet periodically.

Ms. STEIN. About how often would you meet with them?

JUDGE SHUGHART. I wouldn't have any idea. Couple times a year.

Ms. STEIN. In previous conversations with Commission staff you indicated that you sent a memorandum to the district justices regarding their utilization of the Protection From Abuse Act. Could you summarize what you said to them in the memorandum?

JUDGE SHUGHART. Very simply, I said to them that I regarded the criminal law process as a superior means of dealing with this and that,

therefore, they should, if the criminal law was violated, use the criminal law procedures rather than the Protection From Abuse because I think it is more effective.

MS. STEIN. Well, when there are two alternative routes for relief in a case, one civil or one criminal, if the party involved wishes to invoke the civil route, is the existence of a criminal route a reason for denying the civil action?

JUDGE SHUGHART. No, and nobody has ever said that.

MS. STEIN. Well, could you explain then—I understood—

JUDGE SHUGHART. I thought I already explained it.

MS. STEIN. Could you tell me—I thought you said that you instructed them to use the criminal route rather than the Protection From Abuse Act?

JUDGE SHUGHART. I said where there was a viable alternative—that I felt that the criminal procedure was more effective and I suggested that they attempt to use that.

You've got to realize that on the Protection From Abuse they come into our court and not to the district justices, except when the district justices are on duty over the weekend and we usually aren't available, but by the same token, an ex parte order that is entered on a weekend, the individuals have no way of getting that before the court until the court is in session the next Monday and, therefore, the damage that can be done to somebody by an improvident order without a hearing is far greater, and there are established procedures for the criminal side and there are not the established procedures that have been tested as far as the Protection From Abuse Act.

MS. STEIN. The reason you say there are not established procedures, is that because the act is new? I mean, you say there are not established procedures, but—

JUDGE SHUGHART. No, it's not because the act is new. I think the act tells exactly what it is.

MS. STEIN. But the act does establish procedures, does it not?

JUDGE SHUGHART. Certainly it establishes procedures, but the point I'm trying to make is—I think Judge Sheely would agree with me—that 90 percent of our cases of Protection From Abuse arise Friday afternoon at about half past 4 or 5 o'clock when—and that's when I got caught with the last one that I took over for him was about 5 o'clock.

Had I gone home at the regular time, I wouldn't have had the case, but those cases come in and, if you enter a pick-up order, or you enter an order directing that somebody stay away from his home, and this is pretty drastic procedure on an ex parte basis. He is going to be excluded for 2 or 3 days before the case is heard and, if the case came into the court, if it came in during the regular hours, it would come before the court and then the court is making the determination, whereas the district justices have full authority to deal with the criminal and they know exactly what they have to do.

MS. STEIN. But the act does give them authority to deal with it on a civil basis, doesn't it?

JUDGE SHUGHART. That's correct. That's what the act says, and I've already expressed my feeling as to the dubious constitutionality of those particular provisions.

MS. STEIN. Isn't it less likely that we will get an authoritative ruling from the appellate courts about the constitutionality of the act if judges and district justices avoid using it, making orders under it?

JUDGE SHUGHART. You can answer that question yourself. If no case gets to the appellate court, they won't make a decision.

MS. STEIN. Thank you. Judge Sheely, in earlier testimony officers from the Carlisle Police Department indicated that they do not make arrests on probable cause for a violation of a protection order issued under the Protection From Abuse Act based on instructions from you. Could you tell us what the basis for those instructions was?

JUDGE SHEELY. I don't remember any such instructions. It is possible I told them that. I don't think there was any basis for that prior to the amendment. I'm not sure when that was told to them.

MS. STEIN. Well, am I correct that the Protection From Abuse Act says that where there is an order outstanding excluding the husband from the home and the police officer has reasonable cause to believe that order has been violated, he has, by that very reason—he had authority to make an arrest?

JUDGE SHEELY. I think that's what the law reads now. I'm not sure that was in the law as it was originally written.

MS. STEIN. Well, have you advised the Carlisle Police Department as to whether or not they have to see the order being violated before they can make an arrest?

JUDGE SHEELY. It's possible that I did and, if I did, I'm sure it was prior to the amendment being in effect. I would suspect that in most cases that would be the most logical course to follow anyhow.

MS. STEIN. Well, at present, if a police officer observed a man in apparent violation of a restraining order issued by the court, would you view that as probable cause for arrest?

JUDGE SHEELY. Certainly, if he observes it. That's certainly probable cause.

MS. STEIN. Suppose probable cause exists to believe that he violated the order, but the police officer does not in fact observe him violating the order under the law as it exists now? Would the officer be justified in making the arrest?

JUDGE SHEELY. I think the way the act reads, he would be, yes.

MS. STEIN. Would your advice to the Cumberland County police—I'm sorry—the Carlisle Police Department be that they should make an arrest in that case?

JUDGE SHEELY. I would not tell them to make an arrest or not to make one. I think my only thing would be to—if I was asked a question by them—would be to tell them what the law is. What they want to do concerning what they consider to be probable cause, that would be up to them.

MS. STEIN. So you wouldn't advise them one way or the other?

JUDGE SHEELY. I would not. I think that would be the district attorney's obligation to give them advice on that matter because I would have to hear it.

JUDGE SHUGHART. I would like to add my opinion and my concurrence with that view. I don't think it is our place to advise the police when they can do anything. If we're going to be sitting in judgment on what they did, I think they should get their advice from someone else.

And on that same question, we're absolutely clear now that we require probable cause for an arrest made by a police officer, and it is a constitutional matter, and the big question mark would be whether the legislature can constitutionally do away with that probable cause in any procedure and there you have a constitutional problem.

Ms. STEIN. Well, I don't think the legislature purported to do away with probable cause. As I understand the act, what the legislature purported to do is say the officer may arrest on probable cause without having observed the act himself. Is that your understanding as well?

JUDGE SHUGHART. That's what the act says, but my question is, the act, of course, is something less than the law handed to Moses, and there will be a final determination as to whether it is constitutional or not.

Ms. STEIN. In the meantime, before a final determination of whether it is constitutional, what do you think should be the attitude of the judiciary about interpreting the act and carrying it out?

JUDGE SHEELY. Who are you addressing that question to?

Ms. STEIN. Judge Shughart.

JUDGE SHUGHART. Well, I don't think that the court should have any part in trying to enforce a regulation that the court felt was unconstitutional.

Ms. STEIN. And how should the court deal with an act that the court feels is unconstitutional?

JUDGE SHUGHART. Treat it in such a way that it is—act so that—act in such a way that the application is constitutional.

Ms. STEIN. In other words, not issue any orders that are authorized by the act but which the judge feels might be unconstitutional?

JUDGE SHUGHART. I don't think a judge would be doing his job if he handed down a court order of any kind that he felt was unconstitutional.

Ms. STEIN. Could I ask you the same question, Judge Sheely. What do you think the attitude of the judiciary should be towards an act pending a determination of its constitutionality?

JUDGE SHEELY. I can say personally what I have done. I haven't worried too much about the constitutionality. If I felt it was a serious case—where you're talking now about evicting a man from his home—if I felt it was a serious enough case where I thought that possibly somebody really might get hurt or injured, I haven't been worried about it. I have signed several *ex parte* orders on that basis. I think each individual judge is going to have to make up his own mind how he feels about that particular part of the statute and act accordingly.

MS. STEIN. When these cases have been presented before you, has the unconstitutionality of that provision been urged upon you or has that not occurred?

JUDGE SHEELY. I can't honestly answer that. I think maybe sometimes counsel have alluded to it in argument. It has never been presented in a form of a written motion where I had to decide that.

MS. STEIN. Judge Shughart, how are ex parte petitions assigned to judges in your court?

JUDGE SHUGHART. They are assigned by the court administrator.

MS. STEIN. Does the court administrator—

JUDGE SHUGHART. Based on who is available. The petitions are sensibly divided among the three judges and the court administrator is the one who does it; however, if some judge is on vacation, the case goes to somebody else.

MS. STEIN. Does the court administrator use availability as the sole basis for assignment; does she do it in a random way?

JUDGE SHUGHART. Normally, all three of us are available, unless they come up after hours and then, if they come up after hours, it would be generally less than all of the judges available and would go to the one who is there.

MS. STEIN. Does the court administrator assign any cases according to subject matter? Does she take into consideration—

JUDGE SHUGHART. Well, now, what do you mean by that? I don't understand that.

MS. STEIN. In other words, would she take into consideration the subject matter of the case, the type of order that was sought in deciding what judge to assign it to?

JUDGE SHUGHART. I don't understand what you mean. Are you talking about Protection From Abuse Act cases or—

MS. STEIN. For example.

JUDGE SHUGHART. No.

MS. STEIN. A person seeking an ex parte order in a Protection From Abuse Case.

JUDGE SHUGHART. No. The assignment is based on equalizing the caseload among the judges.

MS. STEIN. So you would expect that the judges would probably have an equal number of, receive an equal number of such cases?

JUDGE SHUGHART. That's exactly what I would expect.

MS. STEIN. Justice Lyons, would you please describe your jurisdictional authority as district justice?

JUSTICE LYONS. I handle all cases that start—summary, misdemeanors, and felonies that start—come through my office, and civil cases up to \$2,000.

MS. STEIN. When you say you handle all cases—

JUSTICE LYONS. They start in my office.

MS. STEIN. And would I be correct to say that the summary cases also finish in your court?

JUSTICE LYONS. Unless they are appealed.

MS. STEIN. Right. Okay. And what happens to the misdemeanors and the felonies?

JUSTICE LYONS. I set up the hearing, hold a hearing and, if a prima facie case is established, the defendant is bound over for court, at which time the case is shipped to the court of common pleas.

MS. STEIN. Could you give us an estimate of the number of cases involving interspousal violence that come before you in any given time period?

JUSTICE LYONS. You're not talking about abuse cases now; you're talking just husband and wife fights? Is that what you're talking about?

MS. STEIN. Yes.

JUSTICE LYONS. Abuse cases—I have had none.

MS. STEIN. By abuse case, I don't mean a case under the Protection From Abuse Act; I mean a case involving an assault or harassment by one spouse by the other.

JUSTICE LYONS. Maybe a couple a month or something like that. It is very minimal.

MS. STEIN. Can you tell me how these cases are generally charged, what the charge generally is?

JUSTICE LYONS. Simple assault, usually simple assault.

MS. STEIN. More commonly than harassment?

JUSTICE LYONS. Probably some of each, harassment and simple assault.

MS. STEIN. What would be the procedure followed when a woman comes in, let's say, to your office and says that she has been abused or struck by her husband?

JUSTICE LYONS. She will fill out a form. I'll look at the form and maybe ask some questions and, if I find that there is a possibility of a case, we will type up the complaint, at which time it will be sent to the district attorney's office for approval. She will be notified to come in after it is approved and sign the complaint, swear to it, and then at that time a summons or warrant will be issued and a hearing will be held.

MS. STEIN. How long does this process generally take?

JUSTICE LYONS. Maybe a week. Most of the cases you have—when they do come in and file a simple assault, you take the case, send it up to court. They're asked to go up there and they never show up. Like the judges indicated, the next day they're back together again.

MS. STEIN. What percentage of the assault cases would you say that happens in?

JUSTICE LYONS. Ninety.

MS. STEIN. And of those cases that—well, prior to trial in those cases, in any case, those 90 percent and the other 10 percent that do go to trial, prior to trial in an assault case, what is generally the status of the defendant? Is he incarcerated? Is he free on bail? Is he free without bail? What is the situation?

JUSTICE LYONS. Any number of them. It depends on the case.

MS. STEIN. But typically, if the case is an assault case, can you make a generalization?

JUSTICE LYONS. If it is a serious assault case, he'll be arrested and put on bail, or incarcerated, as you say, if he cannot get bail.

MS. STEIN. Okay. And you said 90 percent of those cases don't go to prosecution?

JUSTICE LYONS. I would—

MS. STEIN. Do you think that the exclusive reason for that is that the parties have made up?

JUSTICE LYONS. Absolutely. Most of this happens when the two of them are out in a bar drinking. They go home and they start a fight.

MS. STEIN. What jurisdiction, if any, do you have over the Protection From Abuse Act?

JUSTICE LYONS. The only thing I have is weekends when I'm on call.

MS. STEIN. And if a case was presented to you over the weekend, a woman came in and said that she had been assaulted and that she felt there was a serious risk that she would be assaulted again, what would occur?

JUSTICE LYONS. I would follow the rules. She would file a complaint and so forth. I haven't read it over. I've never had one so I would have to go over the act.

MS. STEIN. You've never had a case of that kind?

JUSTICE LYONS. I've never had one.

MS. STEIN. I take it then you've never had occasion to issue a protective order over the weekend in a case of this type?

JUSTICE LYONS. Never.

MS. STEIN. What factors do you take into account in setting bail in an assault case?

JUSTICE LYONS. Well, the same as any other case. The individual, his standing in the community, if he's a property owner, a working man, and what happened in the assault, what instigated the assault.

MS. STEIN. Have you ever had occasion to file criminal charges over the weekend in a case that could have been the subject of a protective order under the Protection From Abuse Act?

JUSTICE LYONS. I don't think I have since the Abuse Act went into effect.

MS. STEIN. So you have not had, on the weekend, a woman victim of abuse come to you—

JUSTICE LYONS. No.

MS. STEIN. —for relief?

JUSTICE LYONS. No.

MS. STEIN. And if one did come to you seeking an order under the Protection From Abuse Act, would you have any hesitation in following the procedures set forth in the act?

JUSTICE LYONS. Not if it's serious, no.

MS. STEIN. Could I ask, Judge Sheely, one final question? It has been said in a number of jurisdictions that the summary offense of harassment is the offense most often charged in cases of domestic assault. Do you think—in your opinion has the creation of the summary offense of harassment had the effect of decriminalizing domestic assaults—in other words, removing them by and large from the criminal system, the system administered by the court of common pleas?

JUDGE SHEELY. I really can't answer your question. I think maybe you could ask Justice Lyons because all summary offenses would be filed directly with him and, as he has indicated, we don't get them into court unless they are appealed. And I can say we get very few appeals

from summary offenses where the charge of harassment is involved. I'm sure I haven't had any this year yet.

MS. STEIN. I have no further questions at this time.

CHAIRMAN FLEMING. Commissioner Horn?

VICE CHAIRMAN HORN. I notice in the statistics which the president judge provided us that there's been a rather rapid increase in the caseload. In '78 there were five petitions filed; two were heard. In '79, 18 were filed; 2 were heard. In 1980 already 21 were filed and 16 were heard.

I just wonder if any of you gentlemen could give us your judgment as to what might have led to this? Is this better knowledge by the abused, largely being women, of her rights? Is it greater use by Legal Services? What seems to explain it?

JUDGE SHUGHART. I don't know. Same thing happens when we get an upswing in any other type of offense or type of litigation. I have no answer for it, but I think that might be addressed to the public defender's office, I mean, the legal services office because usually they are the ones that prepare these petitions.

I think, as far as I know, we had one petition presented to us not so long ago by private counsel and I believe that is the first one that I recall. Judge Sheely's experience may be different, but most of them are filed by Legal Services.

VICE CHAIRMAN HORN. Any other comment anybody would like to make?

JUDGE SHEELY. I think of all the cases that I've heard, they've all been Legal Services except possibly one, and maybe Legal Services has now made more attorneys available to file these type of actions. I don't know, but the vast majority of them, in my court, have all been Legal Services cases where they represented the woman.

VICE CHAIRMAN HORN. Okay. I wonder—Justice Lyons, mention was made of a State court administrator that presumably notifies district justices of new acts that are on the books. Did you receive information from the State court administrator in terms of the Protection From Abuse Act?

JUSTICE LYONS. Yes. That act was mailed to each of us.

VICE CHAIRMAN HORN. Does counsel have a copy of the letter that went from the State court administrator?

MS. STEIN. No, we don't.

VICE CHAIRMAN HORN. It seems to me it's appropriate at this point in the record just to find as an exhibit what was the content of that letter. Was it simply mailing the act or were any guidelines given?

JUDGE SHUGHART. I would suggest you contact Jerry Spivak in the State court administrator's office. He would probably supply you with a copy of the letter.

JUSTICE LYONS. I have no knowledge at this time.

VICE CHAIRMAN HORN. Why doesn't counsel follow up on the president judge's suggestion there?

One last question. Justice Lyons, you've had experience with the initial filings on domestic violence cases. Do you see any difference based on the time of month? Do these cases rise and fall? Is it a matter

of law enforcement? Is it a matter of Legal Services? How do you attribute this?

JUSTICE LYONS. You mean, rise and fall during a month?

VICE CHAIRMAN HORN. Yes. Is there a difference?

JUSTICE LYONS. Absolutely. Full moon and new moon.

VICE CHAIRMAN HORN. You think it is the full moon and the new moon?

JUSTICE LYONS. Absolutely. You can ask my secretaries on that.

VICE CHAIRMAN HORN. Very good. Thank you.

CHAIRMAN FLEMMING. Commissioner Saltzman?

COMMISSIONER SALTZMAN. Gentlemen, do you view this problem as an issue—that is the issue of spousal abuse—as one that is of serious magnitude?

JUDGE SHEELY. I do not.

JUDGE SHUGHART. Nor I.

COMMISSIONER SALTZMAN. Justice Lyons?

JUSTICE LYONS. I haven't had any. I can't answer that.

JUDGE SHUGHART. If you haven't had any, it seems to me that does answer it.

JUSTICE LYONS. Well, you're probably right.

COMMISSIONER SALTZMAN. Is it a problem that affects individuals who come from a particular socioeconomic group by and large, from your point of view?

JUDGE SHEELY. I'd say not all. I think—talking about that, black, white—I think of 12 cases that I've heard, only 1 of them has been black; the other 11 have been white.

COMMISSIONER SALTZMAN. I don't mean race; I mean economic, socioeconomic. That most of the cases came from Legal Services organizations, does that imply that they could not afford private counsel?

JUDGE SHEELY. I think that's correct. Yes, sir.

COMMISSIONER SALTZMAN. So that most of them came from lower socioeconomic levels?

JUDGE SHEELY. At least at that time they had no funds and Legal Services felt that they qualified for their representation.

COMMISSIONER SALTZMAN. Do you think it is characteristic of a particular socioeconomic level?

JUDGE SHEELY. The only thing I can say from those that I have heard—I would say that I don't think any of them would be people making incomes in the \$20,000. I think they are of all low-income people. A lot of them aren't even married. They are people who are just living together. I would think—my response would be yes, that they are low-income people, the majority of them.

COMMISSIONER SALTZMAN. The problem of wife beating doesn't occur from your point of view or from your knowledge in middle-class, upper-class status families?

JUDGE SHEELY. I can only say from the cases I heard, I'm certain it must occur, but perhaps they got it resolved before it gets to that point.

JUDGE SHUGHART. I don't know how we would know the answer to that. I think that what Judge Sheely just said might be part of the answer. If the parties are in a position to have private counsel, it may

well be that private counsel on both sides are able to resolve the matters, and where the parties are both qualified for Legal Services, they—Legal Services can't represent both of them, so there is no way to negotiate until they get up to the point of hearing or until the husband shows up.

So, why we aren't getting them—I'm sure that people with incomes over \$20,000 fight the same as those under \$20,000. At least I have never seen anything in my experience to indicate that there was an economic cutoff that determined whether two people who are married to each other beat one another.

COMMISSIONER SALTZMAN. Judge Shughart, I have an intimation of a Catch 22 situation with respect to this situation. You are suggesting that criminal prosecution is the best way and the safest way relative to the constitutionality of the process for dealing with spousal abuse cases, but we've heard from the district attorney and from the police, and they speak with great hesitancy of proceeding in that direction, so that isn't there perhaps some merit to the Protection From Abuse law which seeks to remedy the situation without a criminal procedure?

JUDGE SHUGHART. Well, I was here while Mr. Bayley was testifying. I must admit I couldn't hear what he said, so I don't know what he said.

Certainly, in a serious case of an assault, which is what we're talking about, the district attorney has no basis for failing to proceed in a criminal manner, and, if he does proceed, then our rules of court spell out the various rights of the people that are involved, both the defendant and the victim, and I don't have any problem with it.

I suppose that the question where I have hesitancy—and I think it has already been stated—is, you are the Commission on Civil Rights, and it seems to me that there are two people that have civil rights: any individual who is abused by a spouse has a right not to be abused, but a husband who is accused of abusing his spouse has the right to a hearing at which he can call witnesses and confront witnesses to determine whether in effect he has done this act. And I don't think that—we approach this thing sometimes as we approach a rape.

Rape, for instance, is a very, very serious and a very, very ugly thing, and yet I think the last two or three rape cases I tried resulted in acquittals by a jury and, in my opinion, properly so, so that I am fearful that there is an assumption here that a woman comes in, says, "My husband beat me," that she's entitled to have him locked up or locked out of the house without any opportunity on his part to deny it. Just as I mentioned the case the other day where the two people were ordered apart 6 months ago by Judge Sheely and, apparently from the day the order was made, they continued to live together for 6 months until she became unhappy with him. The most that he apparently did was got a little drunk and was sleeping on the couch and she wanted him out of there.

COMMISSIONER SALTZMAN. Well, in reference to the civil rights of, perhaps the male in this, in any given instance, the counsel's question to Judge Sheely seems to me was expressed with a concern for that issue when she asked what standards of criteria would trigger an ex parte

order removing him from the home. Shouldn't there be some specified criterion?

JUDGE SHUGHART. But, sir, even though there be a specified criterion, if the complaint is coming *ex parte* without any cross-examination, this is where I have my troubles.

COMMISSIONER SALTZMAN. I understand.

JUDGE SHUGHART. We know in many of these cases, this case I gave you as an example, is a case I should not have issued the order arresting that man, putting him in jail overnight, and I did it *ex parte* based on the fact that Judge Sheely had already made the order, but this man was not in my opinion, or when we got right down to it, in violation of the order.

COMMISSIONER SALTZMAN. I see. No further questions.

CHAIRMAN FLEMMING. Commissioner Ruiz?

COMMISSIONER RUIZ. I'm not going to ask a question but relate what I have perceived by listening to this panel and to the testimony of other witnesses.

One of the reasons the Commonwealth of Pennsylvania was selected for this hearing is because the State has taken a procedural stance not commonly found in other State jurisdictions. One of the great things about our country is that every State is an independent laboratory of experience. When new and novel legislation is passed by a given State, the decisionmakers and legislators of other States focus attention on what may ultimately take place in that State of origin. There are many lawmakers throughout the United States attempting to assess what the judicial branch and executive branch of this State is presently doing and may be doing in the immediate future in connection with the administration of justice in this area of interspousal domestic violence.

From what I have perceived, you are attempting to carry out the spirit of the Protection From Abuse Act by possible diversion to established procedures on the criminal side of the docket because of a possible constitutional violation. Over the 50 years that I have been practicing law, the Constitution has become an expansive document wherein property rights in some instances have become subservient and even possibly what constitutes due process to personal rights, such as the right to be left alone, the right to privacy, laws of privilege, exclusionary rules which have made some rights of property irrelevant almost when weighed on a scale of civil rights and the right to even the pursuit of happiness, recently articulated by the United States Supreme Court.

The Pennsylvania law may be a good law. The lower courts ought to presume its constitutionality. The legislators of this State have done their duties and tossed the subject matter to the courts. Since you have, as good judges, fashioned another remedy, and this is your privilege to do so, and that's what makes our judiciary so good, by diversion to the criminal side, there may not be much to lose by confronting the issue on the civil side as soon as a good factual situation presents itself and this is what we are looking to.

I said I was going to make a statement. I made a long one. Thank you for listening.

CHAIRMAN FLEMMING. I don't know whether any member of the panel would like to comment on Commissioner Ruiz's summary of the situation as he sees it as a result of listening.

COMMISSIONER RUIZ. I would be very happy to have you do it.

JUDGE SHUGHART. I have no desire to comment.

JUDGE SHEELY. I have no comment.

CHAIRMAN FLEMMING. Commissioner-designate Berry.

COMMISSIONER-DESIGNATE BERRY. I just have one question. It is for Judge Shughart. I learned something very interesting today and I just want to make sure about what I learned. That's why I'm asking the question.

As I understand it, in the Commonwealth of Pennsylvania when the legislature passes a statute—and I'm quoting from what you said, Judge Shughart—that a court should not have any part in dealing with an act that it thinks is unconstitutional. Is that correct? Am I misinterpreting what you said?

JUDGE SHUGHART. No, you're not misinterpreting what I said.

COMMISSIONER-DESIGNATE BERRY. So that that's your position you take on any statute, or is it just on this Protection From Abuse Act?

JUDGE SHUGHART. There are many, many instances of that that could be given. I don't feel that I want to comment on what they are.

COMMISSIONER-DESIGNATE BERRY. Would you agree with that position, Judge Sheely, that in the Commonwealth of Pennsylvania, when the legislature passes an act, a common pleas court should not have any part in dealing with an act that it thinks is unconstitutional even before an appellate court has decided its constitutionality?

JUDGE SHEELY. That's correct, the issue would always get raised first with the common pleas court and, if we decide that an act is unconstitutional, than on appeal—

COMMISSIONER-DESIGNATE BERRY. No, no, that's not my question. Let me restate my question. My question is not a decision that it is unconstitutional. I was quoting Judge Shughart. He said that in the case of the Protection From Abuse statute, since he believed it was of doubtful constitutionality—and I can quote his language—that he thought a common pleas court should not have any part in dealing with an act that it thinks is unconstitutional. This is in advance of a decision by the common pleas court itself, or by an appellate court.

JUDGE SHEELY. I think that's always the court's prerogative.

JUDGE SHUGHART. Let me clarify something. You misquoted me. I did not say that the Protection From Abuse statute was unconstitutional. I believe that there are certain provisions of it that are of dubious constitutionality, and those are the ones that provide for court orders affecting the liberty of an individual without due process, without giving him a right to a hearing, without giving him a right to cross-examine the witnesses who are confronting him. That's what I said and that's exactly what I meant.

I did not mean that the entire act was unconstitutional, and, for example, I'll give you an example: if the legislature passed this act and they said in every case where a woman comes in and complains about her husband abusing her, the court shall put the husband in jail, this

would be an unconstitutional statute, and I don't believe that any judge should throw away his knowledge of constitutionality and throw a man in jail under such a statute. That is what I meant.

VICE CHAIRMAN HORN. I might add there's an oath you all take to support the Constitution of the United States and the State of Pennsylvania. It seems to me it is completely unreasonable for any judge to say he will automatically enforce every act until tested, if in his conscience he feels he's violated an oath to support the Constitution.

JUDGE SHUGHART. If you're going to violate somebody else's rights in the enforcement of—

COMMISSIONER-DESIGNATE BERRY. I have never heard in the history of my own legal training—and I think other lawyers will agree with me—that a lower court can simply decide that an act is unconstitutional and have nothing to do with it. Not even making a decision, just simply saying, "We won't have anything to do with it in our court." I find that strange, but my position is not what is at issue here.

JUDGE SHUGHART. When they relieve me from my oath to uphold the Constitution, then I can blindly, supinely act without thinking about it.

VICE CHAIRMAN HORN. May I say to my colleague I don't disagree on that point, but what I'm saying is, if a judge feels an act is unconstitutional, I do think the judge ought to rule that the act is unconstitutional, rather than just say, "I won't act until I hear from higher authority." Or "I will continue to carry out this law until I hear from higher authority." I think a person has a responsibility under the Constitution to fulfill his conscience, but I do agree on your point that you shouldn't just slide away from the issue.

COMMISSIONER-DESIGNATE BERRY. I agree with you.

JUDGE SHUGHART. If you don't act on it—if you don't act on the provision, you are making a decision.

VICE CHAIRMAN HORN. Well, I would agree, but I think in order to get the question clarified, I think, if you disagree with the Protection From Abuse Act, you ought to rule that it is unconstitutional for those reasons and let's argue it out in the appellate system.

JUDGE SHUGHART. Well, that is not the way ordinarily our legal system works. If somebody is displeased with an order that I make, they can make an objection to it, and then we'll battle that out, and it goes to an appellate court.

I got a call this afternoon from the appellate court wanting to know why I did not write a new opinion in a case, and when we checked it out, we found that their opinion had been filed on September 28 of 1979 and on August 22 of 1979 the parties had settled the matter and both the superior court and our court were preempted by their settlement, and that's what happens, of course, in a great many of these instances.

VICE CHAIRMAN HORN. I thought maybe you told them, "Sonny, I've been around 32 years and I know better than that."

JUDGE SHUGHART. I don't talk that way to people.

CHAIRMAN FLEMMING. Commissioner-designate Ruckelshaus?

COMMISSIONER-DESIGNATE RUCKELSHAUS. I would like to ask Judge Sheely, have you found that the Protection From Abuse Act has been a useful addition to the tools you have to protect people in cases of domestic violence? Has that added to your arsenal of possibilities as a judge?

JUDGE SHEELY. Yes, certainly it does. I think what helps, if you can get a person into court quickly, a lot of times the mere appearance before a judge and telling them, "If you violate this, you're going to jail," I think that has a salutary effect. We do see them faster in that type of a case than we do in a normal criminal case that is filed. It might take 3 or 4 months before that would get to us.

COMMISSIONER-DESIGNATE RUCKELSHAUS. Well, I think speed was clearly one of the things that the framers of this legislation were looking to, and that seems to be particularly important in the cases of threatened violence, somebody who is in fear of being attacked again in a short period of time.

I also wonder if it isn't possible that, Judge Shughart, in denying somebody the legislatively endowed, through statute, rights of using these remedies in the Protection From Abuse Act, if you haven't, in fact, removed from them a right of appeal of that decision? The legislature has given them some remedies under the Protection From Abuse Act; you have decided that those remedies aren't available to them because of your decision about the constitutionality of the law.

Nobody else has decided it yet. The issue hasn't come up, but somehow the individual who comes to you for whom those remedies have been provided is denied those remedies.

How do they get them? They can't appeal that decision; that's one you've made that is unappealable.

JUDGE SHUGHART. Frankly, I could not hear all that you said and I have serious question about why—

COMMISSIONER-DESIGNATE RUCKELSHAUS. The parts you heard you didn't understand or you didn't like?

JUDGE SHUGHART. No, I didn't—your statement that, if we don't do what the act says, that they think ought to be done in this particular case, it is certainly a basis for their taking us up on an appeal.

COMMISSIONER-DESIGNATE RUCKELSHAUS. But you haven't made your decision on the basis of the constitutionality; you've just moved on to another remedy which, in their case, might not be the best.

JUDGE SHUGHART. As long as we make our decision, depriving them of what you say their right is under the statute, they immediately have a right of appeal.

COMMISSIONER-DESIGNATE RUCKELSHAUS. Well, no, that's not the issue. They don't. That's not the issue they come to you on. They come to you asking for a protective order. Well, that isn't available in your court, evidently.

JUDGE SHUGHART. We didn't say that it wasn't available. I think we said it was not available as a general proposition, and I think—I'm really surprised to hear some of the things that I've heard here today that it is perfectly all right in behalf of somebody's "right to be free from abuse" to go out and violate somebody else's right to be heard.

COMMISSIONER-DESIGNATE RUCKELSHAUS. Well, I'm surprised if you think that's what you heard.

JUDGE SHUGHART. Beg your pardon? Before a definitive order is handed down?

COMMISSIONER-DESIGNATE RUCKELSHAUS. I understand your constitutional difficulty. I'm not even quarreling with that. I don't think anybody has said that, and, of course, you are making a judgment about whether a person's right to be safe and free from fear and free from the potential of bodily harm is worth restricting somebody else's freedoms, and those are balances that have to be made all the time.

If you prefer the system of bail, I could cite for you cases in which people out on bail have violated their bail and maybe the system doesn't work then. You cite a case in which somebody who has had an order filed against him moved back into the house, and isn't that an abuse? Yes, it is an abuse. That's certainly not what the law intended but, on the other hand, you deal with that kind of thing all the time in which people don't behave in ways the law intended.

I also wonder, Judge Shughart, if in fact the testimony I heard earlier about your not feeling responsibility to disperse educational information to the lower court judges—

JUDGE SHUGHART. I did not—I don't think I said that. I think you misunderstood me.

COMMISSIONER-DESIGNATE RUCKELSHAUS. I'm sorry. I thought you felt that because of other information that would be coming to the districts that it wasn't your responsibility to—

JUDGE SHUGHART. No, I didn't say that. I said the primary responsibility for disseminating this material comes from the State court administrator. If I left the impression that we simply say, "Well, you learn it from there, that's all right," this is not true; because, in addition to their getting information sent to them, there are also, I think—Meade, you're going to have to help me—6 hours of mandated instruction, at least, for every district justice in the Commonwealth of Pennsylvania, and he is required to go to these seminars and, among other things, he gets instruction there as to the new acts.

In addition to that, just recently, our district attorney had a session with our district justices regarding some new things and, additionally, we have had meetings with them, so that I'm not trying to say that we do not have an obligation to see that they get some information regarding the new legislation, but I'm also saying that there are other people that basically supply this need to them.

COMMISSIONER-DESIGNATE RUCKELSHAUS. I understand that. Well, I am sorry I thought that is the implication.

JUSTICE LYONS. We are required by law to have 32 hours of instruction per year.

JUDGE SHUGHART. See, I lied by five times plus.

COMMISSIONER-DESIGNATE RUCKELSHAUS. Well, I was interested in your perception of your own personal responsibility about helping the district justices to understand something like the Protection From Abuse Act, because, as I understand it, the leadership they would have gotten from you in that case is it's probably unconstitutional.

JUDGE SHUGHART. Is what?

COMMISSIONER-DESIGNATE RUCKELSHAUS. The fact that it—sections of it are of dubious constitutionality.

JUDGE SHUGHART. Right, and what I told them in regard to that we already alluded to under questioning by your counsel.

COMMISSIONER-DESIGNATE RUCKELSHAUS. So that certainly is, in that case, a form of an education about the Protection From Abuse Act.

JUDGE SHUGHART. Right.

COMMISSIONER-DESIGNATE RUCKELSHAUS. Thank you.

CHAIRMAN FLEMMING. I think a good deal of the discussion relative to the Protection From Abuse Act has revolved around the discretionary authority, as I understand it, that is granted in the act as to a judge to sign an *ex parte* order, saying to a husband that he's got to leave the home. I think I am correct that it is discretionary; it isn't mandatory in the law.

I understand the reluctance to sign an order of that nature without having the opportunity of hearing the other side of the case. If you are presented with a proposed order of that nature, Judge Shughart, is it possible for you, before you decide whether or not to sign it, to hear the other side of the case? I mean, do you have authority as a judge to, in effect, reach out and get some witnesses in and take testimony so that you would hear the other side of the case before you made up your mind on the signing of that order?

JUDGE SHUGHART. Well, it still wouldn't answer the one basic problem, if I understand your question correctly, and that is that the individual whose rights were going to be affected by the order certainly has a right to be confronted by his witnesses.

Now, if they are all available, then—and I think in most instances we fix these hearings within a day or two, so that anything that is going to happen is going to have to happen very quickly.

The matter of fixing hearings—you know, we have to realize that every time the legislature meets, or the supreme court hands down a rule, there's a new type of proceeding that we have to hear in 2 days. We have to hear preliminary injunctions, make a preliminary injunction within 3 days.

We've got certain limitations on—every child that is placed in detention has 3 days to have an opportunity to be heard. We have certain replevin statutes that have a limitation on what you do, and we are getting so many of these hearings that must be held immediately that we don't have very much time to do the rest of the work we have, but I like to set the hearing the next day, and then with the husband there, and we hold them at 7 o'clock at night or 8 o'clock in the morning, and we get them there; then I have no hesitancy in imposing an order of any type after I hear the testimony.

My objection is to—we can't enjoin a labor union, for example, from picketing where we might have violence until we have a hearing on the matter and the parties have the right to be heard, so that—I don't know—I fear that my basic problem with this statute has not been gotten across to the folks here.

VICE CHAIRMAN HORN. I think you make a very perceptive point. I'm amazed that the ACLU is not marching on Harrisburg.

CHAIRMAN FLEMMING. As I understand it, Judge Sheely, you have signed a number of these orders.

JUDGE SHEELY. I have signed some, yes.

CHAIRMAN FLEMMING. When you have signed them, how soon after you signed the order have you conducted the hearing, do you recall?

JUDGE SHEELY. Whenever it is convenient in my schedule to set it up.

CHAIRMAN FLEMMING. Is it within a short period of—it's got to be within 10 days, doesn't it, under the law?

JUDGE SHEELY. That's correct. What happens sometimes, of course, you try and set a hearing the next day or very soon. Sometimes you can't get service on the other party. They might no longer be there, and you can't very well require them to be there until they can be served with your order setting a hearing.

Some of them have been soon; some of them haven't been soon. I would like to say this: usually in most cases, where a petition is presented, usually they will have the woman there and, if you wish to hear her testimony as to what happened, normally, she is available and you can hear it and then decide whether or not you feel that under those facts an ex parte order is warranted or is not warranted.

CHAIRMAN FLEMMING. Have you followed that practice at times, I mean, taken testimony from her?

JUDGE SHEELY. I have, yes, sir.

CHAIRMAN FLEMMING. Before you've signed the order?

JUDGE SHEELY. In most cases, they will have her there, yes.

CHAIRMAN FLEMMING. All right. So the intent of the act is, in giving this discretionary authority to issue an order of this kind, is to have a hearing follow the order just as quickly as possible. Do I interpret that correct?

JUDGE SHEELY. I am certain that would be correct, especially where you exclude somebody from property. I would think that that would be the intent.

CHAIRMAN FLEMMING. Any further questions? Do you have any further questions?

Ms. STEIN. I have just one procedural question I'd like to ask Judge Shughart.

Judge, under Pennsylvania law, do you have the power in an ordinary civil case, if a preliminary injunction or temporary restraining order is sought and you are satisfied that the requirements have been met, that irreparable injury would result if it were not entered and that there is a probability of success on the merits and so forth—do you have the power to enter an order ex parte in an ordinary civil case?

JUDGE SHUGHART. Not in an ordinary civil case. If you're talking about equity matters, my colleague, Judge Sheely, is an expert on equity. I don't handle these bad little kids in juvenile court.

JUDGE SHEELY. The answer to your question is yes, where you can satisfy the court that there is immediate and irreparable injury. Yes, we can sign a preliminary injunction ex parte based on affidavits.

Ms. STEIN. And that could affect, could it not, on a temporary basis, property rights or other rights that are valued rights under our constitutional system?

JUDGE SHEELY. That's a very broad question. Can you ask something specific?

Ms. STEIN. Well, I'm thinking of several different types of cases: one would be where you enjoined against the transfer of property until a hearing could be heard, if you were convinced that irreparable injury would occur if the property was transferred; then the case could not be adjudicated.

JUDGE SHEELY. I'm certain that could be a factual situation where you could issue an injunction, yes.

Ms. STEIN. How about in a custody action? Could you issue an ex parte custody order if there was reason to think that the one party might flee the jurisdiction with a child or something like that?

JUDGE SHEELY. You mean, where a mother would come in and say that she has custody and she wants an ex parte award giving her custody pending a hearing?

Ms. STEIN. Pending a hearing, yes.

JUDGE SHEELY. I think we've all done that occasionally where we felt there was some real basis to believe that the other party might abscond with the child.

JUDGE SHUGHART. You aren't changing the status quo in such an order, however.

Ms. STEIN. But pending—as long as the proviso exists that a hearing will be held within the shortest practical time or the time set forth by the legislature, do you have any constitutional reservations about that type of power?

JUDGE SHUGHART. No, because I think, as I said before, most of those orders are preserving the status quo.

Ms. STEIN. Well, prior to the order being entered, surely both parents have an equal right to custody of their child, so, in effect, this is changing the status quo to a certain extent pending a hearing.

JUDGE SHUGHART. I don't see it your way.

Ms. STEIN. I have no further questions.

CHAIRMAN FLEMMING. May I express to all three members of the panel our appreciation to you for coming and responding to the questions that have been addressed to you regarding the issues that are confronting us at the present time. Your testimony has been very helpful and we're grateful to you for it. Thank you very, very much.

JUDGE SHEELY. May I say this. I would again like to say that I'm certain, in this area, if the Commission would just get on the phone and ask a judge if he would come in and testify, that a lot of this hostility, initially at least on my part, sir, would not be present.

We don't operate that way. I'm certain in this area among the judiciary, and I'm certain that had we been requested just by a phone call, would come in and testify. I'm certain, I personally would have been very happy to come under those circumstances, and I think that the whole attitude of entering into one of these would possibly have

been much better and more freely if this would have been done in this case.

CHAIRMAN FLEMING. Thank you again very, very much.

JUDGE SHUGHART. I would simply second those remarks. I think the average witness appearing in our court comes there voluntarily and without proceedings. It is a little embarrassing and just a little bit degrading, after making myself available to a number of very pretty young ladies and talking to them, to next be confronted with somebody who came over and served on me the very first subpoena that I've ever had served on me in my lifetime, and it didn't go down well, and I think, as you've already found out, and this is not something we conjured up between us—I think our feeling about it was arrived at separately and without any conspiracy.

Now you folks have all been very nice. You all know who we are. I would like to have the General Counsel or somebody give me a list of the people who were on the panel during the time that I was testifying.

CHAIRMAN FLEMING. We'll be very happy to provide you with that information. Again, thank you very, very much.

Counsel will call the next witnesses.

MS. STEIN. Barbara Channing, Stanley Krammes, Melissa Fried, John Riegler, and Michael Irely.

[Barbara Channing, Stanley Krammes, Melissa Fried, and Michael Irely were sworn.]

TESTIMONY OF BARBARA CHANNING, EXECUTIVE DIRECTOR, WOMEN IN NEED, CHAMBERSBURG; STANLEY KRAMMES, SERGEANT, PENNSYLVANIA STATE POLICE; MELISSA FRIED, DIRECTOR, BLOOMSBURG WOMEN'S CENTER; AND MICHAEL IREY, SPECIAL MASTER, COLUMBIA COUNTY

CHAIRMAN FLEMING. Thank you, we appreciate your being with us.

MS. STEIN. Mr. Chairman, before the questioning begins, I might just indicate to you that one of the witnesses has been delayed and has telephoned us and is being spoken with now, so I suggest we proceed in his absence until we find out what is delaying him.

MS. MEADOWS. If we could begin, for the record, would each of you please state your name, your title, and how long you've been in your present position, starting with you, Ms. Channing?

MS. CHANNING. Barbara Channing, volunteer, executive director, Women in Need, Chambersburg, serving Franklin and Fulton Counties. I've been in this position for 7 months.

MS. MEADOWS. Sergeant Krammes?

SERGEANT KRAMMES. I am Sergeant Krammes with the Pennsylvania State Police and I am the officer in charge at the Duncannon Station which encompasses Perry County. I've been in the station commander position for 16 years.

MS. FRIED. Melissa Fried, Bloomsburg Women's Center. I am the director. I've been in that position for 3 years.

MR. IREY. I'm Michael IreY. I'm an attorney from Berwick, and I've been practicing for approximately 6 years and I serve as special master in spouse abuse cases for Columbia, Montour County.

MS. MEADOWS. Ms. Channing, could you please describe for us briefly the Women in Need shelter and tell us something about the services that you offer?

MS. CHANNING. We have an apartment in Chambersburg where we can house up to 23 women and children for 30 days maximum stay. The other services that we offer are counseling, hotline, crisis intervention, advocacy and accompaniment, speakers bureau, and we operate with volunteers.

MS. MEADOWS. What counties do you serve?

MS. CHANNING. Franklin and Fulton Counties.

MS. MEADOWS. What kind of training does your staff have?

MS. CHANNING. Training?

MS. MEADOWS. On-the-job training?

MS. CHANNING. Mostly on-the-job training. We have voluntary training that's set up by the volunteer coordinator and the staff must attend this training, and we provide inservices, using community people on various topics. Mostly that's it. There's not a lot of money available for outside training.

MS. MEADOWS. Okay. How many women did you serve last year and do you know what their ethnic background was? Do you have a breakdown?

MS. CHANNING. Yes, our shelter will be in operation a year on June 26. The first 8 months we served 63 women, 133 children. Ninety percent of those women and children were white, 6 percent were black, and the other 4 were various races.

MS. MEADOWS. In addition to the problems faced by most battered women, regardless of where they live, what factors of rural life do you see that make it difficult for women in rural areas, such as your own, to receive help?

MS. CHANNING. Transportation is a big problem. There are no—there's one taxi service in Chambersburg, no bus services, so these women, when they need help, they must depend on mostly Women in Need for their transportation. Police response is—it's as good as it can be for the area because they serve such a large area, and there are only four town police departments and the State police have to cover the rest of the territory in our county.

MS. MEADOWS. Do you have an estimate on how many officers there are, say, to cover the counties?

MS. CHANNING. There are 754 square miles in Franklin County and there are 33 State police officers to cover that area.

MS. MEADOWS. How about Fulton County?

MS. CHANNING. Fulton County has 435 square miles and there are 17 officers, State police officers, in Fulton County.

MS. MEADOWS. Are there any factors that might cause a battered woman in Franklin or Fulton County to avoid seeking help through the courts?

MS. CHANNING. Yes. The majority of our women do not prosecute criminally through the courts. They do seek protection orders, and a lot of the reason is the attitudes of the people in the legal system when they want to file charges. They feel like they are a bother to them and that they don't really care. They would just rather not be bothered with these women.

I think it is because they just don't understand. They don't understand that it happens over and over and she might be back a few times before she decides she just can't live like this—before she gets brave enough to step out on her own and be by herself.

MS. MEADOWS. Have the residents or clients at your shelter had any experience with the Protection From Abuse Act?

MS. CHANNING. Yes. We've had—quite a few of our women have gone for Protection From Abuse. We tell them about the act and what it can do for them, but sometimes you feel guilty doing that because this woman goes out and seeks this order that she's going to count on for protection and, as far as I know in our county, the State police enforced their first protection order last week, and I think the local police have done maybe one or two, and some attorneys will try to enforce this order through the court on their own, but they get very discouraged because they have the order and everyone says to them, "I'm sorry but we don't know how to help you with this order." They haven't been able to figure out yet how it works and what we're supposed to do with it.

MS. MEADOWS. Have you spoken with any of the local or State police about this problem?

MS. CHANNING. Yes.

MS. MEADOWS. Have you gotten any insights from them?

MS. CHANNING. Yes, State police? They are working on it. They keep telling us they are working on it. They are trying to straighten these problems out from this order crossing from civil into criminal and back into civil, but they haven't really given us any kind of idea of how they're going to enforce this, what's going to happen.

MS. MEADOWS. Okay, thank you.

Sergeant Krammes, in addition to your experiences as a State policeman, what other involvement have you had with the problem of domestic violence?

SERGEANT KRAMMES. I'm on the executive board of Perry Human Services which gives short-term counseling for youth and family problems.

MS. MEADOWS. Have you participated in any special training on the subject of domestic violence?

SERGEANT KRAMMES. No.

MS. MEADOWS. Would you briefly describe for us the structure and the jurisdiction of the State police in the Duncannon Station?

SERGEANT KRAMMES. We are—with the exception of three small boroughs, we are the total police protection for the county. It's 551 square miles—as of 1970 census, an average of 51 persons per square mile—I think that's up to about 60 now. We do handle practically all the police problems in the county.

MS. MEADOWS. How many calls for assistance did you receive at the Duncannon Station last year?

SERGEANT KRAMMES. The calls that we responded to was 115. I would venture to say that there's probably 5-to-1 or 4-to-1 ratio of advice given on the phone. The 115 that we responded to—there was a possibility of a disturbance, a possibility of abuse or a need.

MS. MEADOWS. I assume that by the 115, are you referring to domestic calls or is that the total number of calls that you received at your station?

SERGEANT KRAMMES. That's the total number of domestic calls we received.

MS. MEADOWS. How many calls of any type do you receive or did you receive last year at the station?

SERGEANT KRAMMES. Roughly around 4,000. We have a 25-man detail there.

MS. MEADOWS. If you decide not to respond to a domestic call, what advice, if any, do you offer to the victim who has called?

SERGEANT KRAMMES. The due process of law, the procedure that they should follow. If there's a threat of abuse or if there's abuse going on at the time, we always respond, but we use the guidelines that, if the problem is already resolved, we give them the various agencies that can assist them or the district justice's telephone number. If they don't have transportation there, we will transport them.

MS. MEADOWS. What standards do you use to determine whether or not to respond to a domestic call?

SERGEANT KRAMMES. The situation itself. If there is a situation right at the time. In other words, if a woman has already been abused and her husband is no longer there, if there is no need for us there, then we inform her of the legal procedures. She can get the Protection from Abuse, or she can go to the district justice and charge her husband with assault. If she doesn't have transportation, we will furnish it.

MS. MEADOWS. Do you ever get called back to the same home for repeated domestic disputes?

SERGEANT KRAMMES. Yes. I looked into that and I'd say that there's about four or five families we answer four or five times a year.

MS. MEADOWS. What procedures do the State police in Perry County follow when they respond to a domestic call? When you actually arrive at the scene of a domestic incident, what are your guidelines? What do you actually do?

SERGEANT KRAMMES. Naturally, our first concern is the safety of people and we look at both the neighborhood—whether or not any neighbors may be in jeopardy or the family itself, the women or the children—and you have to keep in mind that you are a guest of the complainant, and generally the husband may tell you to get out and yet the wife has invited you in. It's usually a unique situation. We're also aware of any acts of disorderly conduct being committed in our presence, and we also try to keep in mind that, if charges are brought, they inevitably will be dropped.

MS. MEADOWS. And how does that affect the alternative you choose to use at the scene?

SERGEANT KRAMMES. I didn't understand that.

MS. MEADOWS. If you approach a scene of domestic violence knowing that the charges are likely to be dropped, what effect does that have on the alternative that you might choose to use, whether to refer it or arrest?

SERGEANT KRAMMES. Well, we want to try to prevent a return call, because our manpower is very limited, and we try to resolve the situation while we're there. In some cases it is transporting maybe the victim to a relative. In other cases we'll wait while they pack a suitcase if they want to go to Women in Crisis.

MS. MEADOWS. Do you take them to Women in Crisis?

SERGEANT KRAMMES. Yes, if they don't have—we usually ask them—if they don't have a friend or a family member or a neighbor that can take them, we will take them.

MS. MEADOWS. Okay, how effective would you say the Protection From Abuse Act has been in Perry County?

SERGEANT KRAMMES. Publicity is needed in the matter. I think the law itself is great if it holds up to due process. We have served three orders this year so far and our judge up there has tried to maintain total control of it.

As a matter of fact, we have one in jail right now that was put in last Friday, and the judge won't be able to hear him until Thursday. The judge himself keeps his finger on it. He has a policy, that we pick them up and if they are in violation of his court order, they go straight to jail.

MS. MEADOWS. How many protection orders do you have on file at this time in the Duncannon Station?

SERGEANT KRAMMES. We have in the neighborhood of 10 on file right now. However, they are being issued, I believe, at the rate of about one a week right now.

MS. MEADOWS. Have you ever sought clarification from the district attorney of Perry County about what procedures you should follow in the case of a violation of a protection order?

SERGEANT KRAMMES. Yes, we've discussed it with the district attorney and the judge.

MS. MEADOWS. Could you tell us what his advice was when you spoke maybe with each of them?

SERGEANT KRAMMES. The judge feels that if the situation—for example, if the husband would be prohibited from going back to the property and he did appear back there and then left prior to the arrival of the police, it is his suggestion that we withhold the service of the order.

I realize the law itself reads that that is not necessary. However, that's his feeling in the matter, that we don't serve the protection order; that the abused party seek the legal system, the district justice.

MS. MEADOWS. And how about the district attorney? Did he provide you with advice on how you should handle the matter?

SERGEANT KRAMMES. Yes. We go pretty much by the judge. I put him right on the spot to find out the way he wants it done.

Ms. MEADOWS. Does the district attorney—when you spoke with him, did he ask that you advise the victim to go to him to file a complaint or to have her complaint approved?

SERGEANT KRAMMES. Yes.

Ms. MEADOWS. Thank you.

Miss Fried, would you briefly describe the Women's Center in Bloomsburg and tell us a bit about the services you offer there.

Ms. FRIED. Okay. The Women's Center has been in operation for 5 years. We provide emergency shelter, counseling, and supportive services to victims of domestic violence and their children. We also provide educational programs. We begin with seventh graders and go through the schools, and we also have special programs for the agency people and whoever will hear us, and we also provide services to victims of rape.

Ms. MEADOWS. What counties does this shelter serve?

Ms. FRIED. Columbia, Montour, and lower Luzerne.

Ms. MEADOWS. How would you describe those counties?

Ms. FRIED. Rural.

Ms. MEADOWS. Would you tell us about the establishment of the Women's Center, including any problems you had that you feel might be attributable to your location in a rural area?

Ms. FRIED. Okay. When we began operating, we started in an office in the MHMR Building in Bloomsburg and we found that we had an abundance of calls from victims of domestic violence. We were basically—when we first started, we were just a women's center, so in January of '76 we restructured to deal with the problems of domestic violence and at that time we found a shelter facility.

The shelter facility is inadequate because of its size, but because we have not received much financial assistance, we have been operating on private donations, fund raising, small grants and have not been operating on, you know, a large budget, and I think that a lot of the grants that we see do go to large urban areas and the rural areas are not usually considered, but we will be receiving Title XX funding in July now.

Some of the problems that we've come up against is just a general reluctance to accept the fact that abuse does exist. That only exists in large cities according to many of the local people and they—also we've had problems with two of our county commissioners. One of them feels that we're breaking up marriages by taking the women out of the home, and they have refused to give us continued funding because they said it's not in the county code book to allow for women and shelter. They could give money to animals or to beautification but not to women, so it is difficult for you when you have commissioners working against you.

Ms. MEADOWS. Do you have any perspectives to add to what Miss Channing told us about problems in rural areas that battered women in rural areas uniquely face?

Ms. FRIED. You mean, as far as—the transportation is definitely a problem. We have relied on volunteers at our center also. We had limited our services to a 50-mile radius, but that really is taking a lot of

area in. Also, when the women are isolated, they have to rely on the State police to respond, and they say that they feel that sometimes a 218 is worthless because, by the time the police arrive, the husbands have already left and the police are reluctant to arrest just taking the word of the woman.

Ms. MEADOWS. Does the response of the police vary in the different localities that you serve?

Ms. FRIED. Yes, definitely. The Bloomsburg police are excellent. I credit Sergeant Riegler, who isn't here yet. He took the Pennsylvania Coalition Against Domestic Violence police training, and it really made a significant difference in his understanding. And then we had—together with Sergeant Riegler, the Women's Center had a program for the police in all the outlying areas and their understanding of the problem seems to have improved. We have been receiving more calls from them and more referrals from them.

Ms. MEADOWS. Could you tell us about—from your conversations with the residents of the shelter and the women that you have served there, are the criminal laws and the Protection From Abuse Act effective in your area and, if not, what are the problems?

Ms. FRIED. I haven't really had—as far as the criminal laws, I haven't really had that much experience with that.

Ms. MEADOWS. How about the Protection From Abuse Act?

Ms. FRIED. We have really had a good response. Legal Services has filed 32 this year, 218s, and the State police have 30 active orders on file now.

Ms. MEADOWS. From the information you may have received from the residents, are these orders enforced if they are violated?

Ms. FRIED. Again, I think this depends on the police. Sometimes some of the women have complained that in the rural areas—I mean it is all rural, but in the outlying areas that the police response is not quite as good. I think, you know, the understanding of the police in Bloomsburg has—well, they are responding more and they are enacting orders.

Ms. MEADOWS. Thank you.

Mr. Irey, would you please describe for us the special master process that is used in Columbia and Montour Counties?

MR. IREY. In June of 1978 I was appointed a special master by Judge Meyers, president judge of that judicial district, with instructions in his order to handle the petitions for Protection From Abuse Act filed in Columbia and Montour Counties. My duties include scheduling of hearings, reviewing petitions, signing temporary orders, holding the hearings, and then filing a report with a recommendation to the court after the hearing.

Ms. MEADOWS. When you sign an ex parte order, does that usually include a provision excluding the respondent from the family home?

MR. IREY. If such a request is contained in the petition and the temporary order is provided with that provision, if the petition contains sufficient allegations to support that type of relief, yes, I will sign a temporary order on an ex parte basis.

Ms. MEADOWS. At the hearing that you hold within 10 days of the filing, are both parties usually present?

MR. IREY. Yes, they usually are.

MS. MEADOWS. Do the parties receive a copy of your report and recommendation?

MR. IREY. Yes, they do. The order contains a direction that all parties receive a copy of the order and also that the police departments having jurisdiction receive a copy as well.

MS. MEADOWS. If one of the parties doesn't agree with your findings, what recourse do they have?

MR. IREY. Under the order by which I have been appointed, the judge has provided that, if a party is aggrieved by the recommendations contained in the report, he may file exceptions to the recommendations within 10 days.

MS. MEADOWS. And what happens if they don't file any exceptions?

MR. IREY. Then the judge will enter a final order incorporating my recommendations as part of his order.

MS. MEADOWS. Does he normally incorporate your recommendations or does he ever disagree with your findings?

MR. IREY. He usually incorporates them, yes.

MS. MEADOWS. Has he ever not?

MR. IREY. No, he's not, ever.

MS. MEADOWS. Okay. Have you ever had exceptions filed to your findings?

MR. IREY. No, I haven't.

MS. MEADOWS. And what would happen if they were filed?

MR. IREY. We have never gotten to that stage. I don't know if the judge would have the record transcribed and he would make a decision based upon the record of the hearing or whether he would have a *de novo* hearing. I don't know what he would do.

MS. MEADOWS. How many protection orders have you issued?

MR. IREY. Since I've started, I would say approximately—I've handled about 50 cases.

MS. MEADOWS. What procedure do you follow when a protection order is violated?

MR. IREY. Well, I don't follow any procedure. The petitioner would notify the appropriate police department having jurisdiction, and on the two or three occasions that this has occurred, the police have responded, and if it is usually at a nonbusiness hour of the day, they will then take the respondent or offending party before the district magistrate and arraign the individual and then place him in jail, and then we schedule a hearing within a day or so.

VICE CHAIRMAN HORN. Excuse me, counsel. You asked the question, how many protection orders have you issued and you said you had 50 cases. Is that the same?

MR. IREY. I would say yes. When the petition is filed, I usually enter a temporary order and if the case goes through the hearing—and most of them do; there are very few that don't—there will usually be a final order then issued by the judge, so there would be a final order as well issued by the court.

MS. MEADOWS. What is the statutory authority for the special master process that is used in these cases?

MR. IREY. I'm not really sure what it is. I would assume that it is the inherent powers of the judge of the court of common pleas to appoint a special master to process these types of cases. I might say that the reason for this is Judge Meyers—it is a two-county judicial district, and we only have one judge and it is somewhat difficult for him sometimes to schedule a hearing within the 10-day period required under the act, and this was, I would assume, a primary reason why this procedure has been adopted in our judicial district.

MS. MEADOWS. Aside from acting as a special master, do you serve any other roles in Columbia County?

MR. IREY. I'm an assistant district attorney as well.

MS. MEADOWS. Do you maintain a private practice as well?

MR. IREY. Yes.

MS. MEADOWS. Do you ever find yourself in a position where you have a conflict between any of these roles?

MR. IREY. Yes. Occasionally I will have a client who will request relief under the Protection From Abuse Act, in which case I will represent the client, and the judge has appointed an alternate attorney, Thomas Ritchie from Bloomsburg, who serves as special master when there's a conflict involving my office.

MS. MEADOWS. I would like to back up for a minute to the case where there's been a violation of a protection order and ask you whether you conduct the hearing on the violation or whether that goes before the judge and who imposes the sanctions, if any?

MR. IREY. I think we've had three occasions where an individual has been placed in jail for violation of the order, and subsequent thereto we've had the hearing, and I've held the hearing. In all three of the cases there were no sanctions imposed other than the time spent in jail.

MS. MEADOWS. I would like to ask the women from the shelters to tell us how they are funded.

MS. CHANNING. We are funded through United Way, through the Governor's Council on Drug and Alcohol Abuse, through our local county. We are funded—we have been funded this past year, one position, through Title XX, and next year most of our funding will be Title XX and Drug and Alcohol.

MS. FRIED. Right now our funding has been through grants, through the local churches, and clubs and private donations, and we, too, will be receiving Title XX funding in July.

MS. MEADOWS. Now, very briefly, if each of you could just tell us if you have any suggestions for improving the way our system of justice responds to the needs of battered women, starting with you, Miss Channing.

MS. CHANNING. Training, training for the judges. After what I heard on the panel before me, starting with the judges down through the police. The police are getting better through coalition training. We've had a few officers through that training and they are getting much better, but there needs to be a lot of work done with the attorneys and the judges, because I don't think they understand.

MS. MEADOWS. Sergeant Krammes?

SERGEANT KRAMMES. In defense of the police, the officer arriving at the scene of an abuse must keep in mind that this is one of the highest death rates of police officers, is answering a domestic call, and you're going there with quite mixed emotions. You're going there with the feeling, is there danger involved to you? Is there danger to anyone else? And you're already on guard. I just wanted to add that.

MS. MEADOWS. Do you have any suggestions for doing something about that?

SERGEANT KRAMMES. I think the police officer—one of my officers has had the training here at HACC [Harrisburg Area Community College]. He has distributed among—what he has picked up—the men on station during class sessions, including myself. I would say that the police officer could use a little more training in this end, but he needs it from, I think, superiors who know the problem when they get there. The training that he has distributed seems to have left out the danger factor.

I also think there's more publicity needed to the people themselves, to the abused person, so they know where to go and what to turn to. There really should be a central place and a central clearinghouse for this.

The problem is there. There's no question about it.

MS. MEADOWS. Thank you. Miss Fried?

MS. FRIED. I, too, think it is obvious that we need to do more police, district justices, and judicial training. I also think that we should do general community education and continue to make people more aware of the real problems of domestic violence, and to help them to understand the victim's side of this situation.

I also think that more appropriate counseling should be done. I do think in many cases that, if you do have the right types of counselor, you are going to have some positive effects from this.

MS. MEADOWS. Mr. Irely?

MR. IREY. The only thing I would add would be along the same lines, better education of the public with regard to the availability of this type of remedy and also better education of the individuals who have to deal with implementation of the procedures under this act.

MS. MEADOWS. Thank you. I have no further questions.

CHAIRMAN FLEMMING. Commissioner Ruiz?

COMMISSIONER RUIZ. I have no questions.

CHAIRMAN FLEMMING. Commissioner Saltzman?

COMMISSIONER SALTZMAN. Mr. Irely, in the 50 approximate cases—and most of them were followed by hearings—how many of them did you feel justifiably the abuser was removed from the home? Did you hear the judges' testimony?

MR. IREY. I heard some of their testimony. I would say this with regard to the hearings: by the time we get to the actual hearing on the merits, I would say in 90 percent of the cases the parties will stipulate or agree to a stipulation with regard to the relief requested, so that I would say 90 percent of the time I do not hear any further testimony with regard to the allegations in the petition. They just agree to the relief requested.

On the cases that I do hear the testimony, I would say that in all the cases it was justified to have the offending party removed from the premises because there was violence.

COMMISSIONER SALTZMAN. As an attorney do you have in your mind a constitutional issue with respect to issuing a protective order *ex parte*?

MR. IREY. Yes, I have some reservations with regard to that, with regard to denial of due process; however, my rationale for executing temporary orders is the fact that the hearing is scheduled within a relatively short period of time, and on that basis I will sign the temporary order if the allegations in the petition support that type of relief.

CHAIRMAN FLEMMING. Commissioner Horn?

VICE CHAIRMAN HORN. Sergeant Krammes, you furnished the staff with some interesting statistics as to the domestic disputes in 1979 as handled through the Duncannon Station. Has that been inserted in the record at this point? Well, let us get it in the record at this point.

CHAIRMAN FLEMMING. Without objection, it will be done.

VICE CHAIRMAN HORN. I'm interested in your earlier comment that they feel inevitably the women will not testify. I realize that you're in a rural county and things are much closer there, and in a way the options are much less in terms of where the abused might be able to go, or what happens to the abuser if an order is filed removing the abuser from the premises.

I also am aware that there's a difference of opinion in the county in terms of the district attorney's view as to whether the police can arrest or not unless they actually see the violation, so we have a difficult climate.

I'm wondering, just based on your experience, which I realize has been mostly in police administration in a rural county—am I correct?

SERGEANT KRAMMES. Yes.

VICE CHAIRMAN HORN.—rather than an urban setting, do you think that one of your problems is that the reluctance of women to follow through on the testimony is that they really have limited options in terms of what their choice is? There is no particular income maintenance program for abused women; there's no real alternative housing in most parts of the United States, certainly a lot of the rural areas, besides the social stigma and all the rest, and the psychology we get into—I'll forget that.

I'm just looking for what are the economic options a woman has, many of whom might not work. All of a sudden if they pursue it, they are conceivably cast out on the economy; they have got to become self-supporting. Some of these suppositions I voiced—is that your experience or feelings, or do you have some others you'd like to add to the list?

SERGEANT KRAMMES. Yes, they generally are totally dependent on the abuser and they do usually have a decision to make—do they want to change their lifestyle. It isn't just a case of being beat up. Are they ready to change their lifestyle because generally this is what happens, and I found that the rural people are more reluctant to change their lifestyle because of their remoteness.

VICE CHAIRMAN HORN. of course, I have one feeling as I realize what the D.A.'s policy is there—do not arrest until you see the violation—and then I listen to you and you are correct from all I understand nationally that police know that it is a very explosive, volatile situation into which they are moving when they are called to the scene of a domestic quarrel.

On the other hand, if police were called to the scene of a murder and there was a smoking gun, if you will, in the hands of the abuser, in this case, and the abused presumably no longer has anything to say about it, I assume that the police would pick up the abuser and cart them off to the local correctional facility and argue about matters later unless the person was able to get the lawyer, post bail, and do all of those other wonderful *Miranda* type things that one needs to do in this day and age.

I wonder why the police don't simply haul off the abuser in these situations and maybe a few lessons like that might reduce the incidence of abuse from repeaters. What's your feeling on that?

SERGEANT KRAMMES. What has happened in the past and prior to the Protection From Abuse Act, the women who did file charges in, I would venture to say, at least 19 out of 20 cases, dropped the charges. They were back with the abuser and living again and totally happy, and the culprit of the whole situation turned out to be the police officer. The police officer hasn't quite gotten used to the Protection From Abuse Act yet, and he is still recommending, for example, if the woman had a black eye when he got there—well, I guess, he's assuming they walked into a doorknob, but the police officer is then advising him, them, "Do you want out? Do you want him out now or what?" And then, if not, "Do you want to go to a district justice to file a charge for assault?"

The option generally is up to them and they're usually in an emotional state, and the police officers can readily get out of making a lengthy report by suggesting that they file an information with the district justice.

VICE CHAIRMAN HORN. Under Pennsylvania law, does the police officer have the same problem with assaults committed on the street if they were not committed in that officer's presence but he arrives on the scene, there's somebody with a black eye, broken bones, blood streaming somewhere, battered and bruised? Does the police officer merely act only if a complaint is filed?

SERGEANT KRAMMES. If it is a one-on-one situation, we recommend they file the charges.

VICE CHAIRMAN HORN. You recommend they file the charges. What under the law could that officer do?

SERGEANT KRAMMES. He could file it.

VICE CHAIRMAN HORN. He could file it?

SERGEANT KRAMMES. He could possibly file it.

VICE CHAIRMAN HORN. Does a member of the Pennsylvania State Police file charges—let's forget the domestic abuse case—when you have an assault, battery, whatever? Do members of the Pennsylvania State Police file charges when they were not on the scene but when

they come upon the scene they see the evidence of a ruckus and damage to one of the parties involved?

SERGEANT KRAMMES. If they feel they have sufficient evidence to prosecute.

VICE CHAIRMAN HORN. Then what you're saying is that, if they come upon a domestic violence scene—similar circumstances, same amount of damage, brutality, whatnot, only here conceivably one is male, one is female, although I could transfer that out to the streets and ask the same question—that they also have the opportunity to file charges there?

SERGEANT KRAMMES. Yes.

VICE CHAIRMAN HORN. Now, I would like to move to Ms. Fried. In the first place, I'd like to congratulate you. I note in the background papers that the AAUW [American Association of University Women] did a needs assessment at Bloomsburg State and formed this Women's Center, of which you are the director. I think that is a very useful community endeavor.

You made the comment that police response in rural areas is not good, and I wonder is that just a matter of distance response where it just takes a long time to get someplace in rural areas or is that a problem of attitude?

MS. FRIED. Well, I think—I certainly think that the fact that it does take them a long time to get to the location does have some bearing. It does seem that the officers that I have had contact with tend to have the attitude that they are wasting their time by filing temporary 218s because—to quote an officer that I spoke to the other day—he said that the people are usually “lovey-dovey and back together before the hearing comes up,” and I think having that type of attitude and that lack of understanding about the problems certainly has an effect on, you know, how they are going to respond and the type of assistance the women are going to get.

VICE CHAIRMAN HORN. Okay. I notice you have a very elaborate questionnaire that you distribute to people in your center. You furnished us with some of the statistics as to the use of that center. Have you compiled a summary of information to all these different questions you asked? Is that available?

MS. FRIED. That's our old brochure.

VICE CHAIRMAN HORN. What I'm thinking of—attached when the staff visited you on April 17 was a questionnaire that elicited from the person using your center personal information, spouse information, medical information, counseling, what happened in the magistrate court, police contacts, and so forth—and I just wondered if you had summarized the year's experience anywhere.

MS. FRIED. I don't think we have yet this year.

VICE CHAIRMAN HORN. Am I right, this is your questionnaire?

MS. FRIED. I was trying to think; yes, we do have them on file.

VICE CHAIRMAN HORN. Because it's excellent in terms of the questions and some of the answers you might have are what some of us have been fishing for from other parts of the criminal justice system as to what happens as you go across the whole panorama.

I would merely say to counsel, Mr. Chairman, I would like at this point in the record to reserve a place for any data that the center could furnish us. We're not interested in names or in summary information, just in what happens in the categories for which they are already eliciting information.

CHAIRMAN FLEMMING. Without objection, that will be done.

VICE CHAIRMAN HORN. All right. Last question, since I notice you ask this on the questionnaire and I would appreciate the response of any of the panelists: is the degree to which alcoholism or drugs, unprescribed drugs, are factors in the domestic violence-domestic abuse situations—what's your experience?

Do you want to start, Miss Channing?

MS. CHANNING. The majority of the women that are in our shelter, their problem is in some way drug or alcohol related with their abuser. That's how we received our funding through Drug and Alcohol, and I don't think that drugs or alcohol is a cause of the problem. I think it is used by the abuser as an excuse for his abuse, but it is not—it doesn't cause the abuse.

VICE CHAIRMAN HORN. What do you think does cause the abuse?

MS. CHANNING. A lot of different factors. Sometimes it is, on his part, low self-esteem; maybe he feels he's not providing; maybe he's lost his job, money is tight; or his background, his family background, the way he was brought up. In our county a lot, most of the men that we deal with, they don't think they're doing anything wrong—it is their right to beat her if she doesn't toe the line.

VICE CHAIRMAN HORN. Is that your experience—those of you that have been involved in these cases—that problems of self-esteem, unemployment, family background—I guess we could add low education, plus just cultural attitude—are the causal factors? Alcoholism, drugs, your argument is, might well be sort of the result or the attempt to alleviate the causal factors.

MS. CHANNING. Right.

VICE CHAIRMAN HORN. Is that your experience, Miss Fried?

MS. FRIED. I think that violence is a learned behavior and it certainly includes all those reasons, but, you know, I think the person—that's the way they learn to deal with their aggressive feelings.

VICE CHAIRMAN HORN. How about you, Sergeant? How do you feel about it?

SERGEANT KRAMMES. The part about alcohol and drugs—it's a rare case when either aren't involved.

VICE CHAIRMAN HORN. When either are involved?

SERGEANT KRAMMES. Are not involved.

VICE CHAIRMAN HORN. Okay.

SERGEANT KRAMMES. It's a lot of recidivism in the thing. You find that the father that was an abuser produces a son that is an abuser. It is an inherited factor, I believe. It is very evident in a rural area.

VICE CHAIRMAN HORN. Well, inherited in the environmental sense, not in the genetic sense, I take it. Although we don't know, I guess one could argue some of that in the future.

MR. IREY. My experience has been the same. An alcohol problem appears in the vast majority of the cases that I'm involved with.

VICE CHAIRMAN HORN. What do you feel of the earlier comments as to the causal problems? Do you think alcohol is, perhaps, the immediate cause but not the basic cause?

MR. IREY. It is a contributing cause.

VICE CHAIRMAN HORN. Do you think there are more serious causes than alcohol, and if so, what is your experience?

MR. IREY. I think there are other fundamental problems with the relationship, and the alcohol just precipitates aggravation of the situation.

VICE CHAIRMAN HORN. We had one witness this morning that said, well, if I might summarize that witness' comment, "It is a power trip. It is a male dominance over the female." Is that your experience?

MR. IREY. Could be. Could be the situation. I would say yes.

VICE CHAIRMAN HORN. How do you feel about that, Miss Fried?

MS. FRIED. Yes, and I would again say that was a social, you know, learned behavior.

VICE CHAIRMAN HORN. Sergeant?

SERGEANT KRAMMES. Yes. I think it is a learned behavior.

VICE CHAIRMAN HORN. How about you, Miss Channing?

MS. CHANNING. I agree.

VICE CHAIRMAN HORN. Because I notice in some of your statistics, you also have abuse of males, I assume by females; at least some males are on the shelter statistics I look at. Is that true? I mean, have we had those situations in your centers? Maybe I'm reading the statistics—

SERGEANT KRAMMES. I have only dealt with one.

VICE CHAIRMAN HORN. You have dealt with one. Was that a power trip in reverse?

SERGEANT KRAMMES. Could be, yes. Yes.

VICE CHAIRMAN HORN. Thanks.

CHAIRMAN FLEMMING. Okay.

MS. FRIED. About the alcohol relation—our statistics show that about 65 percent of our cases are alcohol-related, and it seems that most of the cases that are referred to us by the police are alcohol-related. I think that in those cases the people are more likely to call the police to assist, and the women that come to us just calling them on their own, you know, very often don't have the problem of alcohol.

CHAIRMAN FLEMMING. Mr. Nunez?

MR. NUNEZ. Sergeant, you perform your function in a very rural area. Would you feel that the people involved, the men involved, are different kinds? What kinds of jobs—are they farmers mostly or what kind of people are they?

SERGEANT KRAMMES. Most of the employment in our county is out of the county. They go travel elsewhere for work. There's very, very little incountry employment, and, no, they are not farmers most of them. Most of them are laborers at—outside of the county.

MR. NUNEZ. Is there any special relationship to people who have property, a piece of land, where it might be isolated? Do you see any of that kind of situation?

SERGEANT KRAMMES. No, I would say not. It's not generally that isolated

MR. NUNEZ. So you don't see any difference between the situation in your county, which is a very rural county, to a more urbanized county in the kinds of--

SERGEANT KRAMMES. Well, the alcohol that they generally get to stimulate them is located in the little communities, and the problems stem from around that area, yes, but I would say it has no particular bearing as to one part of the county to the other.

MR. NUNEZ. Thank you.

CHAIRMAN FLEMMING. Commissioner-designate Berry?

COMMISSIONER-DESIGNATE BERRY. I know that some of you were here when we had the earlier testimony from the judges, and I'm just struck by the difference between what seems to be your perception of the problem and the perception that some of the earlier witnesses had.

Do you think that spousal, interspousal abuse is an overstated problem and that it's just that you happen to be working with shelters, or you are focusing in on the issue and, therefore, you might think it is a significant problem because, as I understood the earlier witnesses, they seemed to think it was an insignificant problem and that in 90 percent of the cases or something people get back together and drop complaints, and that it is just a minor ripple in society's problems.

MS. CHANNING. I've been involved with this organization that I'm in now for almost 3 years. Before that, I worked for a district magistrate in Franklin County for 2 years and I was well aware of the problem before the center was even open—of spouse abuse—because she saw an awful lot in her office. And these people—I will agree with what was said—they will come back, they will file the charges, and they will drop the charges, but I think sometimes that's out of fear. She's in a rural area. There are not a lot of jobs available. There is no transportation, no day care. What is she going to do if she leaves this man and files charges against him?

We had some women who came in while I worked with the district justices who said, "I have to drop these charges. He said he will beat me to death. He'll kill me if I don't drop the charges."

Sometimes it is out of fear and sometimes—I will admit in her office we saw the couples that would come in; they were holding hands and hugging and kissing. Over the weekend they were ready to kill each other.

It is hard to understand why they do that, but it was a problem. We have been accused of bringing out the problem in Franklin County because before there wasn't as much of it; before Women in Need was there, there wasn't as big a problem. But it's just now, I think, they have a place to go; they have a place for assistance and guidance, and that's why we're seeing more of it. There's more of an understanding.

COMMISSIONER-DESIGNATE BERRY. If anyone else wants to comment, don't be constrained to do so.

SERGEANT KRAMMES. I would like to say I agree with the filing of the charges, that the majority of them are dropped. It is seldom that they proceed with it. And an example of how the case can progress—I

served five warrants for assault and battery on one man, filed each time by his wife. The sixth time I went to serve the warrant, he met me with a gun. I eventually talked him out of the gun, and he did 6 months in the county jail for pulling a deadly weapon. And 4 months after he got out of jail he killed his wife and sat on the porch and waited for me to come—which is an example of the filing of the charge and dropping it, which—and I don't think at any time had a hearing ever been held on the assault and battery charge on that person.

VICE CHAIRMAN HORN. Of course, that proves my earlier point that the police ought to go in and pick him up the first time around and see if we can't teach them a lesson or change behavior, and I grant you she needs some options. Now she doesn't have any.

COMMISSIONER-DESIGNATE BERRY. She's dead, yes.

MS. FRIED. Very often we find that we're dealing with people that are not rational. They don't really care about the consequences, and I think in these situations, you know, it is really difficult. you know, even if you do file a 218, it doesn't offer a threat to the abuser.

COMMISSIONER-DESIGNATE BERRY. Is there a sense in which the civil procedures whereby one gets a protective order can be seen as just part of the process of trying to mediate a difficulty between a husband and a wife? In other words, one shouldn't be so concerned that a woman wants the protective order and then doesn't, if there's contempt, then doesn't want to proceed and can't make up her mind what she wants to do; or in the criminal justice system, that she first claims harassment and then wants to drop the charge—that all of this should just be seen as a mosaic of trying to resolve some difficulties between two people and that what one is trying to do is find some way to keep bodily injury from taking place while the difficulties are being resolved, rather than being disturbed because charges are dropped or because somebody doesn't proceed or because they get back together. Is there a sense in which one ought to just look at it as a way of resolving domestic difficulties, perhaps?

SERGEANT KRAMMES. I kind of think you've hit the nail on the head. I think the police officer generally looks at it, you know, "What's the use. They're going to drop them anyway." If the police officer does file it, the odds are the women will refuse to testify, so you have no case, and I'd say you generally hit the nail on the head there.

COMMISSIONER-DESIGNATE BERRY. Thank you.

No further questions.

CHAIRMAN FLEMMING. Commissioner-designate Ruckelshaus?

COMMISSIONER-DESIGNATE RUCKELSHAUS. Commissioner-designate Berry has just enunciated what I've been thinking for the last half of this hearing, because we heard how really annoyed the judges seemed to be at the fact that nothing ever came to a resolution, things were withdrawn, 90 percent were. We never got a final solution to all this.

It seemed to be a nuisance to them that it wasn't a neat sort of crime that fit all the old procedures they were used to, and in prosecuting burglaries and prosecuting murders, they knew what the elements were; you met the elements, you prosecuted, and you got a resolution.

I think we have here a very emotional kind of crime—if it is a crime—an issue. It's going to move back and forth between decision and indecision because of the highly emotional nature of both parties, and I think it's really too bad that the most sensitive and understanding testimony that we've heard all day long always comes from the people who deal with the shelter victims, the women who really left the home and had to find support outside the home, and I hope that there will be some way that you who have established shelters and are providing a support system for women, for their children, for the police in the neighborhoods that are willing to take advantage of the sensitivity that you are prepared to share with them will be able in some ways to make that kind of awareness available to not only the police but also the courts, because it's been disappointing to me today to hear the kind of attitude that they seem to bring to questions of domestic violence.

I'm certainly far more sympathetic to the sergeant who risks the life of men who work for him in trying to get involved in these cases. That seems to me a terribly difficult and dangerous assignment, a lot to ask, but I'm not so persuaded that it is too much to ask for somebody who stands for election to an office to have to deal with this thing on a repetitive basis.

I had a question to ask Mr. Irey. Does it seem to you that there is an element offered by the Protection From Abuse Act that is, in the cases of delicate domestic maneuvering, trying to bring a unit together again, is more sensitive than just making a criminal charge; it leaves the woman some room to operate?

MR. IREY. Oh, definitely. I would agree, the better remedy is the Protection From Abuse Act petition and order and that procedure rather than filing an assault charge against the offending party.

COMMISSIONER-DESIGNATE RUCKELSHAUS. Because why?

MR. IREY. Well, if the assault charge is filed, as the officers indicated, the defendant may be arrested, put in jail. He makes bail. He's out. He's back at the house and threatening his wife and there could be other problems, whereas with the Protection From Abuse Act remedy, if the temporary order is issued, or a final order is issued, and he returns to the house, she can call the officer and they can enforce the order and he can be removed. I think it is more effective.

COMMISSIONER-DESIGNATE RUCKELSHAUS. I'm really glad to have that in the record. Thank you very much.

CHAIRMAN FLEMMING. I would like to address a question to Miss Channing and Miss Fried. If I understood the testimony that you've given up to the present time, up to now the support for this shelter has been coming, to a very considerable degree, from the private sector, although you have a grant, as I understand it, growing out from one of the drug abuse agencies.

MS. CHANNING. Right, Drug and Alcohol.

CHAIRMAN FLEMMING. But both of you are getting a good deal of support from the private sector?

MS. CHANNING. Yes.

MS. FRIED. Yes.

CHAIRMAN FLEMMING. As I understand the testimony, on July 1 both of you are going to get some Title XX money. Is that going to be money that will be added on to what you have been able to obtain up to the present time, or is there going to be a tendency on the part of some of the private sector organizations that have been supporting you to say, "Well now, there's Title XX money in here. We don't have as much of a responsibility as we've had up to the present time"?

MS. CHANNING. No, Title XX must be matched through the local and State governments, and we're supported.

CHAIRMAN FLEMMING. What's the matching formula?

MS. CHANNING. Twenty-five percent, 75 percent.

CHAIRMAN FLEMMING. That is, you've got to provide 25 percent to match their 75?

MS. CHANNING. Yes, and we receive a lot of financial support through our local churches, and we have asked permission from them and United Way to use these funds for matching funds, so they understand that their contributions to us are still very important.

MS. FRIED. We have the same thing.

CHAIRMAN FLEMMING. Same thing?

MS. FRIED. Yes.

CHAIRMAN FLEMMING. I'm glad to hear that, because as a result of our national consultation, as a result of the testimony that we've taken in Phoenix and taken here, I personally am very, very much impressed with the role of the shelters and very much impressed with the commitment that those of you have who are involved in the operation of the shelters—and I think our society has got to think through the role of the shelters in order to make sure that we do provide the kind of support that is needed.

I know we're going to take testimony tomorrow on Title XX so I won't go too far into that, but I'm delighted to know that some Title XX funds are coming into this particular area. But I hope that the pressure will be kept on the private sector, on the churches, and on United Appeal or United Way and so on, not only to give what they have been giving up to the present time but to increase it, because I see no substitute for the shelter. I mean, it seems to me you are meeting a need that isn't being met in any other way, and all of the law enforcement people that have also testified as to the importance of this role, the importance of being able to refer to the shelters.

Well, we're very grateful to all of the members of the panel for spending from 5 to 6 o'clock in the afternoon with us, and providing us with the insights that you have and we're very much encouraged by the positive approach that you have to this problem, the contribution that you are making. Thank you very, very much.

This hearing is in recess until 9 o'clock tomorrow morning.

UNITED STATES COMMISSION ON CIVIL RIGHTS

Wednesday, June 18, 1980

The U.S. Commission on Civil Rights convened, pursuant to notice, at 8:40 a.m., in Room 107, College Center, Harrisburg Area Community College, 3300 Cameron Street Road, Harrisburg, Pennsylvania, Arthur S. Flemming, Chairman, presiding.

PRESENT: Arthur S. Flemming, Chairman; Stephen Horn, Vice Chairman; Murray Saltzman, Commissioner; Mary F. Berry, Commissioner-Designate; Jill S. Ruckelshaus, Commissioner-Designate; Louis Nunez, Staff Director; Eileen Stein, General Counsel; Gail Gerebenics, Assistant General Counsel; Donald Chou, Attorney-Advisor; Mary Anne Hoopes, Attorney-Advisor; and Anne Meadows, Attorney-Advisor.

PROCEEDINGS

CHAIRMAN FLEMMING. I'll ask the hearing to come to order. I will ask counsel to call the first witness.

MS. GERE BENICS. Nancy Rourke, Lawrence Norton, Robert Hanna. [Nancy E. Rourke, Lawrence Norton III, and Robert Hanna were sworn.]

TESTIMONY OF NANCY E. ROURKE, ATTORNEY, CENTRAL PENNSYLVANIA LEGAL SERVICES; LAWRENCE NORTON III, EXECUTIVE DIRECTOR, LEGAL SERVICES, INC.; AND ROBERT HANNA, DISTRICT DIRECTOR, DEPARTMENT OF PUBLIC WELFARE, DAUPHIN COUNTY

MS. GERE BENICS. Will you, Ms. Rourke, state your full name, title, and length of time in your position, for the record?

MS. ROURKE. Nancy Rourke; I am a staff attorney at Central Pennsylvania Legal Services at 213A North Front Street, Harrisburg. I've been employed in that position since January of 1975.

MS. GERE BENICS. Thank you.

Mr. Norton?

MR. NORTON. I'm Lawrence E. Norton III, executive director of the Legal Services, Incorporated. My office is in Carlisle, 7 North Hanover Street. I've been the director for the organization for about 5-1/2 years.

MR. HANNA. Robert J. Hanna, district director, Dauphin County Department of Public Welfare for the Water Street District. I've been in that position for about 6 years.

MS. GERE BENICS. Ms. Rourke, could you tell us what counties Central Pennsylvania Legal Services serves?

MS. ROURKE. Central Pennsylvania Legal Services serves Dauphin, Perry, York, Lancaster, Lebanon, Brooks County.

MS. GERE BENICS. What is the size of your staff?

MS. ROURKE. Well, it's approximately—Mr. Berta is going to be testifying next and is probably better able to answer that. There's 40 to

50 legal service people in the Harrisburg office where I work. There are eight attorneys, two paralegals, three secretaries, and two secretary-receptionists.

MS. GEREENICS. Thank you. Could you describe the intake procedure for people who come to your office for legal services?

MS. ROURKE. When the client comes to the office, they either call or walk in the door; they are screened by the secretary-receptionist to see what kind of a problem it is and how serious an emergency it is. If it is a general advice kind of problem, they are given an appointment, generally 2 or 3 weeks away from the time they either call or come into the office.

If it is an emergency, we try to get them in as soon as necessary, depending on the facts. If they have a hearing coming up—if it is a serious abuse case, whatever it is, we try and deal with it based on the facts of that particular case, and we have a separate set of appointments for emergency cases.

MS. GEREENICS. Do the attorneys in your office specialize?

MS. ROURKE. Yes, not completely but partially.

MS. GEREENICS. And your area of specialty?

MS. ROURKE. Domestic relations law.

MS. GEREENICS. Approximately what percentage of your present caseload involves domestic cases?

MS. ROURKE. About 60 percent.

MS. GEREENICS. After a person has completed the intake procedure and comes to you, what is the next step?

MS. ROURKE. They come back on the interview; they see the attorney. On a regular appointment they come and just have the interview with the attorney for however long the case takes, and the attorney takes it from there, depending on what's necessary. If it is an emergency, if an attorney is not available and something needs to be done right away, we do have, for example, on Protection From Abuse Act cases—we have a paralegal. At this point we have two paralegals who are trained to do the initial interview, get the necessary information for a petition, review it, and then find an attorney and prepare the petition and have it ready for filing.

MS. GEREENICS. How much experience have you had with the Protection From Abuse Act and could you briefly summarize that experience?

MS. ROURKE. Okay. I've been involved with the Protection From Abuse Act from two different aspects—from my job as staff attorney in Legal Services and also from my participation with the Women in Crisis shelter. I've been active with that organization almost since I began working in Legal Services about 5 years ago and have been an officer of the organization.

In one capacity or another, I have been involved in helping to create the shelter, get it established, and helping to lobby for the Protection From Abuse Act, the amendments to it and so forth.

I have—when the act initially passed, I met with the judges of Dauphin County court trying to set up a system for how the cases would proceed in Dauphin County before the act went into effect, so

that when the first case walked through the door we wouldn't have to spend a lot of time figuring out where to go to do what at the courthouse, and since that time I've handled regularly a number of Protection From Abuse cases, depending on what the office caseload is.

MS. GEREBENICS. What is your experience as an attorney with the act and how it works and any deficiencies?

MS. ROURKE. The act is an immense improvement over what we used to have. There are still problems with it. There are still areas that need to be improved and there are problems outside of the act in the way—like the criminal justice response to Protection From Abuse Act domestic violence cases. As far as the act itself is concerned, what we do have with the act—like I said, it is an immense improvement. It gives us relief in cases where there was just absolutely no other choice before.

Before the shelter was in existence and before the act was passed, I had one particular client tell me that the reason she killed her husband was because there wasn't anyplace to go and there wasn't any protection she could get. The police wouldn't get involved and he attacked her, and she had no chance. She killed him, and it was found to be justifiable homicide. She told me, if either the act or the shelter existed, he would still be alive and they probably would be apart and there wouldn't be the problem.

The act itself—the most serious problems I see with it now are the questions about jurisdiction and venue. The problems about where do you file a protective order if the party—if the abuse took place in one county and the parties are now living in another county, where do you file? Also, if you want to enforce it intercounty. If you have a protective order in Harrisburg and the people are shopping across the river in Camp Hill, and the guy finds the woman out in a shopping center and attacks her, how do you verify the existence of the protective order? How do you get the police to make an arrest? How do you get prosecution commenced? Do you file it in Cumberland County? Do you file it in Dauphin County? How do we get the authority to get the police over here to testify in the case? There's just some real serious problems.

Also, if, for example, the parties get a protective order and then the party who has the protective order excluding the man from the home moves, say, for example, she gets the protective order in Dauphin County and she moves across the river to Cumberland County, which may be a mile away from where she used to live, who enforces the protective order? Does she go file it in Cumberland County and get the judge there to enforce it? There's a lot of real serious problems answering those kinds of questions.

MS. GEREBENICS. Have you or any other organization with which you are affiliated attempted to resolve that, either formally or informally?

MS. ROURKE. I've raised the issue with the Pennsylvania Bar Association and with Legal Services attorneys and folks from the shelters across the State in trying to draft rules and come to some resolution. There are only a couple of ways that we can resolve it. Either by a

case where we would have to raise that issue with the court—and I haven't been faced where we've had to push that issue yet; it has come up tangentially a couple of times, but we've always been able to resolve it without having to resort to the point where we were taking appeals or asking for a written opinion—or by statute or by rule.

As I said, we made the request of the rules—of the Pennsylvania Bar Association that they contact the rules folks and develop some rules, and we've submitted some proposed rules, but they haven't passed yet. An initial contact has been made with the legislature with an indication that the legislature isn't real sure whether those questions can be resolved by rules or by statute.

MS. GEREENICS. Is there any way—this may be difficult—is there a typical protection order when you obtain one? Is there a general time from an exclusion or custody, or support, are those things generally included in every protection order you get? Do they vary a great deal?

MS. ROURKE. The protective orders that we get usually break down into two classes: one, where we ask for the exclusion from the house, in which case we have to get a custody order, visitation order, support order—the whole business, because if you don't have that, we can really end up with some serious problems.

MS. GEREENICS. How long would a typical exclusion be, or does that vary also?

MS. ROURKE. Living in Dauphin County and practicing in Dauphin County, we don't have too much trouble from the court getting orders for the length of time that we feel is necessary in that particular case. If 3 months will do it, in that case we ask for 3 months; if 6 months—if we ask for a year, we usually get a year if there's a good reason why we need a year.

There are other cases where the parties don't want to separate; they want to try and work on the problems in their marriage and they want to try and resolve some of the issues between them, but they don't want to separate. So we will get a protective order saying he's not allowed to beat her, and in that case you don't need a custody order or visitation order or those sorts of things. Those kinds of cases don't work very well, but if that's what the client wants, that's what I will do for her.

MS. GEREENICS. Mr. Norton, what counties does your office serve?

MR. NORTON. The office serves Cumberland County, but the program I work in serves Cumberland, Adams, Franklin, and Fulton Counties.

MS. GEREENICS. How many attorneys in your office?

MR. NORTON. In the office in Cumberland County there are four attorneys in addition to myself, two paralegals, and some administrative staff and secretarial staff.

MS. GEREENICS. Is your intake procedure similar to the one Ms. Rourke described and do your attorneys specialize?

MR. NORTON. The attorneys do specialize; it is similar. We have a system of priorities that are established, and within that system we have identified certain typical kinds of emergency cases, and they are handled either by the attorney specializing in the area or, in the case of

domestic emergencies, they are split up into emergency days among the staff and the office, and abuse cases are classified as emergency domestic matters that are handled immediately.

MS. GERBENICS. What has been your experience with the Protection From Abuse Act in Cumberland County?

MR. NORTON. Well, the initial experience was that there was a great reluctance on the part of the judges to respond to what the act said. There is still reluctance on the part of the judges to respond in some ways to what the act says. Initially, we had problems with the judges even accepting petitions. We not only could fail to, in some instances, get an order we would ask for; initially we got petitions back in our office, judges refusing to have them filed, not saying they weren't going to have them filed but sending them back and asking questions and making objections to the petition.

That happened, I think, on maybe two or three occasions early on, so the first step in the enforcement of the act was to get the judges to accept petitions that were filed under the act. The express reason for refusing to accept them was the statement and policy directive and interpretation by the courts in our county that it wasn't needed; there were other ways of enforcing the rights that were attempted to be enforced by the petition, and that those ways were more desirable than enforcing the Protection From Abuse Act.

That was the justification for that. We were told that, and the president judge in our county sent instructions to district justices outlining that position, and we, at that time, communicated with the judge and explained our position on the act—why it was desirable, what instances we felt it was necessary to use the act, or, more important, for a plaintiff or a petitioner to use the act as opposed to criminal remedies, for example, and that also stating our position that it was a remedy in any case, whether or not the courts could be convinced that it was more desirable or less desirable, and it should be entertained and dealt with by the courts.

Not necessarily in response to that but over some time, maybe over the first 6 months, anyway, the courts began at least accepting the petitions and setting hearings on the petitions. We continued to have problems with the courts, and even to this day there are some problems with the courts wanting to know, presumably for the purpose of considering whether or not the plaintiff has filed criminal charges, and some other questions about whether plaintiffs were seeking other relief that might be available.

They aren't refusing to accept petitions; they aren't refusing to set hearings. There has never been, to my knowledge, an order entered refusing to grant relief on that basis, but the judges still ask about that and inquire about that and apparently are concerned about that. After we stopped having problems with having the petitions filed in Cumberland County, there was a period of time when we had some problems with having hearings set within the statutory period. Usually it wouldn't go beyond a day or two after, but the courts were not setting hearings immediately under the express provisions of the act.

I think— it is clear to me that one of the reasons for that is the courts resented the legislature in effect setting out a statute that required them to give court time to these matters, and that was one of the ways—all of these things are some of the ways the courts responded to that.

Right now we're not having problems with the dates being set within the confines of the statute. We are having some problems with interpretation of the statute, and we are having continuing problems with enforcement and instructions and guidance that the courts are giving within the county on enforcement.

MS. GERBENICS. We heard from a number of witnesses from Cumberland County yesterday, and some of them indicated a very decided preference for the criminal system and options it provides on the theory that, if it was a serious enough assault to support a protection order, then it would also support the criminal charge. Would you agree with that, and do you ever advise your clients to go ahead with criminal charges in addition to obtaining a protection order on it?

MR. NORTON. I agree that where there is serious abuse, there may also be criminal relief available. We do advise our clients of that relief and the availability of it, and we try to advise clients as to what the outcome of that might be and, in their given situation, whether it might be desirable or undesirable to follow that. There are obvious limitations to the criminal process and I think that's one of the major bases for the Protection From Abuse Act, but our clients do, from time to time, pursue criminal remedies against spouses or people who are living with them.

MS. GERBENICS. One final question. Do you have any thoughts on the legal or jurisdictional problems inherent in the act, like Ms. Rourke described a few minutes ago?

MR. NORTON. Well, I think that she's accurate in saying that there are those problems. I think we're seeing those problems now more because we have more orders in effect, and enforcement is one of the major aspects of what's happening in Protection From Abuse Act cases right now. One of the things that I think that makes that more of a problem than it would otherwise would be—because a lot of these things are very technical issues that she raises—is the problem inherent with this act and with the whole area, and that is, there are many people around to place barriers in the way of enforcing the provisions of the act. And these, if they didn't have that orientation—local police, judges in different counties, prosecutors in different counties, district justices—some of those technical things that are raised would not be as much of a problem as they are. But because there is still an orientation that leaves people to try to stay out of the area, to not want to enforce any orders unless they are forced to do it, these kinds of things are raised as problems and they probably should be dealt with, but I think it points out the more basic problem and that is the problem of the orientation of the police departments, district justices, and the courts.

MS. GERBENICS. Do you think any of those things are curable through amendment, rules, training?

MR. NORTON. I think they are curable through rules. I think that training helps. I think that the law itself has helped a lot. I think that

over the course of time when one person responds, whether it be a police officer or a judge in a particular case, that has an effect on all the other people in the system, and, eventually, I think the law in itself is causing some changes in people's attitudes.

MS. GEREBENICS. Approximately how many petitions for hearings did you file under the act last year; do you have an idea?

MR. NORTON. I would say that we filed in our office in Cumberland County—

MS. GEREBENICS. In your office?

MR. NORTON. We filed on the order of probably 40 petitions.

MS. GEREBENICS. Ms. Rourke, do you have an idea of how many your office filed?

MS. ROURKE. For the office as a whole, I couldn't guess. We do have one paralegal who keeps those statistics, but I'm not familiar with them and I'm not really familiar with what the other attorneys in the office are doing. Again, Mr. Berta may be able to answer that because we have computer statistics to tell what we're doing. I would guess it is larger than what Mr. Norton is indicating their office files.

MS. GEREBENICS. Thank you.

Mr. Hanna, what area does your office serve?

MR. HANNA. My office serves the area in Harrisburg west of Cameron Street, the northern part of the county. Then, in order to equalize the caseload between the two offices, we do have some people in the suburban areas outside of Harrisburg, around Middletown.

MS. GEREBENICS. Approximately how large is the budget of your office?

MR. HANNA. I don't have that information.

MS. GEREBENICS. What types of assistance are available for women victims of domestic violence?

MR. HANNA. All right. If they have children, AFDC [Aid to Families With Dependent Children] is available to them; if they don't have children, general assistance is offered to them; then also medical assistance, food stamps, social services, and then we have a category called emergency assistance.

MS. GEREBENICS. Could you describe emergency assistance procedures?

MR. HANNA. Yes. Emergency assistance is assistance we can give to a person for a period of 30 days if they are not eligible for our regular grants; that is, if an emergency occurs in their lives that might disrupt their family life or their individual functioning—they might be homeless because of some emergency, something of that sort—then we can give assistance for a short period of time.

MS. GEREBENICS. Are there other time limitations on the other programs you described earlier?

MR. HANNA. No, just as long as they have the need they are eligible for this sort of program.

MS. GEREBENICS. In an emergency situation, approximately how long would it be before a person could start getting benefits?

MR. HANNA. If a person has an immediate need—by that I mean they are in a situation where they have no resources available to them, in a

household where there is no money available—we can interview that person and give assistance on that same day.

MS. GEREBENICS. Do women applying from shelters present any particular problem?

MR. HANNA. Sometimes because of the—there may not be a shelter available. If they would apply for shelter, we would most likely assign them to social service people, who would try and find someplace to place them. They may call Women in Crisis, they may call Family and Children Service, or they may know of a private person who has shelter available.

MS. GEREBENICS. If a woman comes to you from a shelter for battered women and she's a resident there, does that present any particular problem in terms of her being determined to be eligible for benefits?

MR. HANNA. Well, she will have to pass the need test that everyone, you know, regardless—if she has no resources and she has identification and all of the other eligibility requirements—

MS. GEREBENICS. What sorts of identification would you require?

MR. HANNA. Let me see if I can remember correctly. I think a birth certificate, a driver's license, voter's registration—those are the three that I can think of.

MS. GEREBENICS. Are there ever any exceptions made to that policy?

MR. HANNA. No. It is—that policy is very strict that they must have some identification.

MS. GEREBENICS. And that applies to emergency assistance as well?

MR. HANNA. No.

MS. GEREBENICS. It doesn't?

MR. HANNA. Right, we can—

MS. GEREBENICS. So a woman who is a resident of a shelter for battered women could be eligible for emergency assistance?

MR. HANNA. Yes.

MS. GEREBENICS. Mr. Chairman, I have no further questions at this time.

CHAIRMAN FLEMMING. I would like to ask Ms. Rourke and Mr. Norton, who are representing Legal Services, what the principal sources are for financial support of your respective programs. Ms. Rourke?

MS. ROURKE. I think Mr. Berta is going to be testifying next. He is our executive director and he can answer that with more specificity than I can. We are funded through two sources, through the Legal Services Corporation and also Title XX. It is a dual-funded program.

CHAIRMAN FLEMMING. Mr. Norton?

MR. NORTON. We're funded through Title XX funds—comes from HEW—and matching money for those funds includes money appropriated by the Commonwealth of Pennsylvania—comes out of the budget of the department of public welfare in Pennsylvania—and, in addition, we raise some local funds that's used to match, to get this Title XX money, and in our program those local funds come from some United Ways, from county commissioners, from bar associations, from the law

school that's located in our county, and then the other source of funding is money from the Legal Services Corporation.

CHAIRMAN FLEMMING. In terms of the person that you are prepared to serve, do you apply any kind of an income test or needs test?

MR. NORTON. Are you asking me?

CHAIRMAN FLEMMING. Yes.

MR. NORTON. We currently, under recent State regulations, apply a different test to eligibility for people in abuse cases than most of our other clients. We do not—it is not necessary for us to consider income to determine eligibility in abuse cases, so that what that means is—but since we are a legal services program, and since we are greatly underfunded and have a lot of other things to do, what that means, in effect, in our program, is that we will make sure, if someone comes in with an abuse problem, that that person has counsel. If the person has a lot of income, we will inquire about that and we will try to get that person to a private attorney. If that doesn't work for one reason or another, we will handle all those cases. We do not use income cutoffs in the same way we would with clients in other kinds of cases.

CHAIRMAN FLEMMING. That is a result of a State policy decision?

MR. NORTON. That's right.

CHAIRMAN FLEMMING. What department of—

MR. NORTON. Department of public welfare.

CHAIRMAN FLEMMING. Does that relate to the Title XX funds particularly?

MR. NORTON. Yes, it does. That's right.

CHAIRMAN FLEMMING. Does the same situation prevail as far as your program is concerned?

MS. ROURKE. Yes, sir. The only other point on that is in standard cases when we have a client, we consider only the victim's income. Like, for example, if we have a husband and wife living together, and the man makes a lot of money and he's beating his wife and she has no income, she is a housewife, we count only her income; we don't count his income; so that we consider her indigent and are able to represent her against him, because it's obvious he's not going to give her any money to sue him and get him kicked out of the house. That just doesn't happen. We consider just her income.

CHAIRMAN FLEMMING. Mr. Norton, you indicated, when it is clear that the individual does have income, it is possible for them to employ a private attorney, that you endeavor to persuade the person to do that. Let's assume that you do not succeed and you handle the case. Are you in a position where you can charge a fee for the legal service? You can ask them to pay a fee to the Legal Services program?

MR. NORTON. No. We don't charge any fees, no.

CHAIRMAN FLEMMING. So that the service that you render that person would be free just as it is for a person of low income?

MR. NORTON. That's right.

CHAIRMAN FLEMMING. Going to the abuse cases, counsel did raise with both of you the question that had been developed yesterday relative to the feeling on the part of some persons that the emphasis should be placed on criminal proceedings, as over and against the use

of Protection From Abuse Act. As I understood your response to counsel's questions, both of you don't rule out by any means the possibility of advising the client to take the criminal route, but you both feel that the possibility of getting expeditious action is greater under the Protection From Abuse Act. Is that a fair summary of your view?

MR. NORTON. I think it is not—it is a question of expeditious action, yes, but there are many other elements to it, I think, that make the Protection From Abuse Act and the civil remedy more desirable, if there were choices to be made, than the criminal system.

Yes, the act requires a hearing to be held within 10 days. That's important, very important. It also makes it clear that a hearing is going to be before a judge, that we are not going through these initial stages where we deal with district justices, which in Pennsylvania means nonattorneys, and it means in our counties, the counties that we serve, and I think it is true all across most of Pennsylvania, a very unsophisticated and conservative approach to any new kinds of issues and new legislation and barriers to enforcement of the act. So we know, by using the Protection From Abuse Act, we're going to get to a judge, and it is going to be treated seriously in court.

In addition, I think the people's reaction to the civil process as opposed to the criminal process is different. In either case, we're talking about the judicial system getting involved in some family life of some kind, and that's a difficult step for anybody, but I think it is much easier for people to know that the remedy that they are going to pursue is not only more flexible and broader relief can be given, but that it is civil in nature; it's not criminal in nature, just by the terminology used; and the result, if successful, is not necessarily going to be putting somebody in jail.

It is not necessarily going to be depriving the woman and the children of support that the woman and children may need, if successful. If unsuccessful, it is not affected at all. I think there are many aspects to the Protection From Abuse Act that make it far preferable to using the criminal process as an alternative.

CHAIRMAN FLEMMING. Listening to testimony yesterday, particularly from some of the judges that were on the panels, we noted that some persons have a question in their minds as to the constitutionality of that portion of the act that provides for an order being signed after an ex parte hearing. Both of you are lawyers. Are you troubled by that particular part of the act?

MS. ROURKE. I'm not. I think a case has been brought and so far the constitutionality of the act has been upheld. That's—I think it is the Boyle case in Allegheny County. I think the interference is de minimis. At the most, the guy is going to be evicted from his home for a period of up to 10 days with his right to use the home. The man will only be evicted from the home for up to 10 days without a hearing. It is a very short period of time realistically, and, in the cases that I bring in Dauphin County, for the most part 10 days is sometimes a long time to wait for a hearing. We can frequently get them in 3 or 4 days, and for that length of time to be evicted from the home—that's, in the first place, not a very serious interruption. It is a minor interruption.

Number two, you don't have the right to use your own property to assault someone else or physically hurt someone else. That is a standard legal principle. A neighbor can't use his property to harass or bother a neighbor, can't withdraw support from a neighboring wall, and the standard nuisance kind of theories.

The State has the power to put restrictions on people's use of their property. The State has the right to provide protection for another person who has a legal right to be in that property. I don't have a question with the constitutionality of it.

I would like to respond very briefly to the question that you raised with Mr. Norton previous to that, because Dauphin County has a little different experience with the relationship between the Protection From Abuse Act in the criminal system than Cumberland County does.

What we're seeing in Dauphin County now is that the court system, the criminal justice system, is deflecting cases away from the criminal justice system and putting them into the civil system and trying to avoid criminal cases because the Protection From Abuse Act is available.

We are finding situations where the police will not make an arrest when they witness a crime or, when a crime has been alleged, they will not take a charge because nobody has a protective order; they'll send them down to us to get a protective order. They won't file a criminal charge because they don't have a protective order. Once the case goes to court, we get a protective order—we had a case in our office very recently where a woman was beaten by her husband with a lead pipe inside of a rubber hose for 5 hours. The woman's skin was about the color of a ripe eggplant. She couldn't move.

We took her with pictures to the D.A.'s office and asked to file aggravated assault charges. We had to practically beg to get them to file the charges. There is a 180-day rule in Pennsylvania that says that if you don't bring the case to trial, a criminal charge to trial, within 180 days of the filing of the charge, the case is over and done with; you have to ask for an extension in violation of the 180-day rule that results in a dismissal of the criminal charge.

The D.A.'s office took the charge and sat on it and 180 days passed and it was dropped. That's a continuing problem. That's not one isolated incident. That's probably the most severe that I've seen in the very recent past, but it is not isolated. The D.A.'s office will send people down to our office instead of taking a criminal charge.

CHAIRMAN FLEMMING. What are your plans for countering that development?

MS. ROURKE. That raises a—Legal Services is not permitted to involve itself in criminal cases except in respect that we can work towards trying to develop access to the system. It presents a very complicated set of facts and generally we don't get—we don't even hear about it until it is too late. That happened before, under the prior district attorney. We have a new district attorney now.

It occurred during the election process before the new district attorney was elected. Women in Crisis and Legal Services are taking steps to try and meet with our district attorney and improve that system so it

doesn't happen again, but the current district attorney was the first assistant district attorney then and still had an immense amount of power in the system.

If the situation doesn't resolve itself through mediation, through negotiation, and talking back and forth and trying to train the people, then we may be faced with filing a charge against the D.A.'s office or the police for failing to accept charges, the same as attorneys for victims have had to do in New York against the police department for failure to treat these cases the same as any other criminal case.

If that woman had been beaten by a stranger in Dauphin County, which is very prolaw enforcement, the assailant would have been prosecuted to the fullest. But because they were married and it occurred in the home, it sat. And the man admitted to it, and the district attorney's office said they didn't think they could get a conviction, but on the witness stand in the civil case, in the Protection From Abuse case, the man admitted to assaulting her. His excuse was, well, it was just a little iron pipe, and that made it okay.

CHAIRMAN FLEMMING. Thank you for giving us that.

MR. NORTON. Let me say something about the constitutionality of some of the provisions. I agree, I don't think that the *ex parte* provisions, even including those *ex parte* provisions that allow exclusion from the home, even a home that may be owned jointly by spouses, I don't think it will be found unconstitutional.

I can understand a judge having that feeling that it might be, but the problem that I see is that whether or not the proper action is taken on the part of the judiciary to pursue that course, and what I mean by that is, that if a judge, for example, thinks that a certain provision is unconstitutional, it seems to me the judge should declare it unconstitutional, enter an order, and issue an opinion that it is unconstitutional for the purpose of having that decided by the appellate bodies that are going to have to decide it.

The judges that have expressed their concerns about the constitutionality of provisions of the statute to us have not done that, and they, I think, have used it as another barrier to the enforcement of the act. I question the good faith of that kind of an opinion when the procedure that I have outlined has not been followed. It seems to me it is another barrier that is thrown up by different judicial and law enforcement agencies to enforcement of this because of their view of this area of the

CHAIRMAN FLEMMING. Is it possible for—let me put it this way: what steps can be taken by the bar, by lawyers, to expedite a determination by your supreme court ultimately on the constitutionality issue? It seems to me that's kind of hanging over this whole situation at the present time. Our attention has been called to the case in Allegheny County, in the Boyle case. It isn't clear to me whether or not that decision is going to be appealed from the lower court. You may have information regarding that.

MR. NORTON. My understanding is that it is moot at this point.

CHAIRMAN FLEMMING. It is moot?

MS. ROURKE. It is my understanding that the appeal time has passed. If it was going to have been appealed, it's past.

CHAIRMAN FLEMMING. Are there any plans or have any plans been developed, designed to expedite the consideration of this constitutional issue?

MR. NORTON. Well, I don't have any plans myself, and Ms. Rourke may be able to talk about that in more detail, but there are a lot of factors that go into that, I think, that make it a little more complicated than approaching it that way.

And one of the factors, obviously, is that, in any case you're dealing with an individual client that has particular interests, and even though you may be aware that that's an important issue, and even though you want to present that issue to the court in every appropriate instance for the lower court to decide it one way or another and get a formal order and decision on that, it does not necessarily mean that you are going to be able to pursue that through an appeal because of differing interests that your client may have in an individual case that may not be consistent with perhaps even raising the matter initially and pursuing it.

There may be other strategy considerations that affect that as well, but I think the main thing that can be done, at least from my perspective, is to make sure that the issue is placed in front of the lower courts, and it is decided in a formal way whenever that's consistent with the individual client's interest.

MS. ROURKE. I agree with that. The constitutional issue has been raised. I file primarily on behalf of the victim. I don't think I've ever represented an assailant in one of the cases, and it is the assailant who is going to raise that, and it is the kind of a case that is very difficult to get an assailant who wants to take an appeal through the years that it may take an appeal to get that resolved. Who wants to pay that much money for the right to stay in a house with someone who doesn't want him there?

It has been threatened to have been raised in a number of cases that I've presented, but nobody ever does it. I'm ready to argue it as soon as somebody else wants to be on the other side of the case, but I can't do it all by myself.

CHAIRMAN FLEMMING. Commissioner Horn?

VICE CHAIRMAN HORN. I would like to begin with the two attorneys and ask how many of the cases you have had involving abuse have been repeaters?

MS. ROURKE. In the Protection From Abuse cases, from the man's point of view, very few, but we see it in divorce cases that our office handles much more frequently. We've gotten a divorce from the same man for three different women with the same set of facts, and it's the same pattern that he follows with each client, and we're now waiting for number four to come in because we just got number three's divorce. We know it's coming.

We see, with the woman going back into the abusive situation, or getting back into the abusive situation, we see that happening too. As far as they, you know, women who get into abusive situations may have been raised to believe that's normal and—well, if we get her out

of one abusive situation, will get back into a relationship with someone else that may become violent.

I don't by any means want to say that the domestic violence is all the fault of the abuser; it may be a dynamic between the two people, and it may require more than just separating them. It's a real serious problem that needs to be addressed in a whole lot more detail than it has been yet, so we don't have a lot of answers to that; we do also see a fair amount of the parties going back together and the abuse continuing between the same two parties.

It's a small percentage of the cases. I would say that there may be—in the cases that I've handled, there may be 20 percent of the cases where there's been a repeat of abuse after the initial protective order, but once, maybe 2 or 3 percent that there's a second repeat, and by that time the client isn't coming back to me anymore. She's decided that she—because I've presented her with a situation that she's got to be ready to make the break completely and put him in jail if he won't leave her alone and be willing to make the break and just stay away from him if he won't stop the abuse. If she's not willing to do that, she's got practically no choice but to put up with the abuse if he won't change.

VICE CHAIRMAN HORN. Is that your experience, too, Mr. Norton?

MR. NORTON. I have a hard time answering. I really don't know how many—if you're talking about repeaters in the sense of after an order being entered and relief being obtained under this act, the woman being subject to abuse or getting into abusive situations in the future, I haven't really seen that very much. I don't know how much of that occurs.

I do think that the important point, though, is that I don't think the abuse act in itself would go far enough to assure that were not going to happen. I think the supportive services that are used in conjunction with the act are the things that help a great deal to lead a person who has been abused to the feeling that's not going to be acceptable in the future and not going to be tolerated in the future. And the things that I'm referring to are the shelters, and the critical thing about the shelters, I think, in that regard, is the ability to talk with other women who have been abused and share experiences and know that other people have been in the same situation, and one getting out of it and doing something different and taking on some independence in people's lives that can be aided by shelters and counseling at shelters.

I think that those things are the things, in addition to filing a Protection From Abuse case and following through on it and getting the court to enter an order making a judgment about what's happened, those things in conjunction offer good chances that it is not going to continue for that woman.

Now, for the man, it is even more difficult for me to say whether that's going to be a repeated situation.

VICE CHAIRMAN HORN. Well, you are heading in the direction where I was leading, then. The reason I wanted to move to supportive services and asked you the number of repeaters was because I wanted your judgment as attorneys as to how successful you feel counseling

and other types of supportive services have been between, say, the first, second, third, and fourth case.

The reason for this question is that yesterday morning two attorneys that we began the discussion with had a rather dour view of the role of counseling as to whether it did any good, the theory being—and their own experience leading them to say this—is that it was important for the abuser to confront largely his behavior, that it is wrong, and they expressed great doubts about the ability of counseling, or at least those counseling programs with which they were familiar, to get the rightness and the wrongness of the conduct clearly in the abuser's mind. I just wanted your reaction as attorneys as to how helpful the psychological services are, types of counseling services, in helping to alleviate or solve the problem.

MS. ROURKE. Again, it is a problem where there needs to be a whole lot more work done. I don't think the degree of expertise in the counseling field at this point, at least the counseling services I'm familiar with in the Harrisburg area, is to the level yet that it can really deal with the underlying problems. It can begin to, but I don't think it's really gone into the area in enough detail yet.

There are several different types of abusers that I see, and you get different degrees of success with counseling and with services, depending on the type of abuse that you see. And one problem is that the court—when the Protection From Abuse Act was originally passed, I think the intent of the legislature was to allow the court to order counseling and to order, for example, if one of the root causes of the abuse is alcohol abuse, to order treatment for alcoholism or something like that.

The courts in Dauphin County are not issuing orders like that at this point. The only way we can get the court to order counseling or to order treatment for alcohol disorders or something along those lines is on a contempt or by agreement of the parties, and the court will not enforce that by a finding of contempt if the guy agrees to go to marriage counseling or something like that and then doesn't do it. So that getting the people to a counselor in the first place is hard.

Once they get there, the degree of success varies, depending on what kind of problem it is. I have had some success with alcoholics, with local alcoholic facilities in being able to control the alcoholism and, therefore, control the abuse, but it is also a very common pattern that when the people will go to the alcoholic services treatment facilities, go through the course of treatment, go back home and be good for a month or two, and then go right back into the same old patterns. We're talking about changing, in some cases, lifetime patterns of behavior, and that's very difficult. We haven't had a real long pattern of experience to be able to draw on.

The Protection From Abuse Act has only been in effect for 4 years. To change peoples' lifestyles and the way they live takes a little longer than 4 years sometimes. I think some cases are very successful. Some cases we've been able to get treatment for alcoholism, services for counseling, but it is a very beginning step and there is a long way to go in that field yet.

One of the biggest problems that Women in Crisis is seeing right now is the lack of any really responsive way to deal with the abuser who asks for mental help or for marriage counseling where you don't have an underlying problem of alcoholism. There's a real gap there.

VICE CHAIRMAN HORN. I wonder to what degree does Legal Services nationally, and those journals and publications both put out within Legal Services and related to the types of problems with which you are dealing in particular here—to what degree have they been helpful in, say, sharing experiences across the country, broadening your understanding of what is occurring in other programs, etc., so that you can seek the appropriate order, perhaps from a judge, to require this type of advice, or is the feeling that, if the parties don't want to voluntarily do it, it really doesn't do much good?

MS. ROURKE. Okay. As far as nationwide with Legal Services, I think there's a very close tie in every area that I've seen between Legal Services and the shelter organizations. On this particular subject, I think the shelter organizations are better organized nationwide to deal with that problem than Legal Services is, but almost all the legal advice given to shelters and the legal work done with shelters is being provided by Legal Services and, if Legal Services didn't exist, the shelter organizations would be in a whole lot worse shape than they are.

I don't have to worry about my salary, it's coming, and I can deal with my clients' problems the best way, whereas a private attorney can't do that. The organized bar is beginning to respond to that, primarily from pressure from Legal Services' organizations and from grassroots organizations, such as the shelter organizations, but we're at the very beginning steps of it. There's a long way to go yet.

VICE CHAIRMAN HORN. Mr. Norton, do you want to add anything?

MR. NORTON. Well, I don't know of any particular help that national Legal Services publications have been to people. I'm not sure that's a deficiency, but I don't know of any particular help they've been. With respect to the earlier question you asked about the possibility of counseling, which seems to be directed primarily for the abuser, I'm not too hopeful about counseling in itself changing that person's behavior. It may, but I'm less hopeful with supportive services accomplishing that than I am with supportive services changing the way a woman would respond to that kind of a situation.

I think the main thing that can affect the abuser is how the courts are going to respond to it, and I think that a statement, a definite statement, from the courts and from law enforcement officials as to whether or not you can do it is the most effective thing in changing that person's behavior.

Frequently, we find that the abuser knows the local police, the State police; they're friends, or they're acquaintances.

MS. ROURKE. Or he is the local police or the local district justice.

MR. NORTON. And how those—and he may go to counseling and the counselor may talk about human relations and how you deal with somebody that you're living with, but he also goes out drinking with the local police and with other people. They don't have to be police, but a lot of his behavior is going to be dictated by how he views

himself in relationship to these other people, so it is broader. Counseling, it seems to me, is not all that helpful in changing that kind of view of yourself that that person may have.

MS. ROURKE. It's also a societal type problem. He says you go out drinking with your friends. I've seen a half-dozen abuse cases where the abuser, the male, works for a certain employer in the Harrisburg area which employs a lot of blue-collar people, and they do the same things. They go to work and they talk about what they did to their old woman last night. And then I'll have one client come in and say, "He did this to me last night"; a couple of weeks later I'll have the wife of a coemployee coming in saying he did the same thing. They talk about it to each other and do the same thing.

I would have loved to have seen Judge Dowling here yesterday. I hear it was—that he had some strong feelings on it, but one reason that I like taking abuse cases to Judge Dowling is because he's one of the few authority figures who will sit up on that bench and read the riot act to an abuser. Just yell at him and tell him, "Don't you dare lay a hand on her. You're not allowed to. It's not legal. Don't do it." And that is effective. That puts the fear of God in them. That works sometimes more than counseling or anything else, just the threat.

VICE CHAIRMAN HORN. Mr. Hanna, I wonder to what degree does public welfare provide counseling services for victims of abuse and what sort of organized program or subsidy do you have in that area?

MR. HANNA. Unfortunately, we don't have the kinds of resources and staff to do this kind of counseling. Whenever any situation comes to us where there's abuse or any other social problem, our caseworkers would refer them to an agency that could be of service. In this case, we would probably refer them to Women in Crisis, or maybe Family and Children Service.

VICE CHAIRMAN HORN. Would you allow funding on their budgets for those services, or is this simply welfare performing a referral function without subsidizing?

MR. HANNA. Yes, it is simply a referral function, as I understand it.

VICE CHAIRMAN HORN. Thank you.

CHAIRMAN FLEMMING. Commissioner designate Ruckelshaus?

COMMISSIONER-DESIGNATE RUCKELSHAUS. Mr. Norton, I was struck by a word you used in discussing the disposition of some of these Protection From Abuse Act cases by the court. I think you said that the courts in some way felt, they seem to resent the fact that their court time was going to be taken up with domestic cases. Was that the gist of what you were implying?

MR. NORTON. Yes.

COMMISSIONER-DESIGNATE RUCKELSHAUS. That certainly is an attitude that must carry over to the D.A., to all of you who are counseling in the legal services area, but probably also to the abuser and the abusee, the feeling that the court thinks that somehow these cases are less important than other matters they have to deal with.

It was disturbing to me yesterday in the hearing to know that a couple of judges were willing to go on the record as saying that they just didn't think this was a crime of the same magnitude as other things

they dealt with. They just didn't think it had that same sort of importance.

I wonder if you see any hope for the Domestic Violence Task Force bringing together the dissimilar elements involved in supporting both the victim, getting help to the abuser, getting the case through the courts in an expeditious and effective way. Is there hope in sight in the Domestic Violence Task Force or is that just, is that not going to work?

MR. NORTON. Well, I can say a number of things about that. Let me say a couple of things before I get to the question about the hope for the task force.

First of all, I do think that—particularly in more rural counties, and the counties that we serve tend to be more rural than the one that Nancy works in, but I think it is true in all counties—the judges play a very important role in this, in the enforcement of this kind of legislation, a leadership role. People look to the judges. The bar looks to the judges. If the judges have a view of a particular law, constitutionality of the law, whether it should take court time or not, the private bar will know that very quickly. They will either bring cases on their own or not, in many cases, depending upon those clues that the courts are giving them, so that affects the enforcement of the act that the private bar could be enabling.

It doesn't work as well with Legal Services, but it is very effective with members of the private bar. The same kind of indications that the court gives are directly effective upon district justices who have a role in enforcing the act. The presiding judge is the administrator for the district justices, the same thing with the district attorney. There is a close relationship between the district attorney and the judges, and they're going to take guidance from the judges; they're going to look at clues that the judges give, and the clues aren't really that hard to read frequently, so the whole justice system is going to take direction from how the courts feel on a particular piece of legislation—how much time should be given to it, whether it is effective, whether it is unconstitutional, whether it should have been enacted, whether it is bad public policy—all those things, and it is very important.

The judges don't have a limited role in this kind of a system. So, you are right that if the judges indicate that they resent this law, or it shouldn't be used, it is a very important factor in whether or not it is going to be used and effective.

With respect to the hope for the task force, I think that there are ways—and I haven't worked in it too much; Ms. Rourke perhaps has more—I think there are ways of showing law enforcement people that civil kinds of remedies, different kinds of remedies, will solve problems for them as well as solving problems for the abused person and the abuser.

I think that police officers have a very difficult time with domestic matters. They have come to treat them in a certain way because they don't—partially because of how they feel about the matters, but partially because of an inability in terms of training and knowledge to deal

with them in any other way, and so I think that the degree to which—and the same with the court system.

The degree to which the task force can offer a new solution and one that is effective and will make it easier for law enforcement officials and judges to make decisions on cases and assure that cases will be followed through on—I think that it can be sold to those enforcement people.

Part of the reason there is resentment, I think, in taking up court time, is kind of a circular problem, and that is that there is the experience among district justices, among police, among district attorneys, among judges that in the past women have not followed through on criminal charges they have brought, and I think that's accurate. I don't know what the percentages are, but I think that's accurate, and charges have been filed in the past, or they've been refused to be filed, but if they are filed, frequently things will happen and they won't be pursued ultimately to the time when the abuser will be sentenced or put on probation or whatever, but the reasons for that are misinterpreted, I think.

The reasons primarily for that are that it's a societal reason about what abuse is, and it's the problem with the criminal justice system to deal with it, and those barriers that a person encounters all along the way that almost dictate it's not going to be followed through on. Once you have a remedy that is more effective and deals better with the problem, I think we've seen that people will tend to follow through more, and so a lot of the resentment in taking up the court time is a feeling on the part of the judges that, "Well, the person is not going to follow through. She's going to go back with him and we're just going to be wasting all of our time."

That comes from a judgment of how the criminal justice system works, and maybe a judgment about how an ineffectual civil remedy would work, but I think that once we can demonstrate there's an effective civil remedy, I think we can show that people will start following through and there won't be the waste in courtroom time, and I think that it is possible for the task force to be able to show law enforcement people that there are positive things that can come out of a new statute in addition.

COMMISSIONER-DESIGNATE RUCKELSHAUS. Ms. Rourke, what happens to most of the women who come to see you who have been abused?

MS. ROURKE. What do you mean? Do you mean, do they get protective orders or do they separate from their husbands or go back to them? What do you ask?

COMMISSIONER-DESIGNATE RUCKELSHAUS. In percentages, what would you think? How many of them eventually end up back in the home?

MS. ROURKE. As far as protective orders are concerned, we haven't been keeping accurate statistics. I could give you a guess. I would guess it is probably half go back. I know the shelter statistics are that half go back to the home situation. Of the half that go back, the

physical abuse may cease in half of them, but in the other half it is still going on.

But the client doesn't come back to me. I get clients who feel like they've let me down if they don't break the situation. They feel like they've alienated me, which is not true, you know. If they've got problems, they're perfectly free to come back to me again, but sometimes they're a little afraid to.

It is very difficult to break a pattern of abuse and more frequently the people will eventually separate. They may get a protective order, go back together again, and come back into our office for the divorce in 3 or 4 years—it's a couple of different patterns, but it is very hard. If you've got an abuser who's got a lifestyle of abuse, who has done it for a long time, who believes that that's what you do with women, you beat women—I mean, that's a societal kind of pattern for him; he was raised in an abusive home; he saw his parents abuse each other. He lives in a society where it is common for people to abuse women. He thinks that's normal. To get him to break that kind of a cycle is very hard.

I think it is almost beyond the legal system all by itself, the ability to deal with it. It's got to have the support services. It has got to have the pieces that are missing right now, from this whole scenario. We've got to have the counseling. We've got to have the support services from the shelter. We've got to have a change in the attitude of the police and district justices and the district attorney's office and juries. Juries don't find—it is a societal problem—juries don't find men guilty of serious crimes against their wives with as great a frequency as if the parties aren't related.

COMMISSIONER-DESIGNATE RUCKELSHAUS. Are you aware of any counseling programs in your counties for men who are abusers?

MS. ROURKE. No. The shelter has begun to deal with the local mental health agency, and they've offered their standard anger group through psychotherapy, or something like that, which I don't think is a particularly effective resolution, but other than that there is nothing.

COMMISSIONER-DESIGNATE RUCKELSHAUS. No specific program and no individual with some expertise in that area?

MS. ROURKE. Absolutely none. So, if you have a man who asks for help like that, I've got very little resources to refer him to.

COMMISSIONER-DESIGNATE RUCKELSHAUS. Thank you very much.

CHAIRMAN FLEMMING. Commissioner-designate Berry?

COMMISSIONER-DESIGNATE BERRY. Mr. Hanna, in terms of the case-load of your office, is this problem of domestic abuse significant or insignificant in terms of the client?

MR. HANNA. We don't place any special emphasis on it.

COMMISSIONER-DESIGNATE BERRY. I meant in terms of the percentage of the workload.

MR. HANNA. Well, I can't tell because we wouldn't hardly know by looking at statistics on whether there is domestic violence, but from the cases that I've read, it is, as I can determine, it's not really significant.

COMMISSIONER-DESIGNATE BERRY. Okay.

Ms. Rourke, if a woman has been subjected to abuse and she wants the abuse to end but she would also like to save her marriage or relationship with the male involved, is it better for her to proceed under the Protection From Abuse Act remedy and to perhaps have him either excluded from the home or have him ordered not to abuse her and then, if he violates it, then to have him cited for contempt, or is it better for her to file criminal charges and have him out on bail and then have him either convicted or drop the charges, depending on what happens in the situation, or what's the best thing for her to do if she's trying to maintain her relationship?

MS. ROURKE. That's the hardest kind of a case to resolve, to get what she wants, because it involves a change in attitude by somebody who is out of her control, and that's him. She has no way to force him to change. The only way—she can force him to stay away from her, she can force him to stay out of the house, and she can send him to jail if he won't, but she can't force him to change his behavior.

The Protection From Abuse Act is a whole lot more effective than anything I've seen coming out of the criminal justice system in achieving the end result of trying to save the marriage, but it's not all by itself going to resolve that problem.

COMMISSIONER-DESIGNATE BERRY. Would you be disturbed if a client came to you and you got an order, protective order, and then you discovered that the client had the man living with her again without telling anybody, and then after a period of time when he abused her again, then she went and had him cited for contempt? Would that bother you?

MS. ROURKE. I've had that happen and I've brought cases on behalf of the client to ask for that. What I ask for is not a contempt citation for allowing him back into the house—for him being in the house. I ask for a contempt citation on that part of the order issued against the man saying he's not allowed to hit her. Because that's something he's not allowed to do, period.

I mean, the Protection From Abuse Act is just saying, as a way of the court telling the man, "You're not supposed to do something that you are not supposed to do anyway."

It is not legal to hit somebody, and I've gotten the court to enforce that. The very first contempt case I had, the man went to jail for 6 months for beating his wife, after she let him back in the house, after he had been excluded. The protection order was not amended, so the protective order still said he was not allowed in the house. We only asked for enforcement of the, "Thou shall not strike" part of the order, and we got it.

COMMISSIONER-DESIGNATE BERRY. Would you have thought, Ms. Rourke, that there was a waste of judicial or legal resources in having expended the time to get the order in the first place?

MS. ROURKE. No.

COMMISSIONER-DESIGNATE BERRY. If she indeed had the man living with her, say they walked out of the courtroom and a week later he came back and she didn't say anything and then later on he hit her

again, so therefore she came back. Would you say we wasted your time in the first place?

MS. ROURKE. Absolutely not. I have—we have a little brochure that we give to clients when they get a protective order saying, “If you want to do that, please let me know because we can go back to court and amend the order.”

A lot of the people don't know that they can go back and change the order if there are changed circumstances. If the man is getting alcohol treatment or if he's going to counseling and things are okay, and they want to try and work on the marriage in the same house, fine, that's great. We're not trying to break up marriages; that's not our goal. We're trying to get what the people want. If they want to stay together, fine. Let's work towards that.

I've had a number of cases where we've had that situation, and the court in Dauphin County, at least so far, has indicated a willingness to enforce the protective order, saying he's not allowed to strike. So, you know, for women to reach the point where they're willing to make the break or decide to stay with him and give up on the criminal justice system, sometimes takes the woman a long time, and I'm willing to work with her through that period of time.

I had a client for a divorce. She was pregnant eight times and her husband beat her in the stomach every time she got pregnant, wouldn't allow her to take contraceptives. She had seven miscarriages, and the eighth child was born deformed, lived for a few months, and died. That was the deciding factor, when she finally had a live baby, but it took her that long to reach the point where she said, “I'm not putting up with this anymore.” You know, I get my salary every week; if I need to sit with her and hold her hand through a couple of years to do that, I'll do it.

COMMISSIONER-DESIGNATE BERRY. Mr. Norton, would your answer to that question be the same or different? Would you think it was a waste of judicial or legal resources in such a case that I gave as an example, where the woman got an order and then let the guy come back to live with her and then later on she wanted him cited for contempt, and her effort was to try and make the relationship work?

MR. NORTON. The reason that she did that was to make the relationship work?

COMMISSIONER-DESIGNATE BERRY. Trying to.

MR. NORTON. I'm not—I don't think it's a waste of judicial resources, no, or a waste of our time. I don't think that it is necessary every time we get an exclusionary order to feel that the only positive result is going to be continued separation. There may be other results.

If the client has not gotten back in touch with us and told us about the change and if we haven't worked within that change, then there's been a failure that shouldn't have existed, but I don't think it's a waste of resources. I do think there are circumstances, there are some times when people either will not follow through after they have indicated they are going to follow through and after you're convinced they are going to follow through, or they don't communicate with you, when you do feel that your efforts did not produce any result that's positive.

There's no doubt that that happens, but I guess if that happened, you know, in a large percentage of the cases, then you might start to think there's a waste of resources.

I don't think that. That's one example and doesn't convince me it's a waste of resources to do it. You're going to have situations where there is not success in your own terms.

COMMISSIONER-DESIGNATE BERRY. Okay. The other point is, how do you account for the difference in attitude toward the Protection From Abuse Act and the criminal justice remedy as options in Dauphin County and Cumberland County? Is it just a matter of which docket has the most cases on it and, therefore, one D.A. would want everything to go through the civil docket and another one would think the criminal justice system was better, or the site of the county, or what accounts for the preference?

MS. ROURKE. I think judicial attitude plays a large part. Judge Shughart was very strongly pushing the criminal justice system, so they're pushing toward the criminal justice system. In our county we can get protective orders, so the police start thinking that you have to have a protective order. And then we have to go out and explain to the police that that's wrong, that you can still bring the criminal charge. It is also a carryover of the attitudes that existed prior to the passage of the Protection From Abuse Act.

MR. NORTON. I'm not sure that there is a difference between the two counties. The fact that Judge Shughart or other judges or other law enforcement people will be pushing the criminal system doesn't necessarily mean that system is working or that there's a feeling that it will work. It may, as I say, it may. There are some instances where I question the good faith of that. It is a barrier that is put up.

I don't think the criminal system works very well to solve the problem, and I don't take the fact that the judge in our county would respond by saying, "That's the way I want it pursued," to mean that it's working well or that it is being pursued in the county, because it's not.

COMMISSIONER-DESIGNATE BERRY. Thank you.

CHAIRMAN FLEMMING. I want to express our appreciation to all three members of the panel for being with us this morning and providing us with this very helpful testimony. Thank you very, very much.

Counsel will call the next witnesses.

MS. GEREENICS. Sherry Knowlton, Robert Ellis, Susan Kelly-Dreiss, Gregory Berta.

[Sherry Knowlton, Robert Ellis, Susan Kelly-Dreiss, and Gregory Berta were sworn.]

TESTIMONY OF SHERRY KNOWLTON, POLICY SPECIALIST, PENNSYLVANIA DEPARTMENT OF PUBLIC WELFARE; ROBERT ELLIS, PROGRAM SPECIALIST, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES; SUSAN KELLY-

DREISS, DIRECTOR, PENNSYLVANIA COALITION AGAINST DOMESTIC VIOLENCE; AND GREGORY BERTA, EXECUTIVE DIRECTOR, CENTRAL PENNSYLVANIA LEGAL SERVICES

MS. GERIBENICS. Beginning with you, Ms. Knowlton, would each one of you state your full name, your title, and years in that position, for the record, please?

MS. KNOWLTON. My name is Sherry Knowlton. I am a policy specialist with the Pennsylvania Department of Public Welfare and I have been in that particular position for 2-1/2 years.

MR. ELLIS. My name is Robert Ellis. I'm with the United States Department of Health and Human Services, as a program specialist in the regional office in Philadelphia, and I have had this position for 6 years.

MS. KELLY-DREISS. I'm Susan Kelly-Dreiss. I'm the director of the Pennsylvania Coalition Against Domestic Violence, and I've held that position for 2-1/2 years.

MR. BERTA. I'm Gregory Berta. I'm the executive director for Central Pennsylvania Legal Services, and I've been in that particular position for 1 year.

MS. GEREBENICS. Ms. Knowlton, could you begin and tell us something about the background of Title XX in Pennsylvania, when it began and what it replaced?

MS. KNOWLTON. The Congress passed the Federal Title XX of the Social Security Act in 1975, and it replaced Titles IV and Title VI of the Social Security Act—part of Title IV and most of Title VI of the Social Security Act. In Pennsylvania, what that basically meant, when the Title XX planning came into effect, and when we had to comply with the act, we really sort of continued a lot of the things that we had been doing under Title IV, especially so that particular agencies which were receiving funding under Title IV. A continued to receive funding under Title XX.

MS. GEREBENICS. What is the total budget of Title XX in Pennsylvania?

MS. KNOWLTON. For the upcoming '80 - '81 year it is \$221 million, approximately.

MS. GEREBENICS. How is that figure arrived at?

MS. KNOWLTON. Okay. The Title XX, at the Federal level, has a ceiling. I think yesterday it went to \$2.9 or \$2.7 billion.

MR. ELLIS. I haven't heard of this.

MS. KNOWLTON. I just heard when I left the office that H.R. 3434 had just passed, but anyway, there's a ceiling, I believe it is \$2.9 billion. That is divided between the States based on population, percentage of the total United States population.

MS. GEREBENICS. Could you briefly describe the process the department of welfare goes through to implement a Title XX plan each year?

MS. KNOWLTON. Okay.

MS. GEREBENICS. Briefly.

MS. KNOWLTON. Briefly, okay. Basically, it's about a year-long process. We are required under Title XX regulations to have public input, and what we have done in the past—originally, we just held public

hearings. There's a proposed plan, published in approximately March. A final plan comes out at the end of June for the upcoming fiscal year, which would start July 1.

Between the proposed plan and the final plan, we hold a series of public hearings and accept public comment for a 45-day period. What Pennsylvania has done, we have added an additional step which we call "preplan sessions."

Now, we hold those in the fall, in September and October, and we have local meetings, county meetings, basically, and invite people to comment on the past year's Title XX program, the current Title XX program, and what changes they would like to see for the upcoming year. Those preplan sessions have really become the most important public planning step in our process.

MS. GEREBENICS. Who participates in those? Are those people who had participated in the Title XX program or people administering it?

MS. KNOWLTON. Mostly they're Title XX service providers, people who have Title XX contracts, although frequently we do have clients come and testify also.

MS. GEREBENICS. How are the funds administered to various agencies within the State once the planning process is completed?

MS. KNOWLTON. I guess what I need to do is talk a little bit about how Title XX is delivered in Pennsylvania in order to really understand that.

MS. GEREBENICS. Okay.

MS. KNOWLTON. It's rather complex because we don't have a basic direct system of Title XX services. The department of public welfare provides directly some Title XX services through the county assistance offices which are a part of the department. We have six district offices for the visually handicapped which provide services directly, and then we have, I think, four youth development centers which are institutions for juveniles who have been adjudicated delinquent. The rest of our Title XX program is purchased. Some of it is purchased from public agencies, which are the county-administered mental health and mental retardation agencies, the county children and youth agencies, and the area agencies on aging, which are in most cases county administered. Then we also purchase services from private agencies such as home-maker agencies, Coalition On Domestic Violence.

MS. GEREBENICS. How exactly did that come about, the contract with the coalition?

MS. KNOWLTON. The contract with the coalition? For several years at our preplan sessions and at our public hearings, we had had people testify, saying that Pennsylvania needed a program for domestic violence, that shelters were needed, that existing shelters that had started with various fundings—I think some of them LEAA grants that were expiring, other local donations—really needed a continuing source of funding that they could rely on.

Our departmental regions had, over the years, funded a few domestic violence programs, depending on maybe if they had money left from their four regions, from their regional allocations, so that we had

maybe six or seven contracts existing that were for various services under the Title XX plan at various amounts.

In, I guess, about January of this year we started to work with the Coalition Against Domestic Violence, which represents domestic violence shelters across the State, to develop a statewide contract for services. We thought that would be the best way to administer a program and also get it going at a statewide level. Secretary O'Bannon, secretary of the department, was instrumental in this.

MS. GEREBENICS. Thank you.

Mr. Ellis, what is the role of your regional office in the Pennsylvania planning process?

MR. ELLIS. We have several responsibilities in regard to the plan. I can make a distinction from the outset from two plans. There is the State administrative plan and then there's the services plan, and I think that you are probably referring to what we call the comprehensive annual services program plan.

MS. GEREBENICS. Right.

MR. ELLIS. Okay. In that plan, we review it in terms of what we call FFP, FFP being Federal financial participation. In the Title XX regulations there is a subpart (c), and there is about, oh, I don't know, half a dozen or so regulations under subpart (c), and when the State publishes their proposed plan, usually in March or April, we review that in regard to FFP issues.

Then, as Sherry explained, there's a public hearing for a 45-day period when the State comes back on July 1 and submits a final plan. We then review the plan, not only for FFP, but we see if the State has made any changes from the proposed plan to the final plan.

MS. GEREBENICS. If they have, you are doing that review just to assess the impact the public hearings had or just to—

MR. ELLIS. Yes, that's one thing. We want to see what kind of changes the State has because of maybe testimony was taken at the public hearings or any kind of written testimony that was sent up to the State agency.

MS. GEREBENICS. The State is required to explain the changes and give the reasons for the changes?

MR. ELLIS. Yes.

MS. GEREBENICS. I see. What would be the responsibility if in fact you didn't think the changes were justified, based on the public hearings or the testimony? What would be your next step?

MR. ELLIS. Well, it really isn't a question of if the change is justified. Our purpose for the review is just to make sure any changes they made would qualify them for the Federal financial participation. Now, beyond that we sort of monitor their services program for the entire year, but as far as the publication of the plan goes, that's the process that we go through.

MS. GEREBENICS. What does your office do if the State is found in some way to be in noncompliance with Title XX regulations?

MR. ELLIS. Okay. I don't want to be too technical, but when you use the term "noncompliance," as far as Title XX regulations go that would only relate to the administrative State plan, and just—for example, the

administrative State plan says that they have to comply with Title VI of the Civil Rights Act; they must hold fair hearings; they must maintain records, they must have a maintenance of effort; and that's where there would be a question of noncompliance, and I really think what you are interested in is where we would have some kind of difficulty if the State was not following what they had in their services plan. All right.

That's a question of, once again, where we would take back FFP through a disallowance process. For example, if the State, through some kind of a program review, or when we audit their financial records, if they were not serving eligibles, because in the plan they describe the client population, if they were not providing proper documentation either for fiscal records or for programmatic records—then we would get together with the State and we would point out the deficiencies. In a review, if the State failed to document either programmatically or fiscally—fiscally, for example, if they had certain invoices and they were claiming to serve a certain population for Xnumber of dollars and couldn't document that, or, programmatically, if they said they were serving an AFDC client and there was no documentation for that, we would meet with the State and tell them where we have identified certain deficiencies. We would then ask them in a 60-day period to make corrections.

In the meantime, we would tell the State we are deferring payment of that particular service for a 60-day period. At the end of the 60-day period, the State would send to us the proper documentation. If they fail to send the documentation within the 60-day period, then we would make a recommendation for a disallowance of those dollars for that particular service. A disallowance would mean that when the next quarter in which we reimbursed the State for their expenditures, that particular amount would be deducted from whatever total that the State would be due for that particular quarter.

MS. GEREBENICS. In the event of some sanction like a disallowance, do either the participating agencies, other than the department of public welfare, or individuals have any rights that you would be required to protect?

MR. ELLIS. All right, sure. For the State agency, if they disagree with our recommendation for disallowance, there's an appeal process. They would appeal to our commissioner in our central office in Washington, and once the State would file an appeal, the responsibility for the decision is taken out of the region and is left solely with the commissioner in our central headquarters.

MS. GEREBENICS. Is that the sole route, the appeal route?

MR. ELLIS. Yes, for the State agency?

MS. GEREBENICS. Yes.

MR. ELLIS. Now I don't know if you are implying for clients. There's a fair hearing system.

MS. GEREBENICS. Right, if you could just explain that; also, the individual's rights under that.

MR. ELLIS. Okay. If an individual who made application—or even if they went beyond the application process and was a recipient of a Title

XX service, let's begin with the applicant. If somebody wanted to make application for a Title XX service, and for one reason or another was either denied that application by the provider agency or by one of the State agencies who directly delivers the services, that person is entitled to a fair hearing, and within a 30-day period the State must give that client a hearing to listen to why the State has refused that person application, and that person can state why they believe they should have the service, and then if the person is already receiving a Title XX service, and for whatever reason the State should decide to terminate that service, that client then also is allowed to have a fair hearing.

Ms. GERE BENICS. Thank you.

Ms. Kelly-Dreiss, before you begin, I was going to ask you to begin with filling in where Ms. Knowlton left off on the history of the coalition attempting to get the Title XX funds, but we've had several people from the coalition speak yesterday and I don't think we actually got on the record a description of the coalition and what it does.

Ms. KELLY-DREISS. Oh, I'll be glad to put that on the record. The Pennsylvania Coalition Against Domestic Violence is a network of 31 domestic violence projects, including shelters, counseling centers, and hotlines, basically serving battered women and their children. And it was at the time when the Protection From Abuse Act was in the legislature that we were asked from the different existing programs—which at the time in '76 was about 10 programs—to come and testify on behalf of battered women. And once we met in Harrisburg through that process, we discovered there was a great deal more that we could accomplish together that we couldn't accomplish as individual programs. So it was out of that incentive to grow, and since that time we've grown enormously and, right now, including the 31 programs which are now members, there's approximately 30 other programs which are developing.

Ms. GERE BENICS. Thank you. If you could just go through the history of exactly your role in obtaining Title XX funds.

Ms. KELLY-DREISS. All right. Shortly after '76, two programs within their State were funded through the regional offices of the department of welfare, and in the following year several more programs were funded. They were appreciative of that funding, believe me. It really ended the bake sale orientation that most of the programs were operating on; however, what we were finding was that the policy was so inconsistent: in one area there would be funding for emergency room and board; in another area it would only be for counseling, and as Sherry said, the amounts were greatly differing.

In one area, \$100,000 was available. In the northeast section of Pennsylvania, three different programs were approached with a \$30,000 leftover and asked to split that among themselves, so each one ended up with approximately \$10,000.

So, in order to address the inconsistencies, we started to talk among ourselves. We also supported our programs to enter into the hearings, the public hearing process, and would help generate materials and so forth for those hearings. We were very fortunate in having contacts within the department of welfare that did include us in preplanning

meetings, and we were exceptionally fortunate when the administration, under Governor Thornburg, did appoint Helen O'Bannon as secretary, and we saw a real policy change at that point.

I think it was consistent with a growing awareness of the need for these services under Protection From Abuse, but I think she really did have a particular awareness about how the victims of domestic violence and the victims of rape were in great need of direct services under Title XX, and that it was in compliance with Federal regulations.

MS. GEREBENICS. What is the total budget you will be working with beginning on July 1 and how many shelter programs does that cover?

MS. KELLY-DREISS. As of July 1 we will be contracting for approximately \$2 million and this will cover 28 programs across the State.

COMMISSIONER SALTZMAN. What are the programs?

MS. KELLY-DREISS. About half of them are shelters and the other half are either counseling centers or hotlines.

MS. GEREBENICS. What is the coalition's role in the administration of that grant?

MS. KELLY-DREISS. The coalition will be the conduiting agency. We will be the prime contractor and, as such, we will be the administering body. We have participated already in an RFP [Request for Proposal] process and in reviewing those requests for proposals, and through a review process of our own in which we were very careful not to get into areas of conflict of interest, we have already approved 28 of those proposals.

Through the year we will be responsible for administration. We will be responsible for technical assistance to the programs to make sure that, if they have difficulties in fiscal management, that we help them through that. Title XX, as you may know, is an extremely complicated system when you first start out. Once you get it under control, I think that programs find it's quite simple and it fits into the program management, but for our programs coming out of a real grassroots orientation, we really see a benefit, a great benefit, to having the coalition as an intermediary to provide that kind of technical assistance.

Also, we will be getting into program monitoring and in this function we will be working with the department to standardize some regulations, and then to work towards compliance for our programs under those regulations.

MS. GEREBENICS. Thank you.

Mr. Berta, what is the history of the Central Pennsylvania Legal Services participating in the Title XX Program?

MR. BERTA. Well, Legal Services first contracted with the department of public welfare for expansion of legal services somewhere late 1971, but I believe it was 1974 when we first started receiving actual Title XX dollars. As mentioned before, I think Title XX supplanted some funds that we had received under another title, so we actually started receiving Title XX dollars, I believe, in 1974.

MS. GEREBENICS. How much of your budget, total operating budget, comes from Title XX funds, in percentages?

MR. BERTA. Currently, about 44 percent of our program in particular—44 percent of ours comes from Title XX.

MS. GEREBENICS. And the rest comes from Legal Services?

MR. BERTA. The majority from the Legal Services Corporation.

MS. GEREBENICS. Has the dual funding under Title XX and the Legal Services Corporation presented any particular problems to the administration of Legal Services in Pennsylvania?

MR. BERTA. Yes, it's actually caused considerable problems. I guess the first thing I have to state is that we have had a declining funding base, and we're getting less money overall this year than we did several years ago. In addition, with the effect of inflation and whatever, we have less staff than we had during the last several years.

Now, the Legal Services Corporation, for instance, recognizes that problem and requires that we set priorities for services. We simply cannot serve everybody that comes in the door, and there is a conflict between the priority type system, where we serve only those things our clients and our staff and community people recognize as the priority area, and the Title XX regulations under which we have to either list cases that we handle or we exclude. For instance, under this issue of Protection From Abuse, it is a very high priority, but we can't, under Title XX, we can't simply say we're going to handle 10 times as many of those types of cases and only 5 housing cases, for instance.

The demand for services is determined exactly by who walks in the door, and if we either handle a case or we don't handle it under Title XX, again, our Legal Services Corporation funding, we would prioritize and try to put the majority of our money into the high priority areas.

MS. GEREBENICS. Thank you.

Mr. Chairman, I have no further questions at this point.

CHAIRMAN FLEMMING. Commissioner Horn?

VICE CHAIRMAN HORN. On your last point, Mr. Berta, I am very interested in the split funding. From your experience in Legal Services, is this becoming generally true around the Nation, that Title XX funds are supporting perhaps more than two-fifths of Legal Services' operation, or is this just unusual because of the program interest in central Pennsylvania?

MR. BERTA. I think it's gone the opposite direction. In those areas where we've seen Title XX funding of Legal Services, for instance, Georgia, I believe, had a similar setup to Pennsylvania and they were almost completely defunded by Title XX for—I'm not sure the reasons for that. I know in other States the amount of dollars committed towards Legal Services by Title XX is declining.

VICE CHAIRMAN HORN. Does Legal Services keep statistics nationally which show the breakdown between Legal Services' funding, Title XX, other Federal monies, perhaps State and private monies, etc., in operation?

MR. BERTA. Yes, they would.

VICE CHAIRMAN HORN. I would like, Mr. Chairman, to have that exhibit put into the record at this point, perhaps with some trend data of the last 3 years, because I'm impressed by the testimony I've heard from Legal Services' attorneys, with the argument that was made very well by Ms. Rourke this morning, that she's paid to do a job; therefore,

she can be helpful to clients because she does not have to worry about paying the rent that month; the rent is going to be paid.

But with Legal Services becoming more available, so individuals can properly gain access to utilize them, and the problems of inflation, which you pointed out, tightening of the Federal budget, I think we have a very real concern as to how we do fund these activities so that people who are poor will have access to the legal system to solve their problems, and I just would like to see this laid out in a chart so we can see where the trends are.

CHAIRMAN FLEMMING. Without objection, that will be inserted in the record at this point.

VICE CHAIRMAN HORN. To your knowledge, does Legal Services keep national data in the domestic violence area as to the degree of program activity that might be going on? Is that a category on which you would report to Legal Services?

MR. BERTA. I'm really not sure because of the Pennsylvania setup right now. In order to be in compliance with Title XX regulations, all the Pennsylvania programs contract with the computer service that gathers all the information that we get on our intakes and then that information is—the information required by the Legal Services Corporation is generated from those reports, so I'm not exactly sure at this point what they do ask for, what they do gather.

If that were available, it would have to be available to the Legal Services Corporation in Washington.

VICE CHAIRMAN HORN. Right.

To your knowledge, Mr. Ellis, Ms. Knowlton, does Title XX accumulate data in a category that one could isolate as programs in domestic violence, or how would you label those programs?

MR. ELLIS. We would have that data. We have a reporting system that we require the station to make, but it is not broken down that anybody could identify services to people who would be eligible, who have been abused.

VICE CHAIRMAN HORN. Well, that's what I'm interested in. In other words, you know of no national statistics that are gathered as to the extent to which Title XX funds programs in the areas dealing with domestic violence?

MR. ELLIS. No.

VICE CHAIRMAN HORN. Do you, Ms. Knowlton?

MS. KNOWLTON. As far as legal services go, legal services to victims of domestic violence, I'm not sure. I think—

VICE CHAIRMAN HORN. I'm thinking of any services.

MS. KNOWLTON. Okay. There are comparisons of services on a national level on a broad scale, like under protective service for adults, but I don't think it would be specific.

VICE CHAIRMAN HORN. Let's ask staff to pursue this with Health and Human Services and, Ms. Kelly-Dreiss, can we have staff pursue this with an exhibit at this point in the record.

CHAIRMAN FLEMMING. Yes.

MS. KELLY-DREISS. The State of Illinois has been the only State prior to Pennsylvania contracting primarily for services to victims of

domestic violence. They have been doing that for 2 years, so I think by now they probably do have some statistics on how Title XX services are used.

VICE CHAIRMAN HORN. Good.

CHAIRMAN FLEMING. Commissioner Saltzman?

COMMISSIONER SALTZMAN. Ms. Knowlton, Mr. Ellis, yesterday we received testimony basically representing an attitude from the judiciary that domestic violence did not seem to be a crucial public issue, at least from their perspective, in terms of the number of cases that came before them, and I wonder on what basis do you, representing your various positions, consider this issue to be of sufficient significance to receive public funding? What are the criteria?

MR. ELLIS. Let me answer first, please, because under Title XX, unlike the two titles that Title XX replaced, IV - A and VI, the Federal Government does not mandate any services. The services that the State serves the public with Title XX dollars are decided upon by the state, so there is no way in which we can say you should serve *X* number of people for abuse cases; however, informally, in our meetings with the State in the course of a program year, we try to recommend and suggest the various ways in which they can use their dollars to better serve people who are in need, and certainly we are concerned, from the Federal level of the growing—at least, perhaps it is not growing, I think it is just being brought to more public attention—of the abuse of women, so in our discussions we would encourage the State, but the final decision on how they are going to use the Title XX dollars rests solely upon the State.

MS. KNOWLTON. Okay. I believe the department's decision was based on, as I said before, a lot of public testimony at hearings, other testimony that we received from shelters that had started, who had just a large amount of clients, women, coming to them for help. I'm not sure that the fact that the judicial system has not seen a lot of domestic violence cases means that there's not a public need for service to the victims. As in rape cases, a lot of domestic violence situations simply aren't reported or taken to court, so that I'm not sure there's a link there.

COMMISSIONER SALTZMAN. May I ask you, Mr. Berta, I felt in testimony given to us, again, I think it was from the judiciary yesterday, an implication that the Legal Services organization is really an instigator of cases around domestic violence, encouraging women to take their grievances to court, that the majority of cases—in fact, I think one judge said that every single case that he ever had was brought to him by LSO, that he had no private counsel bringing a case to him, and this suggested that the LSO was sort of farming for or fishing for clients.

MR. BERTA. Well, I would say that one of the provisions of our contract with the department of public welfare is to provide legal services in the protective service area without regard to income, and since that is made a high priority by that provision, I think that's maybe one reason that we have many people coming to us.

I think another area is that we have—a lot of our staff attorneys are very active in this area on their own time, and things, working with

womens' shelters and trying to set up provisions. Some of our counties that we operate still don't have shelters, for instance, but we have a lot of our staff attorneys that do volunteer work and do counseling and things like that. So I think we're very much involved in that area and that may be one reason, but I would disagree with the contention that we are an instigator of it, but we simply represent clients.

COMMISSIONER SALTZMAN. I think you mentioned that you handled the cases in terms of people who come in. You don't reach out. There's no outreach, is there, to—

MR. BERTA. No, none at all, none at all. We have to have a client. The client would have to come in the door. We would have to somehow have somebody contact us for the services.

COMMISSIONER SALTZMAN. You were speaking of priority that Legal Services has in determining what cases it will deal with. What kind of priority does the domestic violence case have?

MR. BERTA. We have three areas that are highest priority, which would be housing, domestic violence, and community legal education, and when we went through our particular program, going through a priority-setting process, we just determined those areas of high priority, medium priority, and low priority, and those three items, housing, domestic violence, and community legal education, come out as the highest priorities.

COMMISSIONER SALTZMAN. Is this on personal evaluation or is there some basis for establishing that order of priority?

MR. BERTA. It was done through a process where we went throughout the community and in each one of our counties we held meetings. We had people come in—clients, social agency workers, our own staff, our board members in each of the communities talked about the legal problems they had, what they felt needed to be done. They developed lists of everything. Then we brought them together in county meetings and then had those counties come together in a programwide meeting and then through that process we developed a list of priorities, so, basically, the overwhelming participation in our priority process was by clients who were eligible for our services.

COMMISSIONER SALTZMAN. Thank you.

CHAIRMAN FLEMMING. Commissioner-designate Berry?

COMMISSIONER-DESIGNATE BERRY. So you would say then, Mr. Berta, that your office definitely did not stimulate this activity in the area of domestic violence, despite what the judiciary would think?

MR. BERTA. No, we did not.

COMMISSIONER-DESIGNATE BERRY. But you did say that it's one of your highest priorities. You listed three items: housing, domestic violence, and community legal education.

MR. BERTA. Yes.

COMMISSIONER-DESIGNATE BERRY. And you do make some choices about what cases you will take when they come into your office; isn't that correct? You just said you can't take everything.

MR. BERTA. Well, but under Title XX the decision is made then after we set the priorities, and that's the conflict I have been talking about earlier. Once we set the priorities, then we have to file a list of the

cases that—case types that we will exclude, so we took some items that were in the lower part of the median priority and some of the low priorities and we excluded those. All other cases we will handle regardless of how many come in the door, so in those items that are priorities, if somebody needs representation in that area and they qualify for our services, we will represent them.

COMMISSIONER-DESIGNATE BERRY. Is there anything wrong with your considering domestic violence to be an important item that should have a high priority?

MR. BERTA. Not at all. I guess, moreover, it was not our decision, but it was that of the people that we represent.

COMMISSIONER-DESIGNATE BERRY. The other thing, Ms. Knowlton, is the department of public welfare here in Harrisburg somehow related to the department of—what is it—health and public welfare, the State department? Is there any relationship between the two?

MS. KNOWLTON. Only that we receive funds from them.

COMMISSIONER-DESIGNATE BERRY. No, no. I mean do they, the local department, department of public welfare—

MS. KNOWLTON. Excuse me?

COMMISSIONER-DESIGNATE BERRY. —is that a subsidiary of—

MS. KNOWLTON. Yes, that's one of our 67 county assistance offices, the one here in Harrisburg.

COMMISSIONER-DESIGNATE BERRY. We had a witness in the other panel from the department of public welfare in Harrisburg who suggested that domestic violence cases did not have any priority and there was no major emphasis placed on this, and there was no particular significance to dealing with such people, and, if I understood your answers to the question correctly, in the State department of public welfare there is some concern about this, some emphasis, Title XX regulations were rewritten to include shelters and the like. What accounts for the difference in perception locally as compared to the State office's perception of this problem?

MS. KNOWLTON. I would think that perhaps one of the things is that we are really having our concerted efforts starting July 1, okay, to fund the Pennsylvania Coalition Against Domestic Violence, and perhaps that emphasis hasn't filtered down to the local level at this point.

COMMISSIONER-DESIGNATE BERRY. So that, if we were to ask them months from now in this local office, they would realize that it was a priority and that people were interested in it and concerned about it and it had a major significance, at least in the State office?

MS. KNOWLTON. I would hope so. Yes.

COMMISSIONER-DESIGNATE BERRY. Thank you very much.

CHAIRMAN FLEMMING. Commissioner-designate Ruckelshaus?

COMMISSIONER-DESIGNATE RUCKELSHAUS. Ms. Kelly-Dreiss, I was interested to notice that you are shortly about to begin another training session for the State police. Is this the second one?

MS. KELLY-DREISS. No, we have had about nine training sessions for police and during—some of them are local police and some are State police.

COMMISSIONER-DESIGNATE RUCKELSHAUS. Could you give me some idea about how you go about encouraging State and local police departments to take part in your program and what kind of cooperation you find and whether they extend what they have learned in the programs to their local communities when they go back?

MS. KELLY-DREISS. Sure. This project is sponsored, has been sponsored, by LEAA through our State commission who funds the LEAA funds. We have been doing police training for 1 year and the need to do it was pretty clearly established from our local programs, since the police were the front-line people.

We started doing police training in those areas that requested us to come in to do it. If we got a call from—let's say in Pittsburgh, that they wanted us to come in with our staff and do a police training, then that's where we would go. We would generate the local interest through contacting the local chiefs of police and explaining the training sessions and talking with them about the problems they have around handling domestics, and just opening that up leads to getting lots more requests for training because, in addition to the serious bodily injury to police and the number of deaths to police, which is about 21 percent of all deaths are in response to domestics, and also just the inability or the frustration that the police have in handling domestics is so high. Just the idea of getting some training has been welcomed in every one of the areas where we have made contact.

The 3-day training session has included a history of abuse; it has included some discussion of the Protection From Abuse Act, and we spent a whole day talking about crisis intervention. We break it down so that it gets to be a very personal training to the policemen that are present and part of that—I guess we do that in two ways: one is that we do have a participant who is a State trooper, who was a battered woman, who can talk about what it was like to be a battered woman, but also what it's like to be a cop now. She is very effective. We have videotaped her doing a training session. She will be here this afternoon in your panel. We also do role playing, and recently we had a role playing done in media with the police in Delaware County which was extremely effective. Whenever a policeman can take the role of a victim and have someone else take the role of an abuser and perhaps for the first time in that person's life realize what it is like to be victimized, and to seek help and then to be further victimized by the folks that you have called for help, and that often happens.

I think part of why we see the criminal justice system not responding very well is that it's often a first line approach and people, such as battered women, have had a real bad history in calling for help and having a cop come in and saying, you know, "Well, just cool off for a little while," and then that person leaves, and as a matter of fact, all hell breaks loose because she did call the police. So there's a real systematic approach here that we are hoping to work with the police in understanding why it is important for them to go in with an attitude that this person may not immediately divulge all the problems she's having because she's pretty frightened in that position. This is the police training that we've been doing.

COMMISSIONER-DESIGNATE RUCKELSHAUS. I was just thinking how useful that might be for some of the members of the court. We heard yesterday that there were always openings in the various State meetings that the district justices have for additions to programs. Maybe there would be an opportunity to develop some kind of—

MS. KELLY-DREISS. Well, we're working on that. Under the same grant proposal that we're doing police training, the second year of that now is in developing court training. Now, we're not as—we wouldn't dream of developing court training at higher levels at this point, but we are doing court magistrate training right now.

What we hope to do is participate in their formal training for all new magistrates and on their continued training during the summer for—it's like a refresher course. We have written a manual, and we hope to start in the coming year in participating in that training.

COMMISSIONER-DESIGNATE RUCKELSHAUS. Thank you.

CHAIRMAN FLEMMING. Mr. Ellis, it is my understanding that there is now in the Office of Human Development Services within the Department of Health and Human Services a special unit on domestic violence. Have you been made aware of the creation of that particular unit and the functioning of that unit?

MR. ELLIS. First, Mr. Flemming, I am aware of the unit. I am not particularly aware of the function of the unit.

CHAIRMAN FLEMMING. You're not aware as to whether or not that unit now has funds that could be made available for pilot projects and so on?

MR. ELLIS. No, I don't. I'm not saying no, but I'm simply unaware.

CHAIRMAN FLEMMING. Have you received, from either the Secretary's office or the Office of the Assistant Secretary for Human Development Services any particular communications relative to domestic violence, particularly as it might apply to Title XX or to any other programs in the regional office?

MR. ELLIS. From the Assistant Secretary's office, domestic violence in general is an initiative for the next fiscal year, fiscal year beginning October 1, 1980. That would be for fiscal year 1981.

CHAIRMAN FLEMMING. You said the Assistant Secretary's office has identified it as an initiative for fiscal year '81?

MR. ELLIS. Yes, sir.

CHAIRMAN FLEMMING. That would mean that, as you work with the States in the region in connection with Title XX—and I appreciate the fact that you don't issue any instructions as to the programs that are being financed, but you do have a leadership function?

MR. ELLIS. Sure.

CHAIRMAN FLEMMING. And as you work with the States in the region, this is one of the areas to which you will be calling attention?

MR. ELLIS. Absolutely. When we have an initiative, we generally as a rule have milestones for that particular fiscal year.

CHAIRMAN FLEMMING. Right.

MR. ELLIS. We will, for example, outline for the State what we would like to see happen in the area of domestic violence, and then we

will set up various points in the four quarters of the year: "We'd like you to do this in this quarter and follow through," and so forth.

CHAIRMAN FLEMMING. This is a first as far as the Department is concerned? This is the first time they have identified this as one of the initiatives?

MR. ELLIS. Yes.

CHAIRMAN FLEMMING. I think that we should obtain for the record the communication from the Office of the Assistant Secretary identifying this as one of the initiatives for '80 - '81 and indicating the procedures that are to be followed, which Mr. Ellis has very clearly identified, because this has implications for the entire country as far as this program is concerned.

Ms. Kelly-Dreiss, I noted that your grant for the coming year from under the Title XX funds is \$2 million, that this will finance 28 programs, 14 of which involve shelters. First of all, could I ask, on the other 14—does that mean there aren't any shelters connected with the other 14, or does it mean that you are financing some supportive services that might tie into shelters?

MS. KELLY-DREISS. Yes and no. In some areas, especially around metropolitan areas, some of the services we are financing are supportive. They may be a counseling center from which shelter people can go after they've been in shelter. I would think for the most part, however, those nonshelter programs are hotlines in areas which may be rural areas that simply have not grown into being a full-fledged shelter yet.

CHAIRMAN FLEMMING. Could you relate the \$2 million that will be available beginning with the new fiscal year to what you feel that the programs that are going to benefit from this \$2 million may have been spending this year? I'm just trying to get an order of magnitude. I appreciate that that may be a question that you just can't answer.

MS. KELLY-DREISS. All right. This year is a bad year, you know, with the LEAA programs drying up, so we had done a very cursory study of the funding needs at the beginning of '80, and what we were looking at is that if every one of the programs that we know of could have the funding that they felt wasn't lavish but it was what they needed to run their grassroots operation, what we came up with was a figure of about \$5 million.

CHAIRMAN FLEMMING. I think you did give us this figure, but if you would just refresh my memory as to the number of shelter programs that are now operating in the Commonwealth of Pennsylvania, I would appreciate it.

MS. KELLY-DREISS. Well, currently there are 16 shelter programs.

CHAIRMAN FLEMMING. Sixteen. You've got a view of the State as a whole. How many do you think are really needed as of the present moment to respond to the needs that exist in this particular area?

MS. KELLY-DREISS. Shelter programs?

CHAIRMAN FLEMMING. Yes, shelter programs.

MS. KELLY-DREISS. Well, we have 67 counties in the State, and there was some discussion at some of our coalition meetings about the need for those counties having a shelter of their own, and I think we pretty much agreed that if every two to three counties who were not large

metropolitan areas could have a shelter, that would suffice, and we came to the fact that approximately 30 to 35 shelters, along with other supportive services, would probably—we would hope, what we're finding is that as shelters are established, then the numbers of victims that flock in accelerate. So from what we can gather, 30 to 35 programs would be sufficient.

CHAIRMAN FLEMMING. In other words, you've got about half as many as you need?

Ms. KELLY-DREISS. What we would like to have.

CHAIRMAN FLEMMING. Well, as the State really needs at the present time?

Ms. KELLY-DREISS. Yes.

CHAIRMAN FLEMMING. Now, you mentioned the fact that up until now you have been dependent on LEAA funds and they are tending to dry up, and, fortunately, Title XX funds are coming along in order to be of help in dealing with the program.

What is your feeling as to the willingness on the part of local government and the willingness on the part of the private sector to provide support for shelters? Is that picture an encouraging picture? Is it one that is more encouraging now than it was 5 years ago?

I'm trying to get the feeling—let me just say this, I said this yesterday, as a result of our national consultation, the hearing that we held in Phoenix, and so on, I'm tremendously impressed with the role that the shelters play in dealing with this total issue, and I think that it is very, very important, looking at it nationally, for us to try to think our way through to the kind of a program that will provide meaningful shelters on a national basis.

What I'm trying to identify are the possible sources of support for it. Now, the Title XX development is a very encouraging one to me. The step that the Assistant Secretary for Human Development Services has taken is certainly a very encouraging development. The fact that there is now a special unit in the Office of Human Development Services and that that unit is beginning to get some money is an encouraging development, but it is a very modest start; it is being provided with goodly—parenthetically, have you had contact with that particular unit, has your organization had contact with them?

Ms. KELLY-DREISS. Yes, we have. The Office on Domestic Violence—we have been in contact with them.

CHAIRMAN FLEMMING. That's good that that communication has been set up, but I go back to my question, just looking at this financing picture, you've had some encouraging developments from the public sector point of view, some not so encouraging at the Federal and State level. What picture do you have? What feel do you have for the local government level and, also, the private sector type support?

Ms. KELLY-DREISS. Well, I've been in this movement for some time—

CHAIRMAN FLEMMING. I gathered that.

Ms. KELLY-DREISS. --and was working at the local shelter some years ago and in many ways seeing Title XX money become available is a real change. It's the first credible funding and stable funding we've

ever had. However, out of all the country we're only the second State to really generate that kind of policy, so I really, overall nationally, think it does not look terribly promising.

On the local levels, what we're seeing is—well, we see different things: at the State level, within the States, we are seeing some legislation develop to provide funding out of pockets of money, revenues, for example, out of marriage license fee increases or out of fines at the time of crimes, that amount. In the State right now here, we have legislation that would provide for an office on crime victims.

CHAIRMAN FLEMMING. That's pending legislation?

MS. KELLY-DREISS. That's pending, that's S.B. 744 and 745. I often have the feeling, however, that we are really dealing with an "old boy" network and it is very difficult to break through that network. Whenever we go for funding, we are constantly educating individuals about the problem, because there is an overall attitude that this is not a serious problem and that, if it is a serious problem, it's not a public problem, so we find where we do legislative education for 2 years and hope to get a bill passed the next year.

I think the same factor exists in foundations and in private monies. There have been a few foundations that have been particularly supportive, but even the foundations which you might expect to be sensitive to this issue as a women's issue, such as the large cosmetic foundations, Avon, Revlon, give no monies on this issue. So I feel sometimes as if the programs epitomize the victim and also are victims of the system whenever we really look towards getting support, both in the courts and in finances.

CHAIRMAN FLEMMING. Can you generalize as to success or lack of success in getting into United Appeal budgets at the local level?

MS. KELLY-DREISS. Well, in some ways that is changing. The United Way in Pennsylvania, for example, has been slowly supporting more and more of our programs, so I do see that as possibly changing.

CHAIRMAN FLEMMING. Mr. Berta, on the Legal Services, I get the distinct impression from listening to you and then listening to witnesses that preceded you, and in many respects you feel much more comfortable utilizing Title XX money than you do at times Legal Service Corporation money; that is, you don't have quite the same restrictions.

Now, I appreciate the fact that the restrictions that the Legal Services Corporation is working under are very largely restrictions that have been built into the law step by step by the Congress. It seems to me that every time you have an authorization, why, you get some new restrictions built into the law, which I think is a very unfortunate kind of development. I was interested in the fact that your understanding with the State on your Title XX funds is that those funds are available to people without regard to income, for example.

MR. BERTA. Yes, that's correct.

CHAIRMAN FLEMMING. And that means that you can relate to this problem in an overall way to an extent that you couldn't if you were relying solely on Legal Services Corporation funds; am I correct there?

MR. BERTA. That's correct.

CHAIRMAN FLEMMING. Are there any other restrictions as far as the Legal Services Corporation, as far as the law is concerned, the regulations under the law, that impede your ability to respond effectively to the needs in this particular area?

MR. BERIA. Actually, no. The Legal Services Corporation has worked fairly well in allowing us to adopt Title XX regulations; it is interesting you said that because, in many ways, I think Title XX regulations are far more restrictive. It is just this one area that they are more liberal, but they have allowed us to adopt—for instance, the Legal Services Corporation income guidelines are considerably higher now than the ones we use for Title XX.

In Pennsylvania, for legal service we use 40 percent of the State median income, and that's lower than the normal eligibility for other Title XX services, and, again, that's just a matter of trying to reduce the number of people that are eligible for our services that we can handle, but the Legal Services Corporation has allowed us to adopt a lower income guideline, and they've allowed us to coordinate a number of the things in a number of the areas.

CHAIRMAN FLEMMING. Right.

Mr. Ellis?

MR. ELLIS. Mr. Flemming, at the risk of being a consummate bureaucrat, I would like to make a couple of clarifications.

CHAIRMAN FLEMMING. Yes.

MR. ELLIS. One, in regard to services without regard to income. Under Title XX there are only a few services that can be provided without regard to income: family planning, for minors, and for protection of children and adults; however, on what we refer to, generally speaking, as legal services, that is another service, for example, the same as day care would be, and that would be restricted. The State could not serve beyond 115 percent of the State's median income for a family of four adjusted accordingly, so there is an income restriction on Title XX as far as legal services would go.

Another clarification—and I'm not trying to put oil on the fire here, but when we talked a few moments ago in regard to priorities; I don't want to use semantics here, but the Title XX regulations prohibit the use of a provider prioritizing or for a State, as far as that goes, from prioritizing; however, they are allowed to set, which they do in Pennsylvania in regard to legal services, categories of need. The State, in their contract with the Legal Services Corporation, can set up categories of need, but not prioritize.

CHAIRMAN FLEMMING. I get the distinction.

MR. ELLIS. Let me make one further clarification. In regard to Title XX dollars that would go for the battered woman in the shelter, it would be the services and not the operation of the shelter or the cost of the construction of a shelter. Unfortunately, Title XX regulations prohibit the operation of a shelter for adults. Unlike for children in Title XX, there is a restriction in which emergency shelters can be used in a 30-day period over—for 30 consecutive days over a 6-month period. They wouldn't have to be accumulative. However, there is a restriction for the cost and operation of the shelter for adults. The Title XX

money that the State would use would be for the services to the people who are in the shelters. I'm trying to make that distinction.

CHAIRMAN FLEMMING. All right. Is that restriction a regulation or is it in the law?

MR. ELLIS. I'm in dispute here from my colleague from the State. Okay. Sherry has told me, which I agree with certainly, if it is an integral, a subordinate part, the State may pay for room and board.

MS. KNOWLTON. And we do.

MR. ELLIS. But it has to be in their State plan. They would have to articulate that; they just couldn't arbitrarily decide that they were going to pay for room and board. It would have to be in the State plan.

CHAIRMAN FLEMMING. Is this regulation drawing a contrast between adult centers and child centers? Is that a regulation or is that in the law? Do you know? We'll look that up.

MR. ELLIS. I think it is in the law. I'm not sure.

CHAIRMAN FLEMMING. If it is a regulation, why, we can get after it.

MS. KNOWLTON. I think H.R. 3434 just changed that.

CHAIRMAN FLEMMING. Okay. Even if it is part of the law, why, we can make some recommendations designed to clear that up. This leads me to my final question. This has not come up, but as far as HUD community development funds are concerned here in this State, have any of those funds been utilized for shelter programs?

MS. KELLY-DREISS. Yes. Not to a great degree, but I can think offhand of three programs within the State that have used the HUD community block grants.

CHAIRMAN FLEMMING. But your understanding is that, from the standpoint of the Federal regulations, it can be done? It depends on getting the community, the local government around to the place where they are willing to use a part of their allotment for that particular purpose?

MS. KELLY-DREISS. Exactly.

CHAIRMAN FLEMMING. But the funds are there and could be used in that way?

MS. KELLY-DREISS. That's right, and hoping that the local government is in compliance. As in Philadelphia, we have had a problem over the last few years.

CHAIRMAN FLEMMING. That's right. They have to be in compliance with certain standards and so on.

Well, we're very, very appreciative—

MR. NUNEZ. May I?

CHAIRMAN FLEMMING. Pardon me, Mr. Nunez.

MR. NUNEZ. Pardon me, Ms. Kelly-Dreiss, I have several questions. I understand you get funding from Title XX, private funds, and LEAA funding. Do you get any State funds for your program?

MS. KELLY-DREISS. The only State—and you're meaning out of general revenue State funds?

MR. NUNEZ. Yes.

MS. KELLY-DREISS. No, we do not.

MR. NUNEZ. So, really, State social welfare, or department of welfare, is a conduit for Federal funding.

My second question is, you are more than a conduit; you actually provide services to these approximately 14-30 programs. What percentage of the \$2 million would you be entitled to under your services?

MS. KELLY-DREISS. Okay. Of the \$2 million contract for the technical assistance and the administration, our contract is for \$79,000 to administer that.

CHAIRMAN FLEMMING. Very modest.

MS. KELLY-DREISS. We are very modest, yes. We still are grassroots. However, we do have approximately a \$100,000 budget that we are hoping to be able to maintain, as LEAA is diminished, that does provide for other support services that will be integrated into the administration.

MR. NUNEZ. One final question as to your governance. How is your policymaking board made up? Is it a coalition of the other agencies?

MS. KELLY-DREISS. Yes, it is. In the coalition, it is made up—the governing board is made up of one delegate from each of the member programs so that our board reflects the actual programs themselves.

MR. NUNEZ. Thank you.

CHAIRMAN FLEMMING. Well, we are grateful to all of you for being here with us and providing us with this kind of testimony. It's been very, very helpful. I thank you and best wishes.

Counsel will call the next witnesses.

MS. STEIN. Joseph Rehkamp, Mabel Shoemaker, Edwin Frownfelter, and John Riegler. Would you come forward, please?

[C. Joseph Rehkamp, Mabel Shoemaker, Edwin Frownfelter, and John Riegler were sworn.]

TESTIMONY OF C. JOSEPH REHKAMP, DISTRICT ATTORNEY, PERRY COUNTY; MABEL SHOEMAKER, DISTRICT JUSTICE, FRANKLIN COUNTY; EDWIN FROWNFEITER, ATTORNEY, LEGAL SERVICES, INC.; AND JOHN RIEGLER, SERGEANT, BLOOMSBURG POLICE DEPARTMENT, COLUMBIA COUNTY

CHAIRMAN FLEMMING. We appreciate your being with us.

MS. STEIN. For the record, could I ask you each to give your name, your position, and the length of time you have been in that position, beginning with you, Mr. Rehkamp?

MR. REHKAMP. My name is C. Joseph Rehkamp, district attorney of Perry County. I've been district attorney since May of '76.

JUSTICE SHOEMAKER. My name is Mabel Shoemaker. I'm a district justice in Franklin County, have been under the new system 11 years and 6 years prior, 17 years all told.

MR. FROWNFEITER. My name is Edwin Frownfelter. I'm an attorney with Legal Services, Incorporated. I'm a staff attorney in the Chambersburg office and managing attorney of the McConnellsburg, Fulton County, office. I have been in these positions since September of 1977.

MR. RIEGLER. My name is Sgt. John Riegler, Bloomsburg, Columbia County. I've been employed as a police officer for the past 14 years. I am now in the supervisory capacity.

MS. STEIN. Thank you. Mr. Rehkamp, would you please briefly describe your duties and responsibilities as Perry County district attorney?

MR. REHKAMP. Prosecute all criminal cases, private or police, in the county. I have an assistant now, just appointed this year, to handle support work, so my job is to prosecute all criminal cases.

MS. STEIN. In earlier testimony from the Perry County State police, it was said that last year they responded to approximately 115 calls for domestic violence related incidents. Can you tell us how many, if any, of these calls resulted in complaints being filed with your office for prosecution?

MR. REHKAMP. 115 last year?

MS. STEIN. Yes.

MR. REHKAMP. Well, if it goes to the State police, I don't get them in my office directly. They would file their own charges. If it was referred from the State police to me, if that's your question, I don't recall any referrals from the State police that resulted in prosecutions.

I've had private individuals contact me initially and they have resulted in prosecution, but I don't recall the State police asking me for help in processing a complaint. They may have a question in a particular case about what they should do when they go out to a scene. I have had calls like that, but I can't really give you a number.

MS. STEIN. Well, can you tell us, or estimate for us the number of charges that your office brought last year in interspousal cases of interspousal violence?

MR. REHKAMP. The ones that I approved, if those would just be private complaints last year, I'd say at the most 10.

MS. STEIN. And you say those would just be private cases. Does that mean that none came through the police department?

MR. REHKAMP. No. Some would come through the police department. Domestic violence cases, if that includes anything that occurs between husband and wife and family, I'd say about 10, maybe 20 altogether.

MS. STEIN. Okay. Can you recall in how many of those cases the case was disposed of by a guilty plea? Here I'm talking about the total number of cases, the 20.

MR. REHKAMP. I can only recall one case going to trial. It was a nonjury case. The rest of them were either pleas or charges were dropped by the victim.

MS. STEIN. In what proportions would you say pleas or the charges were dropped?

MR. REHKAMP. I'd say most of them were dropped by the prosecutrix, probably 70 percent; at one stage or another they were dropped.

MS. STEIN. What is your position when a woman wishes to drop charges against her husband for assault or aggravated assault? What position do you take?

MR. REHKAMP. I go along with it.

MS. STEIN. Do you ever attempt to dissuade her from doing that or to subpoena her as a witness?

MR. REHKAMP. What I attempt to do is, if it is a private complaint, I tell them that I'll approve the complaint if they go through with the charge. In other words, before they actually file the charge, I tell them that I want them to go through with it, and then, if they decide after that they want to drop it, depending on the charge, if it is a very serious offense, I'll try to get them to go into court, but if they don't want to do it, I'm not going to force them to do it. After all, they're the victim, and I haven't really had a case where a man has been arrested several times that I felt that he should be incarcerated.

You know, if I knew about him before, like five or six prior offenses, or less than that, I might do that. But I haven't had occasion to do that, to force a woman to testify against her will.

MS. STEIN. What do you think are the factors that cause a woman to decide to drop the charges in this type of case?

MR. REHKAMP. Oh, they vary. I remember one case, I think it was 2 years ago, where a woman was very severely battered. The whole side of her face was swollen twice the size it was, a lot of bones broken, oh, a complete mess, and then she decided to drop it for religious reasons. She had gotten religion and she decided she shouldn't prosecute her husband. That was the one serious case that I felt should go to court, but that she decided not to.

A lot of times they get back together. She decides that she wants to go back with him. I have had a case recently where the husband beat up the wife and was drunk, and I approved the complaint, put him in jail, and then she wanted him out of jail, wanted to go back with him, so it was dropped that way.

MS. STEIN. Do you think there are any factors that arise out of the rural nature of Perry County that contribute to the reasons why women drop these cases?

MR. REHKAMP. Well, if the woman doesn't have relatives in the area, most do, in rural areas, have relatives where they can stay; I think there's a lot of family pressure to keep the family together. I think a lot of the women decide to take their husbands back because of family pressure, and, really, it gets lonely up there and the family unit is very important. There's a lot of women—they don't have an alternative social life, you know, so I think there's a lot of pressure there to stay with their husbands.

MS. STEIN. If a complainant or chief prosecuting witness wanted to drop a case in a rape case, for example, where the assailant had been a stranger to her, would you drop the case in that situation without making a greater attempt to persuade her to continue?

MR. REHKAMP. I've never tried—I have always gone through with a rape case. We haven't had too many. I've never had that problem. I would try to persuade her to go through with it, yes, if it was a stranger.

MS. STEIN. Why would your action be different in that case?

MR. REHKAMP. Well, I haven't had any rapes between husband and wife.

MS. STEIN. Why would your reaction be different in the case of a rape than it would in the case of an assault of a wife by her husband?

MR. REHKAMP. Well, like I said, in a rape case, I really never had the problem before. I just said I would, if I had the problem. I don't necessarily consider a rape more serious than some things that happen between husband and wife, but I feel that since there is a relationship there between a husband and wife, and if they want to maintain it for any reason in the future, that that's a reason, I mean, they are married and I think that point is a distinction. If they want to live together, that's fine. If she wants to drop it because she wants to live with him, I'm not going to stand in the way.

MS. STEIN. What standard do you use in deciding whether an offense should be charged as aggravated assault rather than assault?

MR. REHKAMP. Extent of the injuries, if they are serious.

MS. STEIN. Can you give us examples of what type of injuries would be necessary to raise the seriousness to aggravated assault?

MR. REHKAMP. Well, the one I described, where there was broken bones in the face, I guess, generally. The law says impairment of physical function to the extent where someone is unable to keep up their daily routine or work or whatever. Sometimes broken arms, broken limb cases, most of the time they would be aggravated, I would think.

We had an incident just recently where a husband set fire to his wife. I was trying to come up with a charge that's more serious than aggravated assault and I couldn't find it, although we probably could have charged him with attempted murder; but those are the type of things that would be aggravated.

MS. STEIN. What happened in that case, just out of curiosity? Has that come to completion?

MR. REHKAMP. Yes, he finally pled guilty and was sentenced to 2 to 5 years in the State prison.

MS. STEIN. Could you tell us what impact you feel the Protection From Abuse Act has had on the incidence of domestic violence in your county?

MR. REHKAMP. My contact hasn't been that great because I don't process Protection From Abuse petitions, but my contact has been very favorable. I think it's been very helpful to provide a shelter for people, so I think the impact, although it hasn't been that extensive to my knowledge, I think in the isolated cases that I've been involved in, it's been very helpful for the family involved.

MS. STEIN. Where a protection order has been issued under that act and there's a violation alleged, what role do you play in enforcing the protective order?

MR. REHKAMP. I've never had one until just a couple days ago. There was a contempt of an order and I talked to the judge about it and he said that, as district attorney, I shouldn't handle it, so the legal aid attorney, who met with me in my office when I talked to the judge, is going to handle it. It is coming up this week, Thursday.

MS. STEIN. Prior to that time, had you viewed your office as having a role in enforcing protective orders?

MR. REHKAMP. I had. Like I said, I never had anyone come into me—well, I did have, yes, I did have one, alleging a violation. I had

the State police handle it. I'll take that back. I've had more of that type of thing where I act as an intermediary between the person that has the order and the State police, where I call the State police in and usually it is settled.

I never had, before this incident, had to take someone into court on a contempt of the order myself.

MS. STEIN. Had you ever told the police to inform women that, if they wanted to enforce a protective order, they would have to go through your office to do it?

MR. REHKAMP. Yes, I believe I have, yes.

MS. STEIN. And is that still your position?

MR. REHKAMP. Yes, it is.

MS. STEIN. That they would have to go through your office?

MR. REHKAMP. That the State police should contact me and make me aware of it. As far as having the woman come in to me, no, she could call me or, if the State police can handle it on their own, also, I wouldn't have to be involved. I'd like to be involved, but I don't have to be. It's not my policy to become involved in each case.

MS. STEIN. Have you or do you intend to contact the State police and let them know that your view has changed about whether they should tell women that they have to go through your office in these cases?

MR. REHKAMP. I just talked to Sergeant Krammes the other day and we're going to have a meeting in the near future with the judge. I haven't planned it yet, but I want to go over the procedure that should be followed in the future.

MS. STEIN. Are you aware of what's done in other counties?

MR. REHKAMP. No, I'm not.

MS. STEIN. In earlier testimony a State trooper from Perry County indicated that there has been some confusion about their authority to arrest on probable cause in cases of violations of a protection order and that a legal opinion had been sought from you on that question. Can you tell us what your position is?

MR. REHKAMP. Well, just recently I had a discussion with Sergeant Krammes about it and I went over the contempt section with him, and there was some confusion, and I told him that, according to law, whether on view or not on view, you can arrest someone upon probable cause for contempt and take them to jail. So I just told him that just, I think, yesterday or the day before, so I think that's clearer than it was before for them, I hope.

MS. STEIN. Prior to yesterday or the day before, had you advised the police at all about whether they should arrest if there was probable cause to believe the protection order had been violated but the violation did not occur within their view?

MR. REHKAMP. I can recall one incident where they went out and they weren't sure what to do and they called me, and I suggested that some paperwork be filed before they go out and pick this guy up at his home because the wife wasn't there at the home. She was at an apartment.

Then they decided after hearing that—they decided that in that particular case they wouldn't go out there because they didn't have paperwork and they didn't think it was necessary. The woman's life was not in danger immediately. They were out and saw that, so they didn't follow through on that.

MS. STEIN. Would your advice be different today?

MR. REHKAMP. No.

MS. STEIN. So, if a policeman called you, you would advise him not to arrest immediately where there was probable cause to believe the protective order had been violated but he didn't observe the violation?

MR. REHKAMP. No, I'd leave it up to him to decide whether or not there is a danger there, so that he should feel that, you know, if she is in imminent bodily danger from this man, then go ahead and do it, but use your discretion.

I think when you're talking about a situation where the parties are together in the same home, when the police go out there and he's beating her up and drunk, then, fine, I can see going through that procedure, just pick him up and put him in jail.

But where the parties aren't together and you're going into someone's home to pick him up and you have no paperwork, you say, "Well, the wife told us you beat her up today. We're going to take you to jail."

I think perhaps the husband has a right to object to that procedure. So I think there should be something, some type of paperwork like a complaint that they take from the wife to take with them and show the guy.

"This is what we're picking you up for. She's sworn to it." I mean it's something that's sworn to, because I've had situations where people told me things that later turned out not to be so true.

They tend to exaggerate to put her husband in jail, and I don't think it is fair to the husband unless it's sworn to and you have something that is supposedly verified, to pick him up in his home.

MS. STEIN. Under the act, wouldn't the protection order itself be sufficient paperwork to justify an arrest?

MR. REHKAMP. Under the act, yes, it would be.

MS. STEIN. But you're saying you disagree with that?

MR. REHKAMP. Under all circumstances, I do, yes.

MS. STEIN. And that would be the basis of your advice, if the police asked you for advice?

MR. REHKAMP. If they asked me in the future, I'd ask for the facts and I'd suggest that they get—it is not very difficult to get something typed up and signed by the prosecutrix if she's not in immediate danger.

MS. STEIN. Thank you very much.

Justice Shoemaker, would you please briefly describe your duties and jurisdiction as district justice in Franklin County?

JUSTICE SHOEMAKER. Well, I do the same as all district justices do, all summaries, misdemeanors, and most felonies are filed before us before they get to the district attorney, and so forth, except that misdemeanors and felonies must be approved by the district attorney

unless filed by a police officer. The summary offenses we take without approval from the district attorney's office.

MS. STEIN. Could you estimate for us how many cases of violence between husband and wife come before you in any given time period?

JUSTICE SHOEMAKER. So far this year, counting what we call the summary harassment, which is a light type of abuse, not too violent a type, I would say we probably have about a hundred of them or so.

MS. STEIN. Can you tell us what your jurisdiction under the Protection From Abuse Act is and how many occasions you have had to exercise that jurisdiction?

JUSTICE SHOEMAKER. In Franklin County, Judge Eppinger and Judge Keller write the orders for Protection From Abuse; we do not.

I have had one case where it was enforced and that was about 2 weeks ago on a Sunday, which, I received a call from the police and they said they were bringing in a gentleman who had violated his order, and to say the least there was a little bit of confusion as to what to do with him after they had him in custody.

MS. STEIN. Is that because of—do you feel that the district justices haven't been given sufficient instruction about what procedure to follow in cases like that, or what gave rise to the confusion?

JUSTICE SHOEMAKER. Well, the confusion arose in this case, they had picked the young man up who had violated his order, and it could have been serious but didn't turn out to be. What our problem was, should he be committed and how; so, as a result, his wife signed a written affidavit stating how he had broken the order, under what circumstances, and swore to it.

I think as was stated here a few minutes ago, there was a paper signed, an affidavit signed, as to what he had done, and then the police picked him up and we committed him to jail, offered him bail, and from there I don't know what happened to the case.

MS. STEIN. I see. Now, you said that the judges in your county deal with all the applications. Is that true on the weekends as well?

JUSTICE SHOEMAKER. We do not handle them at all. I assume from the fact that her attorney called me, some of the work, since we have several attorneys here, was done through attorneys. We do not handle any of the paperwork in Franklin County.

MS. STEIN. Do you know why that is?

JUSTICE SHOEMAKER. Not really, no.

MS. STEIN. How did you come to know that you were not to handle it?

JUSTICE SHOEMAKER. Those were the judge's orders.

MS. STEIN. Okay. Do you know if that's the practice in other counties or not?

JUSTICE SHOEMAKER. Some counties. I believe, from being at school last, or this spring, early, some of the district justices were using them and others were not. I assume that it is the presiding judge's choice. He makes the decision.

MS. STEIN. Okay. In your opinion, is the legal system dealing adequately with victims of domestic violence?

JUSTICE SHOEMAKER. I would like to see some changes made in the very violent cases, as to how the violator or the husband who beats his wife extremely—now, in aggravated assaults, or your very severe simple assault, some method used to get that wife or husband out of there as quickly as possible so that she is not further abused before help can be gotten.

Under the law as it stands now, for an aggravated assault or a simple assault we have to have the approval of the district attorney's office, which is, to say the least, if it happens Friday night, that's Monday unless we get an order from the judge.

The wife is then subject—if she can't get away, and we live in a rural area, and I guess you would call Franklin County rather rural. It certainly isn't Pittsburgh or Philadelphia. We have that problem. If we can get them somewhere, to the women who protect them, the Women in Need, we call it, who operate that system. But, there again there is a problem, how to get the abused wife and children out of the house without help from the police.

MS. STEIN. Thank you very much.

Mr. Frownfelter, could you describe the makeup of your office and your duties as a Legal Services attorney?

MR. FROWNFEILER. Okay. I really speak for two offices in that respect. Our Franklin County, Chambersburg office has a staff makeup of two full-time and one part-time, very part-time attorneys, approximately three paralegals, and a few secretaries.

Our Fulton County office is staffed by, again, one part-time attorney, that's me, dividing my time between the two offices, and two part-time paralegals, and a part-time secretary. It is in fact a part-time office.

What we do is provide free legal assistance to low-income people, and one of the prominent categories of assistance we provide is legal representation in civil Protection From Abuse cases and advice and referral in other types of domestic cases, including abuse.

MS. STEIN. Can you tell us how many cases involving interspousal violence your office has processed in the past year?

MR. FROWNFEILER. I don't have an exact figure because our case accounting system doesn't lend itself to a quick appraisal of that. I can say that domestic is probably our largest single caseload category. Of that, abuse is a large constituent, mainly because we give high priority to abuse cases and we treat abuse as an emergency situation. It is the only domestic case, other than child snatchings or child custody cases like that, that we accord emergency status to.

In Franklin County, our experience is that we probably have between two and five specifically abuse cases, cases that are defined by the client as being an abuse case or a case in which physical abuse seems to be the major problem, for the moment, at least, I'd say we have between two and five a week. In Fulton County it is a lower incidence simply because it is such a small county. Still, I'd say we have at least one or two domestic cases which involve abuse in the course of each month.

MS. STEIN. Can you tell us how many petitions under the Protection From Abuse Act you filed in the last year, and if you could break it down by county, that would be helpful.

MR. FROWNFELTER. In the past year in Franklin County, we've been filing approximately one or two a month. It comes down to somewhere between 10 and 15 Protection From Abuse original petitions, I'd say, have been filed in the past year. We have additional cases from the past where problems have reoccurred, contempt, review, other domestic relations situations arising out of that relationship.

This incidence is down somewhat from our experience in the past couple of years, not because the incidence of the problem has declined any, but, I think, rather because our ability to deal with it has been somewhat reduced due to staff shortages. However, it has maintained a steady volume in that amount.

In Fulton County we have only ever filed one Protection From Abuse petition despite what I feel is a much higher incidence of abuse in that area. I'm not sure if that was within the last year or not. I know there was a contempt problem arising out of that petition within the last year. It was approximately one year ago, though.

MS. STEIN. Why would you say you have filed only one petition when the incidence of abuse is much higher?

MR. FROWNFELTER. I'm not sure. There are a number of factors, one of which is that in Fulton County we have one court session every 2 weeks, or more accurately, only two court sessions a month. There are only 2 days a month when court is in session in Fulton County, and those days are generally packed solid. It is extremely difficult to get hearing time in Fulton County due to the small size and the limited allocation of judicial time to the county.

Another problem, I guess, or another reason why people in Fulton County are a little less inclined to seek judicial avenues is that it is a somewhat introverted, closed society; it is strongly given to rather traditional ways of reacting to problems like this. And an abuse victim in Fulton County, I think, is more likely to fall back on such defenses as family. To some extent we have family justice in the sense that an abuse victim's best ally in Fulton County seems to be a couple of big strong brothers. Most often the way the abuse situation is cooled off in Fulton County is that the woman will get out, usually to her parents' house or to a relative's house for a few days until the situation is somewhat under control.

Sometimes intervention is sought through the police, which is almost invariably denied. Sometimes it is sought through the district justices. I'm not sure how the district justices handle it, but occasionally there seems to be sort of a peaceful resolution, that the district justice gives the fellow a talking to, renders some perhaps nonjudicial advice, or the intervention of somebody like a family minister, a close friend of the family, or something like that is sought to, in essence, talk the fellow out of it.

I sincerely doubt that this is effective for more than a short period of time in many cases, and what it comes down to is that we have a lot of repeating long-term abuse problems in Fulton County. Some of them

result eventually in termination of the relationship. Some of them just go on and on over years of time.

MS. STEIN. Are there factors peculiar to the rural environment that lead to the high incidence of domestic violence as well?

MR. FROWNFETER. I think there are several. One is the strong sense of tradition. As I mentioned, Fulton County, especially, is a very traditional type of society and Franklin County is, too, to a lesser extent.

It is very clear that family violence is an inherited, learned behavior. Sons of abusing fathers become abusers themselves. I have a couple of father and son abuse cases where I have cases against both the father and the son. They are not specifically abuse cases; what they come out to be is divorce cases, but I have three—I had at one point three father/son sets involved in domestic relations and they were all abusive relationships.

Also, I think it has also been seen that the daughters of abused women often become victims of abuse themselves. I'm not sure of the dynamics of that, but I think this is in evidence in Fulton County where a lot of our clients also are the daughters of abused women. So the tradition is one factor.

There's a lot of pressure on individuals to maintain the family relationship. Stay with him. Be a better wife and the problem will stop. This comes from the ministers. It comes from people in the agencies. It comes from the police. It comes from friends and family, and it's a strong social pressure, and in a tiny, very hermetically sealed society like Fulton County, that amount of peer pressure can be an incredible force for molding a woman's behavior.

Other factors include the isolation, the relative absence of opportunities, housing, especially low-cost housing, especially housing available to families is extremely tight and extremely limited. There's a lot of stacking up. Perhaps a home where a mother and father and maybe two or three or even four of their married daughters and their children all stack up in one overcrowded residence because there's simply nowhere else to go.

Job opportunities are extremely limited. There is only one industry of any substantial size and a job with that firm is a highly sought and prized achievement. Many people commute long distances, 50, 75, even 100 miles to available work, and a woman with limited job skills, limited education, and children to care for and no transportation has no hope of an opportunity like that.

The alternative is welfare. Welfare grants in Fulton County are the lowest in the State. They are on the lowest scale. I believe it is \$158 a month for a single individual, used to be \$240. It would be a few dollars more now for two individuals, barely survival, if survival at all. A woman has to think for a long time before she accepts that kind of material hardship and, more important, imposes that kind of hardship on her children in order to escape from a family situation.

Transportation is a serious problem. There are a lot of women who are literally prisoners of their husbands, dependent on them for everything, for any kind of transportation, for their income, for the basic

necessities of life, and it is a scary prospect for them to give all that up and go out and face what can be a very harsh and difficult life of poverty, especially where there are children involved, so they stay.

As to the incidents of abuse, I think life in these isolated rural areas is kind of conducive to that kind of conduct. We have to face the fact that life in a rural area can be boring as can be. In a lot of situations, we have perhaps a husband who works, as I said, 70, even 100 miles away. He gets up at 5 in the morning to go to his job. He gets back at 7 at night, dead, bone tired. What is he going to do? Mostly he just goes out to the bar, drinks for a few hours with his buddies, and comes home to a tense marital situation and a lot of times that's where the abuse comes.

I'd say an enormous majority of the abuse I've run into happens between about 10 and 2 o'clock when the husband gets home from the bar. All of these factors, I think, are part of the problem and some of them are especially aggravated in rural areas like Fulton County.

MS. STEIN. Could you assess briefly the response of the criminal justice system in your jurisdictions, the police, the district attorney, and the courts?

MR. FROWNFELTER. The response of the criminal justice system, I'd say, has been very limited. The members of the criminal justice system, of course, are aware of the developing trend in, actually, this, almost this half-century, certainly in the last 20 or 30 years, towards expanded protection of the rights of criminals, towards limits on the authority of the State to arrest and to prosecute and to punish for offenses, and they are aware of that trend, and they are somewhat less aware of what can be, at times, a conflicting trend to expand the protection of victims, especially victims of abuse.

I am certain that there is almost a dual standard of justice where victims of interfamily violence are concerned. An offense could be committed against a stranger in the street. I could walk up to a woman in the street and commit some kind of violent act towards her. I would be arrested on the spot, sent to jail, face a very serious punishment.

I could do the same thing to my wife in our front yard and nobody would lift a finger to help her. Why? Partly because, as Mr. Rehkamp said, they don't want to disturb a living relationship. To some extent they've taken the position that—I have actually heard it said that it's less of a crime between family members. Why? I don't know. I guess the theory is that because the woman chose to be there, because she chose this man, that she somehow invited or assumed this kind of behavior. I don't agree with that, but there does seem to be an element of that there. There is some reluctance on the part of members of the criminal system to get involved in what is really a highly volatile situation.

The police, especially, are reluctant to get into entering a home and intervening in a violent domestic situation. They're uncomfortable about their rights of entry and the trespass aspects and their status as an outside person coming into a man's castle, into his home. They are leery of the experience they've had where perhaps a complaint is made by a wife, an abuse victim. The police respond to it and then the wife

changes her mind. Wives have been known to turn on police who have come to assist them and to actually take the part of the abuser. They are aware of that. I think they exaggerate it, but that is a factor in their thinking.

The district attorney's office and the judges take what I would call, probably appropriately, a judicial attitude towards it. They are aware of the trend of cases dealing with the rights of criminals, as I said, and they don't want to take any precipitous action. They didn't want to hurry a case through or give a case any higher priority because it is a domestic case, and the criminal system, as with indeed the civil system, operates rather slowly.

The court is overcrowded. It can sometimes take a month or even a couple of months to get any sort of hearing on a matter, and it unwinds very slowly, be it criminal charges or whatever, and there is a lot of interaction going on in the meantime when the status of the parties is up in the air.

Prior to the passage of the Protection From Abuse Act, the criminal remedies were really the only thing that an abuse victim had available to her, and for a while I was recommending that she file concurrent charges; file the harassment charges and file the abuse petition and pursue both of them for the benefits of each. Our experience with the criminal charges was not very good, frankly.

Oftentimes a criminal complaint would be filed and the district justice would then tell the victim, "All right, we'll issue a summons and mail it out to him," but it could be a lapse of several days before he even receives any evidence that criminal prosecution has been commenced, and during this time all sorts of violent behavior could be happening, or the effect of it could be greatly diminished.

MS. STEIN. Have you found the Protection From Abuse Act to be an effective remedy? Has that changed the situation?

MR. FROWNFELTER. The Protection From Abuse Act is, I think, a somewhat limited but possibly effective remedy in the case, for the benefit of the person on whose behalf the petition is filed. The question I often hear from my clients is, "What is it going to do for me if I proceed under the Protection From Abuse Act?"

And the answer I have to give them is, "It won't solve the problem. It won't change the relationship. It won't make it go away. It will give you some tools and these are what your tools are. Sometimes they work; sometimes they don't. We can't predict it."

As to whether the act has made a dent in the problem at large, I would say probably not. The reason is that it only affects the case in which it is involved. If there are, say, 8,000 abusive families in Franklin County, and we have filed 50 abuse petitions, then there are 7,950 family relationships where the Protection From Abuse Act hasn't made a darn bit of difference. There is practically no lesson to be learned. There is no awareness of the act in the population until it is invoked, and then it's problematical.

MS. STEIN. Thank you very much. Mr. Riegler, would you briefly describe the structure and jurisdiction in the Bloomsburg Police Department?

MR. RIEGLE. The Bloomsburg Police Department consists of 11 officers, including the chief of police. We have an assistant chief and three sergeants and the remaining men are patrolmen. We have a staff of approximately 10 to 12 special, part-time police officers.

MS. STEIN. Have the officers in your department received any training in dealing with domestic abuse situations?

MR. RIEGLE. I had the occasion to go to Luzerne Community College and attend a seminar that the coalition put on for domestic violence and crisis intervention, and then I returned back to our community and we invited all the police agencies in our area—I think there were 17, and all 17 responded—to a seminar which I put on in return and tried to relate to them what I had learned.

MS. STEIN. How many calls for assistance does your department receive each month?

MR. RIEGLE. The number of calls vary. It could be five; it could be three. Sometimes we get three in a night. It varies. The statistics I don't have on the top of my head at this time.

MS. STEIN. How many of those tend to be domestic violence calls?

MR. RIEGLE. I'd say we were running about half-and-half with the abused spouse and with the family as a whole.

MS. STEIN. Of the domestic violence calls you receive, how many do you respond to?

MR. RIEGLE. We respond to each and every call. At one time that wasn't the case. Years back, at the time I started as a police officer, it was very frequent to hear the officer on the phone saying to the woman who was calling relative to her husband beating her up, him saying, "Well, the danger is no longer there now" or, "You can run out of the house. You're on the phone. We suggest you go see the magistrate and fill out the proper papers," and his reason for that at that time was he didn't have the protection.

We had an officer in our community who responded to a call, was invited into the home by the wife, and once he got inside the home, the husband turned on him and he had to use some force to subdue him, and later he sued the officer for assault; but the wife did come forward and testify to the fact that she did invite him in, which saved the officer his job, actually. But there are cases, like what was referred to by other members of the panel, where the wives will turn around and stick up for the husband. So this threw a lot of doubt in the officer's mind as to whether he should really respond to that call. What protection does he have?

Naturally, if you arrive there and there's violence taking place, what you see on view, the officer can make an arrest, but if he responds and when he gets there the situation seems to be quelled, he has a problem. Should he intercede with that family situation?

But as the years go on and the younger officers come on—a lot of the older officers are leaving our department, in our particular case. We're finding out the officers are more interested and they're taking a more active part in these cases. It is the policy of our department, since the Abuse Act, 218, came out that we do respond to all calls and make some kind of determination. The act, we thought, was good in that it

gives the law officers some type of protection, which he didn't have before.

Now, there are gray areas in it, that if there's no violence at the time you appear, what do you do? So it is strictly off the head, a common-sense type decision that the officer has to make.

Our primary reason when we respond to the call is to defuse the situation, find out what's going on. Sometimes it is a matter of just separating the husband and the wife and talking to them a little, counseling from the officer, maybe the problem is solved. It might be just a crisis that sprang up, took place, and was a temporary thing. But if it is a serious matter, then we have to separate or move them, we feel, for a period of time. It is not going to do any good to separate two people for 20 minutes or 15 minutes and solve a problem. Actually days, weeks, months doesn't solve a problem, but we feel, to get them separated—and to do that we have to utilize the Women's Center.

Now, we've had some problems trying to keep our Women's Center aboard, but we did. Somehow we always manage to survive. And I think the two work hand in hand, because the average police department in a rural area don't have officers on the station all night. They don't have people that can sit with these people; so the shelter became, in reality, another big arm to the law; a place where we can separate these people, the abused children, the abused spouse, and call out a volunteer from the Women's Center. And we've got very good response from them; they come to our station, we turn these people over to them, and they take it, in the sense of the word, from there. And when we do defuse these situations, we always try to tell the spouse that, "You don't have to have money. You don't have to worry about an attorney. We're going to put you in the hands of a person who is qualified that can lead you to the proper agencies which you need." And that gives them a sense of—well, it gives them a good feeling because they always have that feeling of, "Where am I going to go? I don't have no money and I can't leave"—a sense of insecurity.

They have the hidden fear. "What's he going to do when the police officer leaves?" So we sort of got together and we spread the word. We tried to publicize it as much as we could, the fact that they don't have to take this abuse, there are things they can do, even though it is limited.

And, we found, by proper response and the officer being a little bit on the professional side, having to be aware of what's happening prior to going, get enough data to know does the guy have a gun or doesn't he have a gun. Maybe put the home under surveillance as he approaches it. Don't park smack in front of it. The man could stand back with a gun and say to his wife, "Tell him everything is okay and beat it," that type of thing. So we try to professionalize ourselves, and I think departments in general should have men specialized in this field that when they go there they know what they're doing, not to run into a haphazard situation, because of the fact that the fatality rate that there is among police officers in this field, and that was the big item which made officers reluctant to respond to these calls. I think they didn't know how, a lot of them, to go responding to these calls.

MS. STEIN. Under what circumstances—excuse me, you mentioned several options a police officer might exert in these situations. Under what circumstances would you make an arrest in a domestic violence call?

MR. RIEGLE. Okay. Our primary reason—our theory is not to make an arrest because it puts a hardship on the family in general. You arrest the husband for, say, disorderly conduct and you charge him \$51 fine and costs. That's coming out of the home, out of the children's mouth, as far as food, clothing, and so forth. So our main concern is to try to defuse the situation and certainly without making an arrest, but if there is abuse, extensive abuse, we do, we make the arrest. It is a common-sense judgment. The officer has to deal with each situation as he comes to it.

MS. STEIN. To your knowledge, do your procedures for handling domestic calls differ from these of the State police in Columbia County? First of all, do the State police respond to all abuse calls and then, secondly, what about your procedures for handling them?

MR. RIEGLE. First of all, I have some firsthand knowledge of cases where State police did not respond to calls. They answered it in a similar manner as I demonstrated to you, where the women called and they had told them to see the magistrate. On this particular case I knew the woman, and it happened several days after the incident happened.

I didn't know it happened at the time, but several days later I had the opportunity to see a picture and she was battered beyond my recognition. I didn't even know her, and she later told me, and she appeared at our seminar as an abused wife, and she told me that she had called and the answer she got was, "Well, we have a car in the upper end of the county. You call the magistrate, get the proper papers, and we will try and take care of it for you then."

She said all she wanted at that time—she was beaten so bad and in so much fear, she thought if just a car had drove by the house and if her husband had seen it that he would have stopped. In this particular case she had gone through this for a period of many years. I think it was even longer than 15 years, but she had nobody to call, no place to go to. She was a woman who didn't want to get her family involved. She didn't want her parents to know she was really having this problem with her husband, which happens in many cases.

MS. STEIN. Finally, could you just tell us what procedure you follow when a Protection From Abuse order is violated?

MR. RIEGLE. In our county, the Protection From Abuse order is handed down by the court, and the sheriff's department serves this act on the defendant and tells him exactly what it contains, what he can do and what he can't do. A copy of it is delivered to our department if it is in Bloomsburg. If it is the outlying area, a lot of times if we are connected with them, we get a copy also. If we get any calls, we respond to the calls.

And, there again, it is a shady area, but it is a judgment. If it is a violation on view, we take action. If it is a case of where she might have said he was here 10 minutes ago and left, he didn't do anything,

but just pulled up in front of the house and walked up the sidewalk and looked the house over and left, we may not take action on it.

Or another alternative is, we try to make contact with the gentleman, say, "Hey, pal, you've broken the order. Let's abide by it."

We really haven't had any bad responses to the orders. I think the mere fact that they know they're going before the judge, and when they get up before the judge at the common pleas level, I think it seems to have a psychological effect on them, and with the Women's Center we're not getting the call backs. I think our number of calls has been cut in half, and I find that the people now aren't calling the police. They know who they can call and where they can go if they need protection, and they're making contact directly with the Women's Center.

MS. STEIN. Thank you very much. I have no further questions.

CHAIRMAN FLEMMING. Commissioner Saltzman?

COMMISSIONER SALTZMAN. No questions.

CHAIRMAN FLEMMING. Commissioner Horn?

VICE CHAIRMAN HORN. I would like to pursue with you, Mr. Frownfelter, a couple of questions. I was interested in your comment about the learned behavior of abusers that has been mentioned by a number of witnesses.

We know there's a literature that's been developed in this area and so on. I'm curious to what extent, if any, you, others interested in this problem at the community level, have sat down with the school district, elementary, secondary, and discussed the degree to which in programs put on by the schools on social studies, civics, etc., some of these problems can be aired. The reason I raise that question to you, since you were talking from the perspective of a rural county, is that, I think, in such a semiclosed society where people grow up, go to school, often stay there throughout their lives, there might be an opportunity for education in an intensive manner to change some of that learned behavior. Has any effort been made along this line?

MR. FROWNFELETER. I think that that would probably be the best thing that could be done with the problem of domestic abuse, to try to get at the children. I think this is also a solution that I have advocated in the child abuse arena, too, to get at this behavior at an early point and educate that it is socially unacceptable, when every lesson the kids are getting now is that it's not only acceptable, but the way of life.

I have raised this prospect a couple of times with a couple of individuals. To my knowledge it has never been raised to any school district in our service area. I would anticipate a lot of opposition to such a program from the community, especially from the more conservative elements of a community whose approach to the problem of family abuse is generally one of denial.

In our area these elements of society are very strongly organized and extremely protective of any kind of "humanistic" programs in the schools, and it would be a difficult project to undertake. I agree that it would definitely be the single best thing that could be done; however, I personally—and nobody of my acquaintance has ever actually gotten around to doing something like that.

VICE CHAIRMAN HORN. You know, every May all of you on the panel probably, and myself, others in education, have Law Week, and there's often a focus in communities around the country of, "Let us take a real look at what the law can do for us," etc. And I just wonder why in your county, Mr. Rehkamp and others, this can't be a major theme that local law enforcement officers would work on with members of the bar and the schools, and really get a community focus on it, frankly get the problem out of the closet, which is, as the sergeant noted in that example of a woman taking 15 years of this abuse, and the fear in the local area, where everyone feels everyone knows everybody else's business and it is frowned upon and one is not a success in marriage, and so forth. It seems to me that's one possible approach.

Now, Mr. Frownfelter, I gather in your areas, at least one of them, the president judge has ordered the district justices not to accept Protection From Abuse Act petitions; is that correct?

MR. FROWNFEILER. That's correct. It's both areas.

VICE CHAIRMAN HORN. In both counties?

When an administrator does not carry out the law, one can go into a court and get a writ of mandamus. What can one do when a president judge, when its judiciary is not carrying out the law?

MR. FROWNFEILER. There are a number of options, which would include appeal of a denial of such an order, or a writ of mandamus, which, I believe, would be available, too, concerning a judge, and our office has certainly considered and discussed those remedies.

The problem is that, in order to obtain review of such a situation, there has to be a case in controversy; there has to be a person who is willing to take up the fight. Surprisingly, our experience has been that we have never had a client who cared enough about this particular problem to make an issue of it. Abuse victims want something to stop the abuse that's happening now, and then they want out—or back, as the case may be. They don't want to become a case; they don't want to make good law. They want to stop hurting. So we have—we have raised it, and we would love to have the case, but we had never had a client who wanted to pursue that.

VICE CHAIRMAN HORN. Justice Shoemaker, I note that when the Pennsylvania Crimes Code was changed, the district justices were stripped of their authority to issue warrants, I believe.

JUSTICE SHOEMAKER. That is right.

VICE CHAIRMAN HORN. And as I gather under the old system, if a domestic violence case came into your court, you could have had the abuser arrested immediately, and under the new system, apparently, if the police bring that individual in and file charges, you can do that, but essentially the district attorney must approve the complaint. Is that a correct summary of where we are?

JUSTICE SHOEMAKER. Yes, sir. A private complaint on simple assault or aggravated assault must be approved by the district attorney.

Now, on what we call the harassment charge, which is what we take a great many of these cases on, where a wife has been slapped or pushed or shoved, there has been no broken bones, the eye isn't too black, and—or not too much bodily injury has been, the trend is to take

it on harassment, but we still cannot issue that warrant. It must go out as a summons unless we believe that he will not answer the summons and in that case you're not sure about.

VICE CHAIRMAN HORN. Why was the law changed in that respect in Pennsylvania?

JUSTICE SHOEMAKER. I do not know. I wish somebody would explain that to me.

VICE CHAIRMAN HORN. I just wondered, is it because most district justices are not attorneys and this was an action of the bar, or was this the ACLU or—I'm trying to get at what the motive was because, obviously, given the heavy regional nature in many parts of the State, in terms of justice dispensed, the district justice is down there at the grassroots.

JUSTICE SHOEMAKER. I can't answer that question. I wish somebody would explain to me why we may not issue warrants under certain circumstances.

Now, I can understand why a summons should go out in a great many cases, when it doesn't involve abuse or physical contact in any way. But I feel very strongly that the man who comes home and beats his wife on Sunday night and she can't get out, there should be—and it should not be abused—the right for the district justice to type up a complaint or the police to come in and say, "We're getting this man out of here until everybody cools down and she gets treatment at the hospital."

We get in a very embarrassing and, I think, an unfair position when a woman calls you on the phone and she says, "My husband is beating me," and she is screaming; kids are screaming in the background. All of a sudden you hear a terrified scream, and the phone is jerked off the wall.

What do I say to her? The police officer here knows I can call him. I may beg him to go out, just go out and see what's going on. So a day or two later, she's taken from the hospital, comes to our office where we see a very badly bruised and battered woman who was not able to get any help that night, and it is frustrating, and I think it is grossly unfair.

VICE CHAIRMAN HORN. Well, let me ask all members of the panel, perhaps the district attorney in particular, if you had a similar case as the justice has just described, with a child that was being beaten in the home, perhaps by both parents, what would the law do? Would the law merely let that child be battered up, with no one in the house that could observe the behavior willing to make the complaint, or does the law have the capacity to do something in a child abuse case?

MR. REHKAMP. Well, first of all, who would report it? If both the parents were beating the child, of course, the child couldn't get the information to the—

VICE CHAIRMAN HORN. Well, it is a question of a bloody child coming to school—I think it's observed by the teaching faculty, or whoever. But let's say nobody was around to report it, but the child was obviously being beaten by X, and one assumes, since there's nobody living 25 miles around, it is the parents and maybe they're both

beaters. Would the law have the capacity to deal with that battered child, or would the law merely let that child go back into the home every night?

MR. REHKAMP. I think if it was discovered in the school system, they would report that to child care, the child care services, perhaps, in the county, and they could go out and investigate that situation to see if it is an abuse situation, and then take action. However, the—

VICE CHAIRMAN HORN. In other words, they could take action on their initiative without a complaint of someone in the home who was the observer to the actual beating?

MR. REHKAMP. I don't know their procedure, sir. Maybe you do. I don't know.

MR. FROWNFELTER. If I could speak to that. It is a dramatic contrast between the child protective laws of this Commonwealth and the spouse protective laws.

VICE CHAIRMAN HORN. Well, that's exactly what I'm getting to.

MR. FROWNFELTER. The Child Protective Services Act, which is the applicable legislation, authorizes, upon receipt of a complaint, which is directed either to the State Child Line or to the local child care service, the child care service has the authority to go into the home and remove the child, ex parte, without any review from the court, upon just being convinced that it is necessary. A hearing is held within, I believe, 48 hours, or perhaps it is 24, but the confidentiality of the reporting person is protected, strongly protected. The parent may get through the entire proceeding and never know the source of the original report. In fact, the law is set up to encourage that. The burden carried by the children services, by the Commonwealth, is relatively light compared to, say, the burden of proof in a criminal case, and I'd say the judicial response in cases of child abuse has always been strong, because everybody wants to protect the poor helpless children.

There is a dramatic difference in the way the law reacts to abused adults and, I think, part of it might be a certain inclination on society to think, "Well, she's an adult. She made this decision. She, again, assumed this situation and she is bigger and she can protect herself." And I think in a lot of cases that is inappropriate, and all of the burden of protecting the victim of spouse abuse as opposed to child abuse is put on the victim.

In a child abuse situation, the State takes the ball and carries it, and carries it vigorously, and with a lot of—with most of the advantages on its side.

VICE CHAIRMAN HORN. You summarize that very well. That is exactly the point I was trying to make, in how the law treats a similar situation, in terms of beating, within a household quite differently. The law in Pennsylvania, and I suspect most States, says essentially, "Spare the rod on the child," but we don't seem to care much if you use it on the mother, and that's a sort of sad commentary in terms of trying to deal with a very difficult situation.

CHAIRMAN FLEMMING. Commissioner-designate Berry?

COMMISSIONER-DESIGNATE BERRY. Mr. Frownfelter, to pursue the point you just made. Is the response that the woman somehow assumed

the risk by marrying an abuser, and as long as she stays there and doesn't go away, one can think of it as, that's a risk she assumed and that therefore the law would not take kindly to trying to intervene; that's really what the problem is?

MR. FROWNFELTER. I think that's the attitude we're dealing with.

COMMISSIONER-DESIGNATE BERRY. Where a child didn't do that. I would like to ask Miss Shoemaker, in all the time you've been a district justice, which is, I guess, about 17 years or so—

JUSTICE SHOEMAKER. Approximately.

COMMISSIONER-DESIGNATE BERRY. In all of that time, have there been other instances where the legislature passed a law and your president judge informed you or informed the district justices that he did not think that it was—that it was of dubious constitutionality, if I can put it that way. Or that you yourself felt that some law they had passed was of doubtful constitutionality and, therefore, really ought not to be enforced?

JUSTICE SHOEMAKER. No, I don't believe so. I can't recall offhand. I know that one, the Protection From Abuse Act, is the only one that we really don't handle; only the end of it. Like, you pick somebody up and he violates it and they come to us because we're available and we handle it from there.

COMMISSIONER-DESIGNATE BERRY. Would you think normally that, if the legislature passes a law and your president judge thinks it's of dubious constitutionality and so informs you, that that ought to be the operative way in which it is handled? That is, that one just simply tries to avoid dealing with complaints under that, or is it just that this is a domestic violence statute that makes it different?

What do you think? Or is there some general principle involved that the president judge, who decides what he thinks is constitutional and then, if he thinks it of dubious constitutionality, he informs you and then therefore you act on that assumption? Is that routine procedure?

JUSTICE SHOEMAKER. That is the only one, the Protection From Abuse Act, that our president judge has said that we were not to handle. I guess we wouldn't be breaking any law if we did, but, after all, he is our boss and we are not too familiar with it as far as—we have not had too much instruction on the handling of the petitions for Protection From Abuse Act.

COMMISSIONER-DESIGNATE BERRY. Mr. Frownfelter, in the absence of a writ of mandamus or taking an appeal in a case, is there anything else in Pennsylvania law that would permit someone to take action against a justice who decides on his own, and not in any particular case, that he thinks something is unconstitutional and so informs the district justices and then everyone refuses to hear complaints under the statute?

MR. FROWNFELTER. The only thing I can think of, as far as the district justice goes, is, you know, you take the petition to her; she has to deny it, saying, "I have instructions from the court not to accept this."

You get an order of denial; you appeal the denial, which is a separate case from filing the Protection From Abuse Act; again, that's an avenue to go.

That is how the appeal process I mentioned would start. I'm not aware of any other action to be taken against the district justice, and I really wouldn't—I don't know if there's a written order or just an instruction in evidence, but it is clear that the situation is the will of the president judge.

I would like to clarify what I think is the situation. I don't think the reason why this policy has been adopted is that the constitutionality is questioned. The judges have raised questions about the constitutionality in chambers, in conversations, but that has never been really litigated or even seriously challenged in our county. The only reported decision I'm aware of sustains the constitutionality of the act. So as far as I'm concerned, that's the law of Pennsylvania at this time.

I think the reluctance of the judge to allow district justices to handle it is more a symptom of a general judicial disfavor of the Protection From Abuse Act. And the judges have made no secret of it to us they're not terribly keen about the prospect of using, of inviting judicial intervention in these kind of acts. They will apply the criminal definitions very stringently. They will require a heavy showing of the petitioner's case. They will require the case to be proved to a high level of proof. The judges are just reluctant to see the act extensively used in our district, and they want to maintain close control over the circumstances in which it is raised, whether it is because of questions about the constitutionality or just questions about the wisdom of the judicial intervention in family situations,

I think there are elements of both. But there is definitely an attitude in our circuit that the Protection From Abuse Act will be enforced to the extent that it is mandated and no more, and apparently maybe not even to that extent.

COMMISSIONER-DESIGNATE BERRY. Thank you.

Mr. Rehkamp, if a woman wanted to preserve a relationship, whether it was marriage or otherwise, with a man with whom she was living, but she also wanted to be free of physical abuse, which was taking place, and she obtained an order under the Protection From Abuse Act, and then after she obtained it permitted the man to—and the order said he was not to beat her and that he should leave the household, and then afterwards she permitted him to come back to live with her again in an effort to try to maintain or extend a relationship, and then he beat her again and she came in for a contempt citation, and you discovered that she had let him come back and she had been seeing him, on trying to maintain this relationship. Or in the alternative, if the woman in such a situation filed charges in the criminal justice system for aggravated assault or simple assault, depending on what the situation was, and then started—he got out on bail, she took up with him again and then he beat her again. She dropped the charges and then he beat her again, and she came back again and said she wanted to file charges again.

In either one of those cases, would you think there was a waste of prosecutorial time, legal resources, judicial resources, in trying to deal

with the situation? In the second instance, the charges were dropped and in the second instance she had the guy come back and live with her and then she wanted a contempt citation.

MR. REHKAMP. If nothing was done to help the man, yes, I think it is a waste.

COMMISSIONER-DESIGNATE BERRY. It is a waste?

MR. REHKAMP. If at one course in the proceeding, if something is done to help him, psychiatric help or something, which could be done, then I don't think it is a waste; but if nothing is done to help the situation, then I think it is.

COMMISSIONER-DESIGNATE BERRY. Why? Could you say a little more about why you would think it was a waste of resources?

MR. REHKAMP. Well, if she doesn't pursue it and it is not pursued, it is a waste of time, I would think, for all involved if nothing is done to help the man or to prosecute or to punish the man for abusing the wife. That's my main reason. That's the main reason.

I would like to respond to the other question you raised to him concerning the judicial attitude of this thing. In my county, Perry County—

COMMISSIONER-DESIGNATE BERRY. Before you do that, could I ask you a question about the answer to the first question I posed to you?

MR. REHKAMP. Sure.

COMMISSIONER-DESIGNATE BERRY. Then it would be your position that in that instance where this woman is trying to maintain this relationship but doesn't want to be beaten, that is, using the legal system to try to prevent that, and it happens again, so long as the man was getting some kind of counseling, or psychiatric care, or help to try to keep him from being an abuser, then you wouldn't mind the legal system being used as a way to try to help her to work herself out of the situation?

MR. REHKAMP. Right. Oh, yes, that's correct.

COMMISSIONER-DESIGNATE BERRY. Okay. Fine. Go right ahead.

MR. REHKAMP. Okay. I think the judge's attitude up in our county under the Protection From Abuse, the reason he doesn't let the district justices handle that, is more of a practical matter, because he'd have to schedule a hearing in the future anyway on the merits; therefore, he wants to keep track of these cases, and so he initiates—I mean, it is initiated through him. And as a practical matter, on the weekend if the judge is not available, and there is a, you know, a severe case of abuse that can be handled through the criminal procedure. I myself sometimes approve complaints by phone, which expedites the procedure. If I get a call from a district justice, he gives me the facts, perhaps the lady is in there and I talk to her over the phone, then we can get immediate help with the cooperation of the police over a weekend when the judge would not be available.

Now, when I'm not available on the weekend, I'm not sure what would happen. Perhaps the State police could handle it. That's what we do in the county. That's why I think it's done that way in Perry County.

COMMISSIONER-DESIGNATE BERRY. Thank you.

CHAIRMAN FLEMMING. Commissioner-designate Ruckelshaus?

COMMISSIONER-DESIGNATE RUCKELSHAUS. Justice Shoemaker, we had characterized for us yesterday by a couple of district justices a feeling that the justices had about domestic violence, its importance as a social issue, and as I recall, you told us in your statement that you have been a justice for some time and that you see quite a few cases of domestic violence. In your opinion, is domestic violence a question, a social problem of some magnitude or of little magnitude, great importance, little importance—as a social problem?

JUSTICE SHOEMAKER. As a social problem, I think a great many cases of wife abuse comes from the use, overuse of alcohol, where they vent their—spending their paycheck or whatever it is—on their wife, a guilty conscience and so forth.

Under the old system—and I keep referring back to that old system, not exactly the old system, but before this law came in—the habitual wife beater on payday we picked up and put in jail until he cooled off. It was a relatively inexpensive way to dispose of a wife beater. We had those who were periodic in their coming home and running their wife out and beating them, children along with them, and sometimes the children were abused. We pick them up on Friday night or Saturday night, give them 24 hours to sober up, and they stay that way for 3 or 4 months or weeks.

It seems to me that the abused wife—and I must say the abused children also—mental abuse on a child from a mother and father continuously fighting over a weekend or periodically is more damaging to a child at certain ages than physical abuse is—! mean like physical abuse, don't misunderstand me. But there has to be a way for this to work effectively, for a percentage of women to get help within the hour or the half-hour to prove effective, then turn them over to the protection, civil end—I can't see how, for some women, unless there is a way provided for the police, or for us, to get those people out of the house or get him out of the house.

COMMISSIONER-DESIGNATE RUCKELSHAUS. Then time is very important in some cases?

JUSTICE SHOEMAKER. It is extremely important in the real bad abuse cases, which are not as many as the light abuse, the slap and the shove, the push; but when it comes down to a woman having her jaw fractured, or choked, or mouth split, lips split open, real physical abuse.

Now, there aren't as many as what we call the light abuse or the harassment cases, but those women are desperate, and I find that we are getting less calls because they have no way to—nowhere to turn. They are getting discouraged and they are, instead of really following through with it—and we say, "You must go to see the district attorney to have this approved."

COMMISSIONER-DESIGNATE RUCKELSHAUS. So your feeling is you may be actually hearing even fewer cases because they aren't given any encouragement, any help, any support by the justice system.

JUSTICE SHOEMAKER. In the severe abuse cases, yes, because they think, "What is the use? We can't get any help." I know they call the police. The police say, "See the magistrate. What can I do?" As a

district magistrate, what can I do to help the woman who is being beaten when at first I have to take the complaint and then call the district attorney for approval or call the judge who may say, "Go ahead and take the complaint. See me Monday morning."

COMMISSIONER-DESIGNATE RUCKELSHAUS. So, particularly over the weekend, there's really no quick remedy available for that woman. There's no protection order available. There's no way—

JUSTICE SHOEMAKER. A severely abused wife cannot wait until Monday morning. She cannot wait for 2 or 3 or 4 or 5 hours to get help and most often she's on the phone—I think I made the statement before. You hear the phone get ripped out, and the threat of calling someone in our position or the police. If you don't get help there quickly, she is going to get perhaps a worse beating than she had before.

COMMISSIONER-DESIGNATE RUCKELSHAUS. Thank you. I have one more question for Mr. Frownfelter. Do you have any recommendations that might be useful to us to improve the way the system of justice responds to the needs of battered women in light of the discussion we just had?

MR. FROWNFEILER. It's hard to come up with specific suggestions. I think the Protection From Abuse Act goes a long way. There are things about the Protection From Abuse Act that need to be changed, clarifications of the police's authority to arrest, for instance; education and training and sensitization for law enforcement officials; more resources for more district attorneys, judges, and so on; but the main problem as I see it is that the legal system is not going to solve this problem.

To a large extent these are personal problems with legal effect, and the Protection From Abuse Act went a long way to doing what the legal system can't do. It can be sharpened up. It can be improved. But the problem is going to continue to be a major one until there are large-scale social changes as well.

COMMISSIONER-DESIGNATE RUCKELSHAUS. Thank you.

CHAIRMAN FLEMMING. We appreciate very much your being with us. We appreciate the testimony that you have given us. Thank you very, very much.

The hearing is in recess until 1:30.

Afternoon Session, June 18, 1980

CHAIRMAN FLEMMING. I will ask the hearing to come to order. Counsel will call the next witnesses.

MS. GEREBENICS. Robert Frederick, Stover Clark, Antoinette D'Agostino.

[Robert E. Frederick, Stover K. Clark, and Antoinette D'Agostino were sworn.]

**TESTIMONY OF ROBERT E. FREDERICK, CRIMINAL JUSTICE CONSULTANT;
STOVER K. CLARK, POLICE-COURT LIAISON, PENNSYLVANIA COALITION
AGAINST DOMESTIC VIOLENCE; AND ANTOINETTE D'AGOSTINO, TROOPER,
PENNSYLVANIA STATE POLICE**

MS. GERE BENICS. Beginning with you, Mr. Frederick, would each of you please give your full name and title for the record?

MR. FREDERICK. I'm Robert E. Frederick and I'm a criminal justice consultant.

MR. CLARK. I'm Stover K. Clark. I'm an employee of the Pennsylvania Coalition Against Domestic Violence. My position is police-court liaison.

TROOPER D'AGOSTINO. Antoinette D'Agostino. I'm a trooper with the Pennsylvania State Police.

MS. GERE BENICS. Thank you. Mr. Frederick, could you tell us how you first became involved in training police officers for the Coalition Against Domestic Violence?

MR. FREDERICK. About a year and a half ago I was approached by Susan Kelly-Dreiss, director of the Pennsylvania coalition, who knew my background as a former captain in the Philadelphia Police Department and said she knew my wife well, knew of my interest in the area of domestic violence, and asked me if I would develop a training program, which I spent 1 full year on staff of the coalition doing just that.

MS. GERE BENICS. During that year how many police officers did you train?

MR. FREDERICK. Well, we began with our first training program at this institution here, as a matter of fact, a year ago last May. Since then we've trained, I think, just about 500 sworn officers.

MS. GERE BENICS. In how many departments, do you know?

MR. FREDERICK. There's about 140 departments involved, plus the Pennsylvania State police—about 105, I believe, of those officers were Pennsylvania State troopers.

MS. GERE BENICS. Could you briefly describe the format of the training sessions that you conducted?

MR. FREDERICK. This is a 3-day program which begins with an overview of the history and extent of the problem of domestic violence, and I have to say this publicly for, I guess, the first time. What we do in that first day is try to sensitize police officers—I hesitate to use that term because policemen don't like it too very much—but we try to sensitize to the problem, make them understand why women remain in a battering situation, why they drop charges, why they do all of the things that policemen have accused them of doing over the years.

The second day is a crisis intervention where we attempt to give the officers some skills in intervening in a crisis situation, whether it be a family situation or not.

The third day we discuss in great detail the Protection From Abuse Act, other enforcement methods, and we also wrap it up on that day, try to put the whole thing together into a package which, hopefully, will be useful to them on the street.

MS. GERE BENICS. Is there a central message or underlying philosophy behind your training program?

MR. FREDERICK. Yes. We're dealing with a crime. Let's treat it as a crime. And in those cases where we are unable, for various reasons, to treat it as a crime, let's at least treat it with the sympathy that it deserves and get the people started on the process of solving the problem.

MS. GERE BENICS. What sort of options do you instruct the officers on that they have?

MR. FREDERICK. We instruct them they have just about any option that they wish to take so long as it is in a constructive vein.

If I could digress for a moment, if I am permitted, I will say that I am sitting here only slightly angry after listening to a couple of hours of testimony before the lunch break. It is fortunate I wasn't able to be here for a day and a half prior or I would have probably been apoplectic by now, because I kept hearing people in the criminal justice system give us all the reasons why they can't do anything about the system when they flatly refuse to use the tools that they have, and that makes me angry.

The police officers have been accused for years of failing to handle this problem adequately, and that's true. They have not handled it adequately. But one of the reasons is they've been told very clearly that, "If you don't handle it informally at your levels, we're going to throw it out at the district justice level or at the D.A.'s level or at the judicial level." So they're reacting to the pressures of both of them in the system, and I just get very angry when I hear judges say, "We won't use the law that's going to help this situation." All right, I'm sorry, I may have gone far afield, but—

MS. GERE BENICS. No, I'll ask you to follow up with any recommendations you might have for improving the system.

MR. FREDERICK. Not being a lawyer I don't know how to go about getting judges to obey the law, but I know a number of them that don't.

I also listened to a district justice here say that the judge was her boss, and he had said she shouldn't use the Protection From Abuse Act. Her boss, it seems to me, is the people who elected her to office, and I don't think any other elected or appointed official has a right to tell her that she cannot use the law. The law specifically provides for her to take action on the weekend. She sat here and said, "We need something to get these men out of the house." She has, and her judge won't let her use it. I submit that she has the authority to do it regardless of what the judge says, and I think that—I don't think she would have any problem with it. The judge might give her a problem, but I think eventually he'd lose the battle.

I think—I have gotten far less resistance from police officers than I get from judges and district justices and district attorneys. The officers are welcoming us with open arms saying, "Thank God somebody is doing something to help us handle the problem." And our training program—in 500 police officers, I think, our overall evaluation from the officers on the scale of 1 to 10 is about 8.6 or 8.8, which is pretty

favorable. Obviously, they like what we're getting. Incidentally, Sergeant Riegle was one of my star graduates.

MS. GEREENICS. We knew that.

MR. FREDERICK. Okay.

MS. GEREENICS. Thank you. Mr. Clark, could you describe your involvement in this training project that Mr. Frederick just described?

MR. CLARK. Yes. I'm responsible for scheduling the trainings throughout the State. And participation in the training itself is the second day, which is on the schedule classified as "crisis intervention skills," but what I have done, I am not concentrating so much on crisis intervention skills for domestic as doing much more sensitizing on the issues—what the woman is experiencing in a situation, the cycle of violence as described by Dr. Lenore Walker, why a woman will tend to stay in that situation. I'm staying away from the idea of instructing police officers to be mediators, to be crisis intervenors. I don't feel that we can expect that of police officers; and my experience throughout the State is that, if we give them a little bit of knowledge in crisis intervention, they will tend to use that and downplay the criminal side of the dispute.

What I'm trying to do is instill in them, as we're both trying to do, that it is a crime we're dealing with, and if a crime has been committed, it must go through the criminal procedure. If a police officer responds and it is a verbal dispute, then he can rely on mediation skills, but only when there is—a crime has not been committed.

MS. GEREENICS. What do you tell the officers are the implications of their failure to arrest, if you see any?

MR. CLARK. Well, basically, it is a very, not so subtle message, that it's okay to beat one's wife or one's girlfriend by taking it out of the criminal system. If I were to commit a crime and the police officer came in and said, "Well, it is a family dispute," the message I would receive was it is all right for me to hit my wife or my girlfriend. And we can't do that. We have to say, "It is against the law to do that."

MS. GEREENICS. How do you select an area to go to to present the training program?

MR. CLARK. Well, now we're responding to, or we've been responding to, need. The programs throughout Pennsylvania will request training. To date we've trained officers in 48 of the 67 counties.

Starting in September we're going to target areas, areas that have not been reached. We're going to go to in an attempt to—before our funding runs out—to at least have representatives from every county of Pennsylvania go through the training, because we're hoping there is a ripple effect that, which the sergeant from Bloomsburg demonstrated, that one officer will go through the training and maybe go back and tell his other officers about it.

And the use of 218—I think we're finding that the majority of police officers have no knowledge of Act 218, and if we can reach two or three in one department, they can go back and instruct their fellow police officers on the use of 218. And the same with the criminal. If we're instructing them that it is a crime, they can go back and give that

message to their fellow officers, "It is a crime we're dealing with, and it's a serious crime."

I want to share with Bob the frustration with working with the court system, and part of the other half of my job is working with the district justices and within the courts of Pennsylvania, and I'm finding that the police are much more receptive to training and to sensitizing than the district justices.

My experiences with district justice training, speaking to their monthly meetings, have been horrendous. They are very unreceptive to having outsiders come in and tell them about new laws or how they should use the law, and it's a hard road we're going to have to follow to get to the district justices. I think we're going to have to do that through the county system, basically.

MS. GEREBENICS. I'm sorry, when you were discussing a minute ago, 218, you were referring to the Protection From Abuse Act?

MR. CLARK. Yes.

MS. GEREBENICS. Thank you. Trooper D'Agostino, could you briefly describe the command structure of the State police force and the makeup of that force?

TROOPER D'AGOSTINO. Surely. First of all, the Pennsylvania State Police is a semimilitary organization, and we are structured accordingly with a commissioner at the head. Directly beneath him is a deputy commissioner and chief of staff, and answerable to the chief of staff are six bureau directors, usually majors, and the deputy commissioner—there are the bureau of patrol, criminal investigation, and the area commands which include the various troops.

I have a schematic of our structure for you. At present, as of 31 May '80, we have a total complement of 3,690 people. That's just the enlisted personnel. Of that group, we have a total male count of 99.2 percent, a total female count of .8 of 1 percent, and I have a further breakdown if you would like, minority and—

MS. GEREBENICS. Yes, please.

TROOPER D'AGOSTINO. White male population is 95.1 percent; white female .6 of 1 percent; minority male 4.7 percent; minority female .2 of 1 percent; so the total white group is 95.1 percent and the total minority group is 4.9 percent.

MS. GEREBENICS. Those statistics, I'm sorry, they are as of May. They don't include the—is there a recruit class now, or one coming up this summer?

TROOPER D'AGOSTINO. We are planning one. We are in the final stages of getting the group together for the final selection process.

MS. GEREBENICS. And that will have how many recruits?

TROOPER D'AGOSTINO. I think that we're trying to get at least 40 in this class. We're trying to run overlapping classes of 40, hoping to train 200 additional people within this fiscal year.

MS. GEREBENICS. Could you briefly describe the basic training course at the academy?

TROOPER D'AGOSTINO. I have a copy of our syllabus with me, and the training includes all the stages of police work—the criminal law, the vehicle law, mechanics, techniques, physical conditioning, firearms

training, and it is broken down into several groups: highway safety, 227 hours; and public safety and prevention of crime, 193 hours; social sciences, 31 hours; physical education and police skills, 229 hours; firearms, 53 hours; interagency relationships, 20 hours; orientation and administration, 90 hours.

What I have here, I might add, is the revised syllabus which will, hopefully, be in effect for the upcoming class.

MS. GEREBENICS. What's the total number of hours that a trooper gets?

TROOPER D'AGOSTINO. I did everything but add those.

MS. GEREBENICS. That's okay. We can add them. Does the academy offer training specifically directed towards domestic violence problems?

TROOPER D'AGOSTINO. Yes. Within the syllabus specifically allotted for family crisis training is 3 hours. However, some of the handling of the domestic complaints are also incorporated into other areas, offenses against family under the crimes code, that type of thing, but specifically allotted for family crisis training is 3 hours.

MS. GEREBENICS. And who teaches that class?

TROOPER D'AGOSTINO. I believe Sergeant Vnable has been in charge of that class.

MS. GEREBENICS. Is there inservice training provided on that specific issue?

TROOPER D'AGOSTINO. Well, to date there has been no specific inservice training for our people. The State police also participate in the Municipal Police Training Act and we do train municipal police officers. There is an inservice program called "advanced patrol procedures" and within that 2-week inservice course for municipal officers is 4 hours on handling domestic complaints. Our agency, to date, has none, but I was directed by our commissioner several months ago to start gathering information for an inservice training program statewide for our people. This has been since my contact with the coalition.

MS. GEREBENICS. How did you become involved with the Pennsylvania coalition?

TROOPER D'AGOSTINO. Well, it started out casually, didn't it, Bob? And I was—

MR. FREDERICK. Explain that, please.

TROOPER D'AGOSTINO. I was talking to Bob when he was a guest lecturer at our academy on domestic violence, and I mentioned that I had a very keen interest in the proper handling of domestic complaints, having been a battered wife myself 11 years ago before I came on the job. And I think I volunteered myself to participate in his training program. I was with the first group that he had here at HACC [Harrisburg Area Community College], at which time I gave a lecture and retelling my experiences as a battered wife and as a police officer, and trying to aim, you know, trying to hit home the point that, even though I experienced it myself and naturally my feelings in the beginning as a police officer handling this complaint were mixed, you still have to train yourself to handle it in a professional manner, and I must commend the coalition on that training.

MS. GERE BENICS. Is there a statewide policy followed by troopers when they go to answer a domestic call?

TROOPER D'AGOSTINO. There is not at this time. As I said, I am working on an inservice training project statewide for our people, and I believe from that will come a policy statement from our commissioner, you know, stating this is the way, you know, the policy of our department will be.

MS. GERE BENICS. What's the central message or underlying philosophy that you try to convey to officers when you're training them about responding to these calls?

TROOPER D'AGOSTINO. My personal feeling, having seen both sides of the picture, is that it is a crime and that it should be treated as such; however, there are other alternatives to arrest: the Protection From Abuse Act, the shelters, having the officer, again, not perform crisis intervention techniques, specifically, but to make the victim aware of the services available to her and the fact that the police are aware that she is in a position where she's a victim of a crime and that they are willing to help her resolve the problem, or at least take a positive step in that direction.

MS. GERE BENICS. Can you offer any particular insights into the attitudes or emotions of the parties involved in a domestic call; the woman, the abuser, the police officers, the dynamic that's going on at the scene when the officer arrives?

TROOPER D'AGOSTINO. Well, it's one of the most emotionally charged situations that a police officer can walk into, and that, I think, most officers find a little difficult to deal with.

With the coalition and any further training I might become involved with, I think my—the biggest thing I can do is help to make them aware of what's going on with the woman, where she's coming from, what her problems are at the moment. I can't speak for every victim of domestic violence. There seems to be a similar pattern throughout, however, and I think you want to know what the woman feels like—mostly terror. That's about it in a nutshell—terror because she doesn't know the alternatives most of the time, terror because she is embarrassed, terror because she has made a mistake so blatant, how can she admit that to anyone, and it's just a whole realm of fear that she gets caught up in and finds it's difficult to break through from.

She doesn't know where to go with the fear. She doesn't know who is going to help her or who, in turn, may put her down or not offer her anything but, "Well, you made your bed. You have to lay in it."

"You have to take the good with the bad." In the case of the church, "You said to death do us part." And so on and so on. I could go on for hours, believe me.

And the officer, what, you know, how can you expect him to react without any background in this? He has maybe not had an experience with it in his own life and he knows there's a law; but when you have a man that has broken a law, and the wife is screaming, "I love him. Don't take him away," because she knows when he gets back from jail, she's going to get a beating like she never had before. So the officer is in a state of confusion emotionally too. He feels maybe compassionate

towards the woman, on the one hand, yet angry, "How can she be so dumb? Why does she stay?"

And the husband, "How dare a man beat a woman," not knowing any of the reasons that went in to make him, or put him in the situation that he's in.

MS. GEREENICS. How about the abuser in that situation?

TROOPER D'AGOSTINO. The abuser in that situation, he's probably just as afraid as anybody else. Because—I never came out and asked my husband, but he was afraid to go to jail, and he was a—he was all the things that made him a batterer, and he—I think fear plays into the part that he's experiencing, and, you know, not so much he's going to pay for what he's done, because normally, at that point, I don't think he really realizes what he's done, so I think an overriding emotion for him would be fear also.

MS. GEREENICS. Thank you.

Mr. Chairman, I have no further questions at this time, but the witnesses have various documents which need to be entered into the record and as soon as I sort out what they are, I will do that. Thank you.

CHAIRMAN FLEMMING. Commissioner Saltzman?

COMMISSIONER SALTZMAN. Mr. Frederick, is there any followup after the training to evaluate its effectiveness?

MR. FREDERICK. Formally there's supposed to be, but to be perfectly frank with you, with our limited funding we found it difficult to follow it up in a formal manner; however, we have talked to a lot of the officers who have gone through the training. They have generally characterized it as very helpful. It is not a panacea; it doesn't solve all the problems and it doesn't work in every case. But they have found it to be helpful in avoiding injuries and in getting these people started on the road to solving their problems.

Sergeant Riegle, I think, stated that their call backs, their cases where they're called back to the same location time and time again, have reduced by at least 50 percent, and I think that's true pretty much around the State.

COMMISSIONER SALTZMAN. Trooper D'Agostino, one officer yesterday, I believe it was, mentioned that he was developing a packet, listing the resources which could be given out. Is that an idea that you think ought to be developed so that the trooper has something and can merely hand a packet out?

TROOPER D'AGOSTINO. I think that's very important, sir. I also—we have a problem in that we are so spread out, you know, of course statewide, but I do think that each troop could be responsible for gathering that information and making it available to their officers. Now, I know when I was stationed in Lancaster and I worked on the road, we did have a list of services available, but that was for everything, not specifically aimed at domestic violence. I know Page Robinson, from Women in Crisis—I'm a member of their domestic violence task force for training police officers, and they are working locally here with the municipal police on developing a card, besides schooling the police officers in what's available, also a card to hand the woman that

could be concealed; if nothing else, if she can't find any other phone number, she would have the number of the local shelter, and I think that's a very positive step.

COMMISSIONER SALTZMAN. In line with your comments about the justices, sir, their, the impression they left—I know it was stated specifically yesterday by some of the district justices, and the president judges, that this is not really a serious problem, and they estimated that it was not a serious problem by reason of the fact that they have so few cases. How would you respond? I would like all of you to give a quick response, if you would, as to the magnitude of the problem as you view it.

MR. CLARK. I'll start. The testimony that was taken in 1978 on this issue, I think a question was asked a psychiatrist who had stated he had never seen a case of an abused woman, and he was challenged to ask the next 10 women who came into his office if they were, and 8 of the 10 women were abused, so it is a matter of having the district justice think on those lines.

Maybe this woman is being abused and maybe it is serious, but he's thinking that we're not dealing with a problem, we're not dealing with a serious problem. The police aren't bringing it to him as a serious problem, or the president judge is telling him it is an unconstitutional act, or it's not a serious problem.

It is a serious problem. I could give you statistics, but it's the mentality of the district justice; it is the innate sexism and racism in our system that we don't want to deal with family problems: the woman deserves it, she nags the man on, so therefore it is not a criminal question; it is something else.

When we get over those kinds of attitudes, then we might start, be able to start dealing with the magnitude of the problem, that it is a serious criminal offense. And I think we could study the inmates in women's prisons, the number of women who end up there as a result of killing their husbands or killing their boyfriends or seriously injuring them as a result of having the courts and having the police say, "It is not a problem," and they became so frustrated and run into so many roadblocks along the way that they have to take the law into their own hands.

I think it is a serious problem and we're not educating, we're not sensitizing enough of the court systems, enough of the police; that we have trained 500 police officers in Pennsylvania—there are 30,000 in the State and to do that will take a long time.

COMMISSIONER SALTZMAN. You mention you could prove this statistically?

MR. CLARK. We—the coalition figures, I think, projected 1980, we're expecting about 101,000 contacts with the shelters and hotlines throughout the State. I think that breaks down to 1 out of every 115 people in the State of Pennsylvania. Psychologists and sociologists have done studies that in two out of four marriages there is some kind of abuse going on, physical abuse, that could be a criminal offense.

I could go on and on. It is just—I think we don't want to think about it as a serious crime. We want to think about the family as the safe

place. Things like this shouldn't happen, but they do, and if we keep it hidden under the rug, we really don't have to look at it, we don't have to examine it, don't have to start looking at the causes of something is wrong with our society.

I'm really going to get off—there's been a lot of talk about alcohol, that that is being the primary cause of abuse. I don't buy that at all. I think we have to be careful that we don't jump at an easy conclusion, or an easy solution by blaming it on alcohol. There are some cultures in the world that drink much more than we do but yet aren't violent. So it is a cultural problem. We want to look at the oncoming bad economic times, as if the poor men being out of jobs and all the stress that that will create and, therefore, they will beat their wives.

Stress isn't the problem; it is something beyond that. It is culturally how we're brought up as men, that we can go home and we can beat our wives; they are our property and we can act violently, and until we examine that and avoid jumping to snap conclusions that alcohol is the problem or stress is the problem, we're not going to get anything done.

COMMISSIONER SALTZMAN. Thank you.

Do either of you want to add anything?

MR. FREDERICK. Well, I'll add a couple of comments. I think that any judge or district attorney who says that he doesn't have this problem in his area probably has his head firmly in the sand. It's there. He may not hear about it at the country club; it's not talked about there. The wife who shows up at the country club with a big pair of sunglasses hiding a black eye could tell him about it, but she doesn't brag about it. I haven't seen any research that does anything except support the thesis that there is a very substantial problem of spouse abuse. If the judge wants to find out, tell him to talk to the cops. They know it's there. They've had to deal with it for years. There isn't any question in their minds.

TROOPER D'AGOSTINO. I must agree with that and add that if more women were aware of the fact that the criminal justice system in this State would support her, they would see many more statistics coming out, because many more women would, I think, be making a move to help herself and help to correct the problem.

CHAIRMAN FLEMMING. Commissioner-designate Ruckelshaus?

COMMISSIONER-DESIGNATE RUCKELSHAUS. Mr. Frederick, what are the major difficulties in the minds of the policemen who come to your training sessions that you need to try to overcome in this 3-day period?

MR. FREDERICK. I didn't bring figures, but I could tell you what they were from the results of a pre and post test that we give them, and the older typical ideas that the man's home is his castle and a man is responsible for disciplining his wife and a man's property belongs primarily to the husband.

It is amazing how many police officers respond affirmatively to those statements, and we have to try to overcome them. In 3 days we don't change their attitudes totally, but we do give them some things to think about.

Getting by that bias, they have the male bias that says the woman is his property, and then we have the bias of the criminal justice system

that says, "We don't want to be bothered with this until, by the way, it becomes a homicide." Then there's general agreement it is a matter for criminal justice.

Once we get over those things, then we begin to make some headway with them and we've been very surprised that, if we attack it head on and say, "Look, you're prejudiced, and these are some of the reasons why you've prejudiced, and these are the actual facts," we've made some headway, we've moved them a little bit, enough so that I think they've generally accepted what we've had to say.

COMMISSIONER-DESIGNATE RUCKELSHAUS. Trooper D'Agostino, how sensitive and responsive and supportive did you find that the system of justice in Pennsylvania to be to your specific plight, beginning with, let's say, the call of a police officer to your home?

TROOPER D'AGOSTINO. This was, as I might remind you, 11 years ago, and I called the police once. The neighbors called the police once or twice. I found the police officers came ready to do a job, which was to haul my husband away, and I found myself in the same position that I found other victims of domestic violence, "Oh, God, what's going to happen when he gets out, because I know he's going to get out." And he did, 8 hours later, and I was almost hospitalized after that beating.

The only reason I wasn't hospitalized was because I was embarrassed to go to the hospital, and they took me to a magistrate. "Yes, but how can I protect myself?" The magistrate was very informative: "You can have him arrested for beating you up."

"Good, then where do I go from here?"

"Well, that's a family problem."

Well, of course, it was, and I wasn't about to carry it home to my own family. They had been listening to it for 3 years. I'm sure they were quite saturated with me and my sad tale of woe, because they had no way to help me. So I found the system worked, definitely, to no corrective measure at all.

You know, it did nothing to help my situation. In fact, at that moment it made it quite worse.

COMMISSIONER-DESIGNATE RUCKELSHAUS. Do you think there's been any change in 11 years?

TROOPER D'AGOSTINO. I think I'm seeing police officers more ready to accept this. Part of the coalition thing, as I mentioned before, was, I stand there and I retell, in uniform, my life experience as a battered wife and as a police officer, and I can't tell you how many officers have contacted me to say thank you, that they thought it was beneficial to give them an insight as to understanding what is going on in that woman's head other than the fact that she likes to get beaten. And many officers I've never even met, they've just seen the tape, have, you know, called to thank me and the coalition for that training. They are receptive. I think police officers today know they need more to do the job better and they are looking for that now. They know there are problem areas and they need help and they're looking for that help.

COMMISSIONER-DESIGNATE RUCKELSHAUS. In your opinion, does the training course for State troopers adequately cover the training that is needed for domestic violence cases?

TROOPER D'AGOSTINO. Well, the training is geared toward the criminal aspect, just about, you know, on the criminal part, you know, what the law is, how the officer should protect himself, and techniques of entering the home.

It is a very good program. My own humble opinion is that it could be a little longer, and I think with the inservice training we have to get back out to the field, the men that we trained 20 years ago, and remind them that things are changing and this is the way, a positive way, to handle this type of complaint. And I hope that we're going to do that with the program I'm working on, to reach the people that we have trained that have long since gone and faced this situation and maybe found themselves at a loss, so I'm hoping that this program will do just that.

COMMISSIONER-DESIGNATE RUCKELSHAUS. Thank you.

CHAIRMAN FLEMMING. Commissioner-designate Berry?

COMMISSIONER-DESIGNATE BERRY. Miss D'Agostino, it was not clear to me whether your answer, about how things were different now than they were 11 years ago, included the difference in all of its aspects. As you described your experience 11 years ago, you said that there really wasn't an awareness of what would happen to you or what was possible, and it was not so much just a question of what the police did, but what else would happen. Do you think that now, if the same sort of thing happened to you or to someone else, that the responses would be very different, that there are support networks that—

TROOPER D'AGOSTINO. Absolutely. Of course, you realize I've worked very closely with it, and so I am fully aware of what's available. But I think, had I known there would have been a shelter and counseling and services available through these shelters in Pennsylvania, which are doing a really good job—I really think they are to be commended—if I knew they would have been available to me, I would have probably left, you know, the first time it happened, but I had no place to take it. I had no place to dump it. There was no one to share that with that I felt I would get any understanding from. I know that if I went to a shelter today, I would have someone there to help me direct my thinking to get me on the right track as to, you know, what are the answers, that there are answers available.

COMMISSIONER-DESIGNATE BERRY. Also, do you think that most of the women who are involved in domestic violence incidents are really in a position of wanting to find some way to maintain a relationship, without the abuse involved, or are they just in a position of wanting somebody to take away the person who did it to them and convict them and send them off somewhere so they're rid of them?

TROOPER D'AGOSTINO. I think most of the time you hear, "Just get him out of here" from the victim when you arrive as a police officer. She doesn't know any answer, but that it will give her relief, she's not going to be beaten in the next 2 minutes.

I think that her cry, "Help me, I don't know what to do and the only thing I can think of is get him out of here." And about the time you do take him out, as just recently happened in—they were taking him out and the woman picked up a knife and came at the officer's back.

Shocking, yes; but, you know, that doesn't mean that then you forget that she's—besides now trying to injure a police officer—she's still a victim of a crime before you got there.

I think she just wants, "Get him out. Help me find some answers." She's usually locked in financially with children, not that she's always uneducated. She's oftentimes very well-educated, but then again, you know, she's embarrassed, and who is going to help her where she can still be anonymous and resolve it.

COMMISSIONER-DESIGNATE BERRY. Thank you.

CHAIRMAN FLEMMING. Mr. Nunez?

MR. NUNEZ. Just one question, Trooper D'Agostino. Do you feel it would be worthwhile to have more women police officers working in this area? Do you see that as a possible beginning? It was suggested in yesterday's testimony that perhaps police departments should have full-time specialists in this area. And that's one question, whether we should have specialists in this area. Secondly, would women police officers make a difference in this area?

TROOPER D'AGOSTINO. I don't think necessarily so, frankly. A police officer is a police officer is a police officer. We all get the same training. I don't really see any big difference. I have seen at times where my presence out on the road was a positive move, and then again I had a man threaten to shoot me because he was so against women in general that I almost got shot by the mere fact that I was a woman. So, I think, if you have any person in your department sensitized and trained, they can handle it.

MR. FREDERICK. May I respond to that, Mr. Nunez? I fought for years with my former employers, Philadelphia Police Department, supporting the idea that women officers could do the job the same as men. I would object to turning it around in the other direction now and saying that we have to use them to do a special job, that men can't do it as well as women.

TROOPER D'AGOSTINO. I think either officer is as equipped, depending on their own thinking, their own backgrounds, what brought them into law enforcement, and how well they are trained. It doesn't make any difference.

CHAIRMAN FLEMMING. I would like to ask all three members of the panel whether you know of any situation in the State where judges, district court judges, or district attorneys, or police officers, are serving on the boards of shelters?

MR. FREDERICK. In nearly all of our shelters, I think there are police officers at least involved and in some cases judges, district justices, D.A.'s; unfortunately, not enough of them.

MR. CLARK. A lot of attorneys, Legal Services attorneys.

CHAIRMAN FLEMMING. I assume many attorneys. But I was feeling for exposing some of them to the problem in a way that might influence the manner in which they carry on their activities, and I don't know of any better way of possibly exposing them to the problem than having them come to grips with some of the operating problems that confront a shelter.

TROOPER D'AGOSTINO. I would like to comment. I am, as I said, a member of the domestic violence task force of Women in Crisis, which is a shelter in this area, and on that board they have a grant, I believe, to train police officers, which they are beginning the process of doing just that. And on the board that is helping to put together the program are district justices and police officers, and also the president judge of that same county has come out with a policy statement regarding the Protection From Abuse Act procedures to district justices, to police departments, to members of the Lebanon County Bar.

I think it is a positive step. I've been hearing about the judges today. I think that here is a judge that is taking a positive step.

CHAIRMAN FLEMMING. Do you have a copy of that statement?

TROOPER D'AGOSTINO. Yes, I do.

CHAIRMAN FLEMMING. If we could get a copy made of it—

MS. GEREENICS. Mr. Chairman, that's one of the exhibits that I was trying to sort through. Mr. Clark also has the previous memo from the same judge on the interpretation, and if we can have both of those put into the record at this time—

CHAIRMAN FLEMMING. Without objection, that will be done, because certainly, if one of the district court judges, presiding judges, has struck a positive note here, we do want to be aware of that and we do want to have it in the record.

MR. CLARK. It was a complete turnaround. I think a year and a half ago he initiated a memo stating that he didn't want to use the Protection From Abuse Act because it was an emotional response to family problems, and he's come around.

TROOPER D'AGOSTINO. Full turn evidently.

CHAIRMAN FLEMMING. Oh, I'd say. In other words, in this particular instance, he started off opposed to the act and didn't want—

MR. CLARK. Very much so.

CHAIRMAN FLEMMING. —people to deal with it, but in a period of 18 months has come around full circle.

MR. CLARK. Yes. So there's hope.

CHAIRMAN FLEMMING. That makes a very interesting exhibit. We appreciate your offering it.

All three of the members of the panel are involved in positive, constructive programs for dealing with this issue. As you think in terms of your own responsibilities, your own programs, what is the next step that you would like to see taken in connection with your particular program, your particular activities, which you think would help to deal with the issue more effectively? Personally, I've appreciated your positive testimony, but I assume that in all instances you feel that there's a great deal of progress still to be made, and I'm just wondering what you would regard as a very significant next step that would move you forward.

MR. FREDERICK. Well, I would like to say that since, with LEAA now winding down, a significant source of funding has disappeared, I think that some kind of Federal legislation has to be enacted that would possibly use the carrot-stick approach, or something like that, to en-

courage the development of programs at the State and local level. There is no money available, generally speaking, for these programs.

CHAIRMAN FLEMMING. When you say encourage the development and implementation of training programs—

MR. FREDERICK. Of training programs and shelter programs, counseling programs, all of the problems that are involved here. There are—we get bits and pieces from Health and Welfare and Department of Education, various, but there is no concerted effort to attack the problem and, as a result, our efforts have been fragmented, and we spend an inordinate amount of our time trying to find sufficient money to continue to operate.

This training program—unfortunately, I have gotten in the habit of eating and I can't continue to train police officers if I'm not paid for it; and come November I probably will not be training police officers any longer unless we find an alternative source.

CHAIRMAN FLEMMING. Your program at the moment is financed primarily through LEAA?

MR. FREDERICK. The training program, yes.

CHAIRMAN FLEMMING. Your understanding is that those funds are going to dry up the first of November?

MR. FREDERICK. Well, the current grant, and we can apply for an additional grant; but, I don't know, the odds are not too good on that.

CHAIRMAN FLEMMING. I see, but you can apply for another grant?

MR. FREDERICK. We can apply for another year, but with the reduced amount of LEAA funds available, I think the chances are very slim, and, of course, probably after this coming year there will be nothing available at the local level.

CHAIRMAN FLEMMING. Mr. Clark?

MR. CLARK. A number of things. Continue to work on the sexist attitudes of the police and the courts; more training for police officers, more training for court personnel; and I think we have to start attacking it on a policies level—police departments requiring written policy as to how to handle domestics. We can only train so many officers, but if there are directives from supervisors and department heads as to how the situation will be handled, the police will know. Maybe we can—

CHAIRMAN FLEMMING. Do you have in the State some examples of—

MR. CLARK. Only one, Philadelphia County; the Philadelphia Police Department has, I think it is effective October 19, 1979, has issued directives to police officers on how to handle the domestic situations.

CHAIRMAN FLEMMING. That's the only one?

MR. CLARK. That's the only one that I am aware of, and I could give that—

CHAIRMAN FLEMMING. And we, including that directive in the—

MS. GEREBENIS. We can have that put into the record; we don't have a copy of that.

CHAIRMAN FLEMMING. If we could get a copy of that and without objection we'll insert that into the record at this point also.

MR. CLARK. Another novel approach might be in Minnesota, and I believe in Florida, there are State laws that specifically, in domestic

violence situations, the police officer can arrest on probable cause on a misdemeanor, if the crime has happened within 4 hours. Again, I could give you a copy of that. It's a novel approach just for domestic violence situations where—we get a lot of "I can't arrest." The police officer will say, "I can't arrest because it wasn't a felony." This takes care of that. It says if it is a misdemeanor and you are acting in good faith, you can arrest the man on probable cause. I think that would eliminate a lot of the problems, and, again, it would tend to get the situation into the criminal justice system, and, one, I don't want to advocate arrest, an isolated arrest. We have to arrest, and then we have to aid the woman with the support systems that are available, the shelter, the counseling services, the advocacy people who will work with that woman through the court system. It just can't be arrest by itself.

TROOPER D'AGOSTINO. Well, I'm hoping to see our program, our being the State police training program, initiated very soon, and my hope is that from that we will have a policy statement statewide for all our people, how to handle this type of complaint.

I think the biggest thing—

CHAIRMAN FLEMMING. I gathered from your earlier testimony that at the moment there is not a policy statement of that kind affecting the State police?

TROOPER D'AGOSTINO. That's correct.

CHAIRMAN FLEMMING. Right.

TROOPER D'AGOSTINO. I think we have to get our act together, local law enforcement, State law enforcement, criminal justice system, the magistrates, and the district justices and the judges. Again, we're so fragmented; they teach some municipal, we teach some State police, and how it is handled in Dauphin County may be entirely different than when it gets to the magistrate as to how it is handled in Lebanon County or Perry County. I think that we have to get together law enforcement generally on this issue and that we're all operating pretty well within the same framework.

CHAIRMAN FLEMMING. I appreciate you giving us the breakdown as far as the composition of the State police force is concerned. I couldn't help but note that the percentage of minorities is a very small percentage as well as the percentage of women. Do those who have responsibility—let's put it this way: have those who have responsibility for the operation of the State police inaugurated an affirmative action program designed to increase the number of minorities and women on the force?

TROOPER D'AGOSTINO. We do have an affirmative action program. Also, we are working under the guidelines of a consent decree where we must reach an established figure of minorities, of which white females are not a part. Now, we do have an affirmative action program, though, for minorities and females, minority recruiting, that sort of thing.

CHAIRMAN FLEMMING. What percentage must you reach under the consent decree on minorities?

TROOPER D'AGOSTINO. I believe that's 9.5 percent we have to reach. I don't know what—I can't think offhand now what the optimum date was, but 9.5 I believe is the figure.

CHAIRMAN FLEMMING. You have a comment?

MR. FREDERICK. One other thing, Mr. Chairman. Someone said earlier today that the legal system, the criminal justice system can't solve this problem. They're right, but it can stop screwing it up. And I think that we've got to recognize that. I happen to have looked, during my entire career as a police officer, I've looked on arrest as essentially a negative act that I always avoided if possible. An arrest by itself has never solved any problem.

I'm saying that we have to find other ways of dealing with the problem. If an arrest is appropriate, fine, but let's develop some kind of method of dealing with this problem that is not going to tear the family apart by putting one part of it in jail and eliminating the income.

CHAIRMAN FLEMMING. We appreciate your being with us. We appreciate your testimony. Thank you very, very much.

MS. GEREENICS. The syllabus and courses and structure from the State police academy that Trooper D'Agostino has, could we have those entered at this point?

CHAIRMAN FLEMMING. Without objection that can be entered in the record at this point.

MS. GEREENICS. Thank you.

CHAIRMAN FLEMMING. Counsel will call the next witnesses.

MR. CHOU. Will Karin Takiff, Gloria Gilman, Andrea Ignatoff, and Muriel Fondi please come forward?

[Karin B. Takiff, Gloria Gilman, Muriel Fondi, and Andrea Ignatoff were sworn.]

TESTIMONY OF KARIN B. TAKIFF, ADMINISTRATIVE DIRECTOR, DOMESTIC ABUSE UNIT, PHILADELPHIA DISTRICT ATTORNEY'S OFFICE; GLORIA GILMAN, DIRECTOR, DOMESTIC ABUSE CLINIC, WOMEN AGAINST ABUSE; MURIEL FONDI, DIRECTOR, TRAINING AND THERAPY, WOMAN'S RESOURCE NETWORK; AND ANDREA IGNATOFF, PUBLIC INFORMATION DIRECTOR, WOMEN IN TRANSITION

MR. CHOU. Would each of you please state your name, position, and the number of years you've been in that position for the record, please? We'll start with Miss Fondi.

MS. FONDI. My name is Muriel Fondi. I'm the director of the training and therapy component, and I've been with the project since October 1978.

MS. TAKIFF. My name is Karin B. Takiff, I'm administrative director of the Philadelphia District Attorney's Domestic Abuse Unit and I've been in this position since December of 1978.

MS. GILMAN. My name is Gloria Gilman. I'm director of the Domestic Abuse Clinic for Women Against Abuse of the D.A.'s office and I've been with the clinic since March of '80.

MS. IGNATOFF. I'm Andrea Ignatoff. I'm public information director of Women in Transition in Philadelphia. I've served as the public information director of this project since October 1979.

MR. CHOU. Thank you. Ms. Takiff, could you briefly describe the organization and funding of the LEAA project of the Philadelphia district attorney's office?

MS. TAKIFF. Yes. The project is funded by a grant from the Law Enforcement Assistance Administration to the district attorney's office. The administrative and prosecutorial functions reside within the district attorney's office, and then there are subcontracts to the three women's agencies, represented by the women here, to provide services under the grant: Women Against Abuse staffs the Domestic Abuse Clinic, and Women in Transition staffs public information and education, and Women's Resource Network staffs the training and therapy component.

We are presently in our second year. Our funding for this year totals \$254,876, of which \$191,157 comes from the Law Enforcement Assistance Administration, \$58,719 comes from the district attorney's office, \$4,000 comes from Women in Transition, and \$1,000 from Women's Resource Network.

MR. CHOU. Would you also briefly describe the administrative component of the project?

MS. TAKIFF. Yes. The administrative component consists of myself, an assistant district attorney who prosecutes all misdemeanor level offenses, and a stenographer. Also, a functional part of the administrative component is a research assistant who is responsible for supervising the project's participation in the national evaluation and data collection effort, and who also provides advocacy services to felony victims.

MR. CHOU. How long is funding for the LEAA project expected to continue?

MS. TAKIFF. At the outset the project had a maximum life expectancy of 3 years. The second year will end January 24, 1981.

As it presently appears, LEAA funding will—our present funding comes out of LEAA's budget for fiscal year 1980. It does appear now that LEAA will cease to exist as of October 1. In all probability our funding will continue until the end of this grant year, although I understand that there is a possibility that the funds presently designated as pipeline funds, i.e., those awarded but unused, may be redirected at any time after October 1 to matters of higher priority to the Justice Department.

MR. CHOU. Have any efforts been taken by the project to ensure its continuation after termination of those funds?

MS. TAKIFF. Well, the information about the funding future has just recently begun to surface. We have begun to strategize about the future of the project and anticipate that we will be looking for local support for the project services. At this point, it remains unclear as to precisely the strategy we'll follow for institutionalization of the services.

MR. CHOU. Thank you.

Miss Gilman, could you briefly describe the organization and operation of the Domestic Abuse Clinic?

MS. GILMAN. Okay. There are six permanent staff members; five are stationed in room 571 of City Hall and one is in room 170. The five in 571 consist of an attorney director, an attorney, a civil paralegal, a receptionist, and a secretary.

In room 170, which is the D.A.'s private criminal complaint unit, we have one criminal paralegal. In room 571, that's where we do interviewing, we do intake; we determine the needs, both legal, counseling, housing, etc., of the individuals who come into the clinic; we make appropriate referrals; and we file for protection orders under the Protection From Abuse Act for those who it is appropriate to file for, and there are those who we do nothing for.

The criminal paralegal in room 170 does counseling and support, including court accompaniment to those who have filed private criminal complaints. We also have law students on weekend who are stationed down at the police headquarters who handle emergency weekend protection orders.

MR. CHOU. Would you briefly describe the caseload of the clinic?

MS. GILMAN. The statistics for 1979 for the first year that we were open are that we served 4,449 clients in that first year. That's on a walk-in basis. Telephone calls numbered 7,319. That's with a staff of six.

Our caseload in April—we received 1,159 phone calls. We had 310 walk-in clients in room 571, and that's while we were closed for 1 week. In room 170, our criminal paralegal saw approximately 100 people. Of those people in April who came in, we filed 92 petitions, we wrote 112 letters, we sent 11 police memos, and made 42 court appearances for 41 clients, because we also do court representation for people—for low-income people.

In May we drastically cut our intake because we realized that we really couldn't handle this volume with such a small staff. We cut it down to only 15 people a day. With 15 people a day we saw approximately 246 walk-in clients in room 571 and received 1,016 phone calls. In room 170, the criminal paralegal saw again approximately 100 people. We filed 57 petitions, sent 93 letters, and 19 emergency weekend orders; 79 clients were represented in 98 court appearances.

MR. CHOU. Could you tell us how you determine which clients for which you will pursue the protective orders?

MS. GILMAN. Well, first of all, there has to be physical abuse. A lot of people walk in and can't demonstrate that they've suffered physical abuse, but they are complaining of psychological abuse.

We look at the type of relationship: is it one where the people would come under the jurisdiction of the act? Has there been a history of abuse? Have any weapons been involved? Has there been a need for hospitalization? What's the attitude of the client? Will the client be likely to follow through? Have we tried any other type of intervention before? Have we written a letter? And the reason that we try and screen so carefully is because the courts are swamped with petitions and they only want to hear so many. They feel that we file frivolous petitions as it is, and we file, generally, it's been about 20 percent since we opened. Only about 20 percent of the people who come in do we file for. So we need to hold it down, partly in order to pacify the courts and partly because our staff simply can't handle it.

MR. CHOU. What happens to the 80 percent in which you do not receive protective orders?

MS. GILMAN. We do what we can. We refer some people to room 170 where they file for private criminal complaints. We try and figure out what kind of intervention people need most. Do they need help on housing; do they really need welfare; are they appropriate people to go to the shelter; and we refer out to whatever agencies we know of within our limited resources.

MR. CHOU. Have you attempted to involve the private bar in the representation of victims of domestic violence?

MS. GILMAN. We have attempted to do that. We've had fairly poor success. I had a meeting relatively recently with a member of the Philadelphia Bar Association who is heading a committee from the Family Law Division to deal with abuse, and we said, "Well, what we really need is people to represent women for free. We need pro bono representation."

He went, he took that back to the committee. They all said—he took that back to the organization as a whole—they said, "No way." There was no way that they were going to represent anyone for free. So he came back and said, "Well, now what?" I said, "Well, how about if we do it on a graduated income scale, something on the order that we prepare the petitions, that we get service on the people, and all they have to do is walk into court and at that point they would charge somewhere between \$75 and \$150 for that representation?"

He got a list of five people, that's for all of Philadelphia. That's as far as we've gotten. I've checked into an organization called the Child Support Center which represents children in a variety of matters, and they get all their representation by volunteer attorneys from the private bar that they train.

I've talked to them. They use the major law firms to do pro bono work, and there's some thought of trying to create some system similarly where we can involve the private bar, the major firms.

MR. CHOU. Does Legal Services of Philadelphia represent women victims of domestic violence who are seeking protective orders?

MS. GILMAN. When the office first opened we filed the petitions and Legal Services did representation for anyone who came within the guidelines of who they can represent, which is the majority of people who come in, because while a lot of people are not really low income, a lot of the people who come in are women who are dependent upon their husbands for support and, therefore, we consider them low income, because they do not have independent means of income.

CLS, Community Legal Services is known as CLS, they came under a financial crunch last October and stopped doing, totally stopped doing, representation of abused people. At that point, the clinic started doing direct representation. It has gotten entirely out of hand and it is way beyond our staff to be able to do that direct representation.

We have gone back to Community Legal Services and asked, "Please, we need help."

As it stands now, they feel that we're there to do this and, therefore, the burden is off them; they can rely on us to take care of that. It is now on an individual basis. There are a few attorneys who do help us to a limited extent and that's as far as it goes.

MR. CHOU. Could you estimate the number of people who are technically eligible for protective orders under the act, who you are unable to file petitions for?

MS. GILMAN. Oh, I can't give you a number at the moment, but I'd say at least half the people who come into the office could be eligible.

MR. CHOU. Could you tell us your opinion as to how effective the Protection From Abuse Act has been in Philadelphia?

MS. GILMAN. Well, it depends who you are talking about. For—it doesn't prevent murder. We've proved that, unfortunately. So it really depends on whether the defendant is—has some fear or some respect for the law. If it is someone who hasn't come in contact with the law before, who is going to be threatened somehow by being brought into court, who the threat of going to jail for contempt is going to have some effect, then that may work for that person. For some people it works because it simply gives a little respite so that the individual, the complainant can get it together to resolve their situation in some other kind of fashion.

There is a problem because contempt doesn't get enforced in Philadelphia. There are—my office has never filed a contempt proceeding. As it stands now, contempt is done, at least through our office, which handles the majority of the complaints in Philadelphia—sends all contempt violations for PCCS [private criminal complaints]. That's going to change shortly, because I want it to, but it's not real rational to do that, since I don't have enough time to do that. The reason is because when they go and get a PCC, they wind up in a process that you'll hear more about later, but they really wind up without any kind of significant punishment.

As it stands under the act, the defendant should be put in jail for up to 6 months. I would like to see these contempt violations being brought back to the courts before the judges who made the orders. The judges are reluctant to enforce their own orders; but I feel that, if the complaints were brought, of contempt, were brought back before them and they saw how often they were being violated, they would get angry and they would start enforcing them, and you would see the act being enforced much more efficiently.

MR. CHOU. Do you have any indication as to why judges are reluctant to find abusers in contempt?

MS. GILMAN. Well, some of them—they just don't want to put them in jail. It is really a family matter. They don't really understand what the whole thing is about.

There is another problem that I didn't mention before with getting these things enforced because, or making the act effective, is that judges don't believe—a lot of them don't believe in evictions. While having a protection order while two people are living in the same house has very limited value, because who can possibly enforce it when two people are living in the same house. There seems to be a greater respect for property rights than for personal interests. Then when it comes back to contempts, it is once again, "Oh, do I have to hear this again?"

It's sort of like being annoyed; they really just don't want to hear it. It is sort of like these are special listings, it's not even on their regular calendar. It is just not looked upon with the same kind of respect as other actions are.

MR. CHOU. What has been the response of the Philadelphia police to the enforcement of the Protection From Abuse Act and protective orders obtained under that act?

MS. GILMAN. There's been mixed response from the police. You just heard that there is a directive to the police of how they should handle these calls. What we're finding is that the police are using less discretion than they used to use over whether they should be intervening in an abuse situation. It's backfired. It seems like it's possibly backfired. I don't have statistics. I can't really say and I wasn't here, but it seems like I've heard from people in the D.A.'s office—it seems that, it used to be that once in a while you get a sensitive policeman who would intervene and really help put an end to a situation, or who would make an arrest, or do whatever was appropriate at the time. Now you see them trying to follow the absolute letter of the directive without any kind of rationality to it, and we're getting very limited kinds of true response.

What they do is, they hand out a card to every complainant that they visit, you know, that they respond to, with our name on it. So what happens is—and they are telling people they can get protection orders; we can't give protection orders to everybody for the reasons that I've already stated, so we get thousands of women at our door who have the expectation that they're going to get a piece of paper that tells this guy to stay away from them.

That's an unrealistic expectation that's being created by the police. It is helping to burden our situation rather than helping to resolve things, and that's a real problem and it is a delicate problem.

There are also situations where the police just have disdain for the courts, for the judges. I had a situation yesterday where a woman has a protection order—the defendant had violated it three times. She went to Legal Services. They were filing a contempt for her. She went last Friday, and the contempt was filed. Over the weekend she was beaten several times by him on the street, in her house, all over the place, and the police were right there and said, "No, I will not enforce it. Let the judge enforce it; he has sheriffs. This is not our situation." Later on yesterday he went with police and went to her house and took possessions out of her house while her sister was standing there and said to him, "Hurry up, we could lose our jobs for this. Hurry up, come on, but we're not going to enforce this." So they actually went to the point where they assisted in violating the order.

MR. CHOU. Does your office maintain statistics regarding the failure of police to respond to incidents of domestic assault?

MS. GILMAN. We are starting to maintain, not statistics, but a log of police abuses, as I call them. The reason that we're starting to log them individually is, there have been some efforts by this agency to work on changing things with the police. The response that we got was that it will be dealt with on a case-by-case method; that is totally unaccepta-

ble, but in order to prove our point, we thought that we would start logging them.

Hopefully, in the near future we may be getting a meeting with the police commissioner to work out some of these situations.

MR. CHOU. Is the clinic considering steps to improve the operation of the Protection From Abuse Act in terms of the court system?

MS. GILMAN. There are a lot of problems with the court system in that there are emergency weekend orders which include evictions, and they expire at 9 a.m. on Monday morning. At 9 a.m. on Monday morning we have 30 people at our door, who we cannot, well—even if we could really file protection orders immediately for all those people, because of our staff it takes us a number of days to get the petitions all typed. Then we have to walk them through the system, and it takes days to get a temporary protection order signed, and then it takes a week to 10 days to have a hearing after the temporary protection order is signed. That is not how the act reads. That is really improper procedure.

I understand that part of the reason for it is the volume and how the court has its organization set up at the moment, but what it means is that a woman who had someone evicted over the weekend has to go hide until she gets her temporary protection order signed, which could be 5 days, it could be a week. It depends if there's a holiday in between or whatever, but there's a real gap in the system.

What we're doing is we're trying to set up meetings with the court and try and negotiate some of these kinds of changes with them. I have some ideas, like perhaps there should be a motions court judge and we should be able to walk everyday into this motions court judge and get temporary protection orders signed.

As it stands now, that doesn't exist. It works very differently in Philadelphia than it does in outlying counties.

MR. CHOU. We heard earlier that LEAA funds for the project may be terminated shortly. What impact will that have on the operation of the Domestic Abuse Clinic?

MS. GILMAN. The Domestic Abuse Clinic will cease to exist. We have some match funding that comes from the D.A.'s office, but it is solely because—it is not match funding. I don't know technically what it is called. But it is solely because we have this LEAA grant. As it stands now, unless something is done to re-fund this project and to create something like it, there will be thousands of people in Philadelphia where the expectation already has been established that there is somewhere for them to go for help and it won't be there.

There are some agencies that provide support services, but they are not visible and there won't be any organized method of anybody getting to those places, and it will be very haphazard and chaos will be back.

MR. CHOU. One final question: in your experience, what are the benefits and drawbacks of operating the clinic under the auspices of the district attorney's office?

MS. GILMAN. I feel that the name of the D.A. lends credibility to the agency. We do get the police to refer people to us because of their

familiarity with the D.A.'s office, because of their familiarity with City Hall. We also get clients because we're in City Hall. People know where City Hall is.

Theoretically, it helps us to have the D.A.'s name because we should be able to deal with the police and the courts more efficiently, but in reality I don't think that's working the way that it should. I think that we need the active backing and advocacy coming from the D.A.'s office that we have not been getting. While we use the name, they haven't gone to bat for us; they haven't pressured the court system; they haven't pressured the police to implement the sorely needed changes that need to happen. I think the D.A. office has to take a very much activist role in order to really make it worthwhile for a community organization to be associated with the D.A.'s office itself.

I think that we lend credibility to the D.A.'s office because we're a community organization, and it is showing that the D.A. is working for the people. I'm also aware that the position of D.A. is an elected one, it is a very political position, and there are times when we might need to make waves that would not necessarily be beneficial for a political creature. That might be a source of conflict when we really try and make some changes in the system.

We also have come under some criticism from women's groups and community organizations because they feel that we compromise, we, Women Against Abuse, compromise unduly by virtue of our association with the D.A.'s office, so it is really a mixed bag. All in all it has been useful to be attached to the D.A.'s office because some of the courts do say, "Oh, you're from the D.A.'s office," and that gives me a little credibility and they will listen. While if I said I'm from Women Against Abuse, they'd be a little more reluctant.

MR. CHOU. Thank you.

Miss Takiff, would you care to respond to that?

MS. TAKIFF. Well, I am concerned about Gloria's suggestion that the D.A.'s office has not properly advocated their interest. I believe that there has been a good deal of advocacy, and I think that when the next panel presents its testimony, there will be an indication of the extent to which there has been that advocacy. There was the development of the—well, the reference earlier to the police memorandum which has, to a certain extent, backfired, perhaps, but it was a beginning; it has been something of a help. I think in at least giving—I think that the distribution of the referral cards which the project produced, which Andrea will discuss, I suspect, has provided a good deal of information and gotten it out to the women who need it.

I believe that there has been genuine support in the district attorney's office, and there has been a vastly increased sensitivity on the part of the assistant district attorneys in prosecuting the abuse matters, both on the misdemeanor level and on the felony level. So I suggest that there has been some considerable support.

MR. CHOU. Thank you. Miss Fondi, would you briefly describe the duties and responsibilities of the training and therapy component of the LEAA project?

Ms. FONDI. Okay. Essentially, the responsibilities are to develop various kinds of training workshops, and these vary, depending on the organization that we're dealing with, that our responsibility is to design them, let it be known that these training workshops are available, and to essentially negotiate with each of the organizations interested in getting up a program that is unique to their needs.

Our goal is to try to train as many mental health practitioners, social workers, psychiatrists, psychologists, law enforcement personnel, lawyers, nurses, i.e., anybody in some kind of a helping profession that is involved in dealing with this problem, and that starts right, of course, at your hospitals and of course with your legal system.

So that our goal is to sensitize them to the issues involved, to sensitize them to the nature of the problem, and to help them, depending on their discipline, of course, with effective case management, effective interventions, and that kind of thing, so that's essentially the goal.

MR. CHOU. Could you estimate for us how many people have participated in the training sessions?

Ms. FONDI. Sure. I could give you the figure from the very beginning, which would have been back in October '78 to Monday, June 16, is a total of 489. There were a total of 25 workshops during that period, and the composition of people who participated would be, as I suggested earlier, that we have done workshops for the diversionary services unit of the probation department, we have done workshops for the preliminary hearing unit of the district attorney's office, we have served as many of the hospitals in Philadelphia, Graduate, Temple, Misericordia, Chestnut Hill—I have a full list if you want that. But we have been very effective in working with the hospitals, both in their social service departments, their emergency wards, and nurses in the OB/GYN units where there's a rather high incidence of abuse; women who are pregnant tend to, there tends to be a higher incidence, yes, so there's a lot of interest generated. Did that answer the question?

MR. CHOU. Could you briefly describe a training session, include the topics that you cover, the information that is given to your participants, and the training techniques that you use?

Ms. FONDI. You have a form that we submitted with the blue portfolio that is under date of May 12, 1980, and this is a form letter that we send as a followup to organizations that are interested in setting up a training workshop or a series of training workshops with us, so that it describes our intent. It indicates that we are very flexible because we're aware that hospitals have a certain kind of rhythm, and mental health centers have another kind, and also that there are limitations on time allocated to staff for training purposes.

The subjects that would cover, if you follow along, is to understand the problem, go into quite a bit about the psychology of the victim and why she stays in an abusive situation. We are gathering increasing information about abusers, so that we know a lot more now than we did a year ago about the profile of the person or the male who abuses.

We deal with counselor roles and counselor bias, and this is an important area because a lot of the people that we're dealing with have

some of the common biases that you find in the general population, that somehow the woman is provoking the problem if she's masochistic, and some similar attitudes, so that there's a lot of bias that is manifested within the mental health professionals that see this as an interfamily problem and try to deal with it in terms of the interactional thing between the husband and wife, rather than doing that in addition to some of the cultural and social and legal supports that are given to—permission almost for men to abuse women.

We teach, if this is applicable, group counseling both for women who are abused and for abusive men, and other treatment modalities, individual short-term, long-term survival skills. We give them a good deal of information about what resources are available and also an explanation of the legal options available.

MR. CHOU. Mr. Chairman, could we have this packet of information introduced into the record at this point?

CHAIRMAN FLEMMING. Without objection, that will be done.

MR. CHOU. Thank you. Could you briefly describe the objective for the therapy groups that were to be established under the LEAA grants?

MS. FONDI. You mean, the abusive men's group?

MR. CHOU. Yes.

MS. FONDI. Right. Okay. The essential goal was that we got the idea a long time ago, somewhere in the winter of '78, probably, that though we were beginning to reach more and more women, that the other half of the problem was not getting any help anywhere, and we thought it would be very important for men to receive some kind of counseling and some kind of help with the problem that they were having, so that the goal was to establish groups of seven or eight men over four weekly sessions for about an hour and a half at 12-week groupings. The main object was to help these abusers learn nonviolent problem-solving techniques, to get at some, the reasons why they hit rather than talk, and to deal with some of those issues. The direct objective is to help them find another way of solving a problem and dealing with their frustrations.

MR. CHOU. Thank you.

VICE CHAIRMAN HORN. Could I just ask a question there, because I have to catch a plane shortly. In the sessions, do you find whether or not it matters whether there's a male or female counselor or a black or white counselor, based on the sex or ethnic makeup of the group?

MS. FONDI. You're talking about the men's group that—let me answer that several ways. That in individual work with women who are abused, that my experience with this is that women counselors are more effective in dealing with them, that having a male counselor somehow puts them in the similar kind of position of almost being subservient to, and, very frankly, a good many of the men that we're trying to educate are rather fired in their minds about some issues, and I think are more prejudicial in a biased way than women counselors, although they do not have, you know, they don't have 100 percent on that.

A lot of the women counselors also are a little confused about this, but I think that women are better helped by women in this area. I think

that the racial difference is less critical in the individual counseling thing than the sex difference.

VICE CHAIRMAN HORN. Thank you.

MR. CHOU. Miss Fondi, could you tell us the current status of those therapy groups?

MS. FONDI. Well, the current status is that we've had enormous problems in trying to get the therapy groups started, that the LEAA essentially locked us into receiving referrals from the probation department and that we began negotiating with them in terms of setting up a collaborative approach to this and setting up a criteria for referrals and a referral process for the group in December of 1978 and that there had been a series—I don't know that I can explain all the reasons why, but a series of problems one way or another, bureaucratic red tape, so that we received our first referral 7 months later in the summer of '79, which aborted.

We renewed our efforts with them in the fall of '79, October, and the referrals started to come in in March of '80, so that as of this hearing, unfortunately, we have received a total of eight referrals, that's over an 18- 19-month period, and we met with top officials from the probationary department, and we're going to try it once more, that we really need a working population of at least 12 or 14 because of the attrition rate that will occur before they, you know, get involved in a group. You'll get attrition all the way along the line. So we actually have six men, eight who were referred, six of whom actually came for screening and interviewed with me, so that's what we have at the moment, but we've got a few more coming in, so they tell me.

MR. CHOU. Have they been receiving therapy?

MS. FONDI. No, unfortunately, they haven't. The reason why we wanted to do this was to set up a model, and you know we weren't trying to service all the men involved in the city. We were really trying to learn how to help these men because this is a very new area. The mental health system really does not have any resources for it, and the other resources are very limited on a private base.

MR. CHOU. Miss Ignatoff, could you briefly describe the duties and responsibilities of the public education and information components of the project?

MS. IGNATOFF. Yes. Responsibilities are to plan and coordinate a public information and education program, to increase public awareness about the issue of domestic abuse, and to apprise the public about the services available to victims.

MR. CHOU. Could you briefly describe some of the projects and programs you've undertaken to fulfill these objectives?

MS. IGNATOFF. Sure. I'll call your attention to the tan folder that was distributed. It includes samples of most of the printed information that's been produced at this time. You might find a small card sticking out of the brochures. One is in English and the other one is in Spanish. These are the cards referred to earlier by this panel, and by the panel preceding. These cards are distributed by the police department under Directive 90 which was issued in October 1979, and also by the staff in the

emergency rooms at Philadelphia hospitals. It is basic crisis information for victims.

The next piece of information is the brochure. Again, it's in English and in Spanish. It includes information on safety tips and where to get counseling and legal help, how to deal with the police, what you can expect from the police, and some brief information on legal protection.

I'm mostly responsible for preparing testimonies, from time to time. In the two pages in the pocket is a testimony that was prepared for the Pennsylvania Forum on Families, which preceded the White House Conference on Families.

The second sheet lists 11 services for battered women which really should be included for comprehensive service to battered women, and on the right-hand side of the packet is a speaker's handbook on woman abuse. This was originally designed to help volunteer speakers to have information and to be prepared to talk to professional as well as grass-roots audiences. In the back is a resource list, for resources in Philadelphia for battered women, and then there's a selective bibliography and an extensive bibliography.

MR. CHOU. Thank you.

Mr. Chairman, could we have these materials entered into the record at this point?

CHAIRMAN FLEMMING. Without objection, that will be done.

MS. IGNATOFF. Excuse me, I would like to further describe the program. Within the program year I also will prepare a survival skills manual for battered women. In addition to the brief information that is in these brochures, battered women need to know all kinds of information. For instance, how to get welfare, how to use food stamps, where they can get emergency food, the steps in the criminal process, and the legal process for resolving their problems legally, emergency shelters, how to cope with the emotional aspect of abuse, mental health centers, and a variety of other issues.

MR. CHOU. Thank you.

MS. IGNATOFF. We also have a speakers bureau which goes out and talks to professional groups of all kinds. We have spoken extensively to the staff at the emergency rooms in hospitals. We have spoken at the Pennsylvania Bar Association. We have spoken at the National Conference of Criminologists. We speak to PTA and home and schools and church groups. Our component also releases press releases to the press, arranges engagements with the electronic media and arranges—distributes information to the print media.

We are planning a day-long conference in November to include the decisionmakers in Philadelphia and all the professional fields which have impact on battered women. That would include the educational system, social services, housing, justice, legislators, city officials, and mental health. We've been trying to work with the educational institutions in our city, too.

MR. CHOU. Okay, thank you.

Are the printed materials that are produced for the project in languages other than English and Spanish?

MS. IGNATOFF. No, Spanish is the predominant foreign language in our city.

MR. CHOU. Have you been able to gauge how effective those materials have been in reaching victims of domestic violence in those language communities?

MS. IGNATOFF. The materials were just produced last week so it is premature to judge. We have 6 more months, though, to find out.

MR. CHOU. Thank you very much.

I would now like to address two questions to the entire panel. First, I would like to get your opinions as to the overall impact of the LEAA project in Philadelphia. Perhaps we can start with Ms. Takiff, since she's the project director.

MS. TAKIFF. I think it may be somewhat difficult to isolate the effects of the project from the effects of other activities in the area, other efforts in the area of abuse, but on the assumption that ours is the most concerted effort, I'll suggest that the impacts I'll describe are primarily because of our efforts.

I think that, clearly, much more attention is being paid by the media, both electronic and printed, to the issue of abuse. I would suggest further that the individuals who come to the district attorney's office or to the clinic have a much greater sense of what their rights are and what the available remedies are.

I believe also that, through the careful coverage that the district attorney's office has given to abuse cases, we have been better able to work out appropriate dispositions in those cases, whether that be a probationary sentence with which the victim is satisfied because she doesn't want to see the abuser imprisoned, or imprisonment when that is an appropriate remedy. Further, I would say that there has been an increased amount of referral and feedback throughout the network of service providers in connection with abuse cases, and that includes medical, mental health, and social services, and also the district attorney's office and the probation department.

Part of that has come about as a result of the advisory board which we have, which is another aspect of the project which includes approximately 50 representatives of all of those services, public and private agencies, and community groups, and gives them a chance to connect up and make referrals.

MR. CHOU. Thank you.

Miss Fondi?

MS. FONDI. Just speaking from my own specific perspective on it, it is always hard to gauge when you're in the business of prevention; essentially, I think, that as more people know how to deal with the problem, that I would imagine less people would have to use the legal route because most people would rather not. Most of these women do not want their husbands to go to jail, do not want to be involved with the court system. It's long, it's painful, so that if problems can be solved at an earlier point where the intervention is more effective, then these more extreme measures might not be necessary. So I guess that the more people that know how to deal with this, then the less people will—the shelters—and the fewer people will be beaten and we will be

essentially serving a diversionary purpose, and I would only hope—I can't document this—I would only hope as an educator that some people are learning and some people are helping better.

MR. CHOU. Thank you, Miss Gilman?

MS. GILMAN. I think that we helped a tremendous number of people individually; but I also think that this, the impact on the city, has been by virtue of the fact that we've made the problem so incredibly visible. Apparently, before this clinic was started nobody had any idea of the vast numbers of people in Philadelphia who suffered from abuse. We brought that attention by filing numbers of petitions that's brought the attention so the courts can no longer ignore it, the legal system can no longer ignore it. There are numbers of agencies that we refer to in vast numbers, and they can no longer ignore it.

We've also given the police an out for how to deal with these situations. They can hand out a card. They can say, "Here, go here. You'll get help there." Numbers of people send people to us and it gives them, numbers of other agencies, it gives CLS [Community Legal Services] an out, it gives—private attorneys send their people, when they are doing divorces they send people to us and say, "Well, these people, you know. The divorce will get money out of them but, you know, the complainants can't afford to have the protection order so let's have this clinic file the protection orders for them." We're kind of—while we're providing relief for numbers of people, we're also providing an out for numerous other agencies.

We also give people the false assumptions that there's really something we can do for them, when our services are so very limited. People do need coordinated services. Those coordinated services do not exist in Philadelphia at the present time, and we don't have enough staff to be able to really pull that together and help them sit down and figure out, "Well, how am I going to resolve this situation?"

I had one experience where I had a woman who was a cancer patient. She had a cancer therapist; she also was in a battered women's group that had a leader. The three of us, the counselor therapist, the battered women's leader, and I, sat down with the woman who—she was asking for a protection order; she wanted an eviction for a year. She was not thinking in long terms. She was an elderly woman. She was not thinking, well, if he moves out, how is she going to pay the rent? She was not thinking about any of the practicalities of it all. By virtue of the fact that we tried a multidisciplinary effect, this woman is in very good shape now.

The other people testified at the trial. We've had a very successful venture. I think that that should serve as a model in the future that coordinated services are the way to go.

MR. CHOU. Thank you, Miss Ignatoff.

MS. IGNATOFF. I think the most obvious impact is the fact that at least 10,000 people were directly served last year in the clinic. Without the project they would not have been served. It is always difficult to estimate the impact of public information and education. However, I've noticed over the months, and, by the way, I've been working on the project 20 months. I started in October 1978, not '79 as I said in the

beginning. There's been a different attitude on the part of people I've spoken with either personally or over the phone.

I noticed in the first few months when I called professionals or directors of agencies, I'd either get some kind of a strange joke about battered women, or a remark like, "Oh, what's their problem now?" Very insensitive remarks, and so I had to—I felt obligated to explain it to them. But by this time those remarks have ceased, I found, and instead of having to explain what abuse is and how frequently it occurs and what a horror it is, instead people greet me with, "Oh, yes. I have heard about that." That's a completely different attitude to deal with, and I think the public information component of this project has contributed to it.

MR. CHOU. Thank you.

MS. FONDI. May I add one cute little vignette on this? In two instances when we were doing training, one of the people that we were working with told us a story of an abused woman who came in and said that she had gotten this little card which, you know, has been pointed out that is in your packet there in Spanish and in English, and that she had gotten this card from the police, and that every time her husband gets to the point where she knows him well enough to know that he's about to start swinging, she takes out that little card and puts it on the table or holds it up to him this way, and that seems to cool him. So I think that it is unfortunate that we're running out of time on this project, because we're beginning to get this kind of very small feedback.

Another woman showed up with a card in a mental health center and said, "I carry this around and some day I'm going to do something about it." So that it's going out and, as I say, it's hard to gauge, but little by little we're getting feedback.

MR. CHOU. My final questions, other than the problems that have been previously discussed, what other problems do you see that exist in the project and what improvements would you make for eliminating those? Perhaps we can start with Miss Takiff again.

MS. TAKIFF. I think that any effort to bring about cooperation among traditional agencies is bound to give rise to certain tensions; agencies perceive competing interests and priorities. I think that in starting, were I to be starting this project—I didn't start it; I came in after it existed. I think that there should be much more substantial groundwork laid among all of the agencies that are impacted by the problem of abuse, and a clear agreement and commitment to work toward mutually agreed-upon goals, because there have been tensions and turf disputes throughout the city, within the project. It's all been there.

I think that one other very clear problem has been because by virtue of the fact that we have a very significant public information component which does a superb job, but it has raised expectations and brought the information to the entire population of Philadelphia; consequently, the clinic, which is really set up almost as a demonstration, small, understaffed, and really suited to serve a very limited population, is exposed to the entire population. The fact that the project is within the district attorney's office reinforces the fact that it is available and

should be available to every citizen in Philadelphia. The pressures, consequently, are tremendous that are brought to bear on the clinic.

MR. CHOU. Thank you. Miss Fondi?

MS. FONDI. I'll reinforce part of what Karin is talking about. I think that the combination of having three women's groups combined with the district attorney's office is a fairly unique experiment and that there have been, particularly in the combination, a certain amount of distrust, a certain amount of uneasiness in terms of whether other women's groups were about to revolutionize the district attorney's office and turn City Hall upside down, which we probably would do to make it better if we could, but we can't, and the traditional office—so that a lot of the uneasiness had to be worked through, so there were some stormy times internally on this. I think that we worked out a lot of that.

It erupts occasionally that the feminist groups involved in this agreed to work with the district attorney's office in good faith, and I think that the partnership is possible and it's showing itself.

One of the other problems has been communication, and whether some of the philosophical differences contribute to that, I'm not sure; they probably have. Other communication problems have been created because of the geographical distance, that we are all over the city. Women's Resource Network is in west Philadelphia; Women in Transition is downtown; Women Against Abuse is up somewhere else; so that the staff of this project is not in the same building. So some of the kind of communication that happens when you're having a cup of coffee, the informal stopping by the water fountain does not happen, so that makes it harder to keep the kind of close togetherness that is crucial to this. So I think, if LEAA comes up with a lot more money, then we're going to have to get a better space so that we really can see each other more often.

MR. CHOU. Thank you. Miss Gilman?

MS. GILMAN. I agree with Karin that it is an impossible goal that we serve all battered people in Philadelphia. By the way, we don't just deal with battered spouses; we deal with battered grandparents, etc., I mean, it is an overall issue. Okay.

In that light, I feel we're incredibly understaffed. We're set up to be, as of now we're set up to be a legal clinic. We cannot do investigations. We have to take everything verbatim that we're given. We have very limited ability to do any kind of support work, as in the situation I described before, to make sure that someone is really going to follow through and use the civil process effectively.

We cannot do quality legal kinds of representation because we have such limited ability to spend time on these cases. I have been known to have as many as 10 cases listed in 1 day. Because of that we need to restructure the entire office and what it looks like and how it provides services. We need to be able to coordinate these support services in order to effectively use the legal system. There is also another problem in the legal system, that the legal system's not set up to be an emergency service.

I had a situation a few weeks ago where I had a woman in court. It turned out that there were some jurisdictional questions, and it's becom-

ing protracted litigation where the hearing on whether or not the judge is really going to hear the case is 6 weeks later, and my client walked out of the courtroom in tears with her extended family, "Oh, no, we're not going to get help. What is this?" And it is because the legal system really is a long, slow process, and it is not set up when you're really dealing and trying to work out what are all the different legal issues and how is the court really going to interpret things. It is not set up to deal with this kind of issue.

MR. CHOU. Thank you. Miss Ignatoff?

MS. IGNATOFF. I'll pick up on what Miss Gilman just said. For some people, legal recourses just are not feasible. They either don't trust the legal system or the legal system cannot respond to the kind of abuse they're enduring; specifically, women who are harassed constantly, women whose abuse doesn't fall within the category of misdemeanor or felony, and I think it is an oversight of our project that we don't have anything built in for social services. I think that advocacy is missing in our project, too, although we have advocated passage of certain bills in the legislature and we have advocated the refunding of our project. There's other things, too.

As others in this panel have mentioned and a previous panel, too, the laws are not going to solve abuse. It's a cultural phenomenon which is encouraged and condoned by mass media and mass merchandising. We have record album covers, we have prime time television, we have print ads, ads for films, all of which show women in various terroristic poses. They are screaming, they are being attacked, they are rape victims, they are being murdered, they're shot at, whatever, and the general message is that women are appropriate victims. I think all of that has to be corrected and our project doesn't really address that very well.

Another problem in our project is the fact that I think our advisory board members could be used more effectively and could take a more active role in incorporating services to battered women within their own institutions and advocating on our behalf.

Finally, I would like to reiterate what Muriel mentioned, that is, the communications. We are dispersed, and that impedes the normal flow of information, and also there's a philosophical difference, I think, the women's groups on one hand and the district attorney's representative on the other.

MR. CHOU. Thank you very much.

Miss Takiff, do you have a copy of the second year grant and quarterly and annual reports of the project to LEAA?

MS. TAKIFF. Yes, I do.

MR. CHOU. Mr. Chairman, could we have those documents entered into the record?

CHAIRMAN FLEMMING. Without objection, that will be done.

MS. GILMAN. I would like to reserve the right to add written materials within 30 days.

MS. FONDI. May I also reserve that right?

MR. CHOU. Mr. Chairman, I have no further questions.

CHAIRMAN FLEMMING. Commissioner-designate Berry?

COMMISSIONER-DESIGNATE BERRY. Miss Takiff, does the district attorney's office in Philadelphia regard this as a worthwhile project?

MS. TAKIFF. Oh, I think so, very definitely.

COMMISSIONER-DESIGNATE BERRY. Does the district attorney or the city of Philadelphia envision funding the project itself in the event that there's no LEAA funding for it?

MS. TAKIFF. It's an issue which we're currently discussing with the agencies, the three agencies involved on the project. There is some feeling, I believe, on the part of the three agencies that they might choose to pursue funding through another agency or in another means rather than having the district attorney's office pursue funding. There's no question on my part. I've discussed it with the district attorney, and he is certainly of a mind to pursue funding for the services within the office, if that is what the agencies involved agree is what they want. We are trying to approach this with them in a cooperative fashion.

COMMISSIONER-DESIGNATE BERRY. Miss Gilman, do you believe that the project would be better off, assuming that it is not funded by LEAA, being funded but administered somewhere other than in the district attorney's office?

MS. GILMAN. I have mixed feelings on that. I think that, if we can work out a more advocacy type role coming from the D.A.'s office, then that might remain a very workable situation and be possibly our most effective way to go. If that doesn't happen, then perhaps we're better off being outside the D.A.'s office.

COMMISSIONER-DESIGNATE BERRY. Also, should I infer from your statement about the need for other kinds of resources and not just legal action that, if the project is continued, that you think it ought to be tied in more directly with social services, advocacy, and the like?

MS. GILMAN. Yes, I do.

COMMISSIONER-DESIGNATE BERRY. Thank you. Mr. Chairman, I have no further questions.

CHAIRMAN FLEMMING. I was interested, Miss Gilman, in one comment that you made relative to battered grandparents. Have you handled a number of cases involving older persons?

MS. GILMAN. Quite a number.

CHAIRMAN FLEMMING. Quite a number?

MS. GILMAN. Yes.

CHAIRMAN FLEMMING. Have you any feel at all for the order of magnitude?

MS. GILMAN. I don't, really. I asked because my first day there I was surprised to find two cases right before my eyes there. My predecessor told me maybe 10, 15 percent. I'm not sure it's quite that high of what comes, I'm not sure, but it is significant enough.

CHAIRMAN FLEMMING. What approach has been taken to servicing that particular type of case?

MS. GILMAN. I'm afraid we haven't addressed that as a separate issue. We haven't examined it well enough to know how that differs from other spousal battering situations. We've pretty much approached it from the same manner as before. When we do our counseling, as limited as it is, we try and deal with the realities of that situation

economically and otherwise. Very often the parents do not want their children put in jail. They just want some kind—oftentimes it involves alcoholism. A tremendous other issue involved in abuse is alcoholism. It comes up all the time, and we're not sure how to deal with that.

CHAIRMAN FLEMMING. Have the rest of you had any contact with that aspect of the domestic violence problem?

Ms. FONDI. I think it is our next hidden iceberg, Mr. Flemming. I think that we're going to be hearing a lot more about this. I think this is a problem that we're trying to address in our training sessions. We don't know very much about it. It needs to be studied. It needs to be publicized and we need to get that part of the iceberg up, too.

I think that although our concentration has been on the abuse of women, that a very critical goal for social services and the legal system is to really understand the whole packet of domestic violence and the abuse of the powerless within the family, be they children, be they the elderly, be they women, be they handicapped, because they're all there and we don't have a total handle on it yet.

CHAIRMAN FLEMMING. Well, some of you may have taken note of the fact that the, that Congressman Claude Pepper held hearings on the abuse of older persons just within the last 10 or 14 days. I'm very much interested in the discussion that has taken place relative to the future of a constructive program of this kind. I gather that, first of all, the feeling is that it is linked to the future of LEAA funds to some degree. Am I correct on that?

Ms. GILMAN. We actually make the assumption that won't exist.

CHAIRMAN FLEMMING. You are making the assumption that that won't exist. Where did that information come from?

Ms. TAKIFF. My understanding is that the President's proposed budget through OMB does not include the Law Enforcement Assistance Administration for '81, nor does the Senate budget, nor the congressional budget.

CHAIRMAN FLEMMING. You referred to an advisory committee made up of approximately 50 persons. Are some of the members of that advisory committee citizens of the city who are accustomed to helping to raise funds for projects such as this?

Ms. GILMAN. Not really. The board is made up of representatives of the justice system, the medical and mental health systems, planning commissions, you know, health service planning commissions, not really fund raisers.

CHAIRMAN FLEMMING. Are there any private sector funds in the program at the present time at all?

Ms. TAKIFF. No.

CHAIRMAN FLEMMING. Has any effort been made to bring any private sector funds into the picture through United Way or—

Ms. TAKIFF. No, no such effort has been made. Really, our feeling has been that the best option to pursue would be to really have the services become institutionalized through the established city agencies that are most appropriate to them, because that would represent the greatest possibility for continuation beyond a very limited period of time.

CHAIRMAN FLEMMING. Do you feel that the program does have some support from city government?

MS. TAKIFF. I believe so. I hope so.

CHAIRMAN FLEMMING. That is going to be the approach, to see if it can be built into the program of city government?

MS. TAKIFF. That is right.

CHAIRMAN FLEMMING. To some degree. How many shelters are in the Philadelphia area?

MS. IGNATOFF. There's one shelter in the Philadelphia area for battered women. I'd like to point out that there're three shelters for animals.

CHAIRMAN FLEMMING. That's a very good point. How many does the one shelter accommodate?

MS. IGNATOFF. It includes 30 people altogether, so that would include about 10 women and their average of 2-1/2 children.

CHAIRMAN FLEMMING. Do you know of any plans for bringing some additional shelters into existence in the Philadelphia area?

MS. IGNATOFF. Many have tried, but few have succeeded. It is very difficult to raise the funds for the building, to get the zoning. Often-times neighborhoods actively object to shelters in their neighborhoods. In addition, a shelter is not an empty space. It must be fueled; it must be heated; it must be staffed; and, even with the funds for the shelter or an actual gift of a structure, then becomes the problem of staffing it, heating it, and furnishing it.

CHAIRMAN FLEMMING. In light of the experiences that all of you have had in this particular field, I rather assume that you feel that shelters are a very important part of the total picture. Am I correct in that?

MS. IGNATOFF. Yes, they're essential.

CHAIRMAN FLEMMING. So that one of the very real needs then, or the kind of resources that would make it possible for you to have additional shelters—

MS. TAKIFF. And I would suggest not just shelters for emergency purposes but also a kind of halfway facilities for—

CHAIRMAN FLEMMING. I could see that because, if the shelter is only able to accommodate the woman for 20 to 30 days or something of that kind, well then, in many instances she's still confronted with a very serious problem as far as housing is concerned. Do you have any kind of halfway—halfway is a good designation—do you have any halfway houses in the Philadelphia area that you can utilize for this particular purpose at all?

MS. TAKIFF. Not to my knowledge.

MS. GILMAN. Not to my knowledge. Philadelphia has a terrible housing situation. It is particularly difficult for even a woman, a single woman with children, to find housing whether she has money or doesn't have money.

MS. FONDI. The halfway houses are restricted to patients that have been discharged from mental hospitals.

CHAIRMAN FLEMMING. If I could go back just linking the two up again—you referred to as the battered grandparents, the cases that you are acquainted with, were they living in the homes of their children?

Ms. GILMAN. Yes, they were, except on a few rare occasions some of the children who were outside the home would come back to assist the ones that were inside the home.

CHAIRMAN FLEMMING. So that also raises a housing problem; in other words, if the grandparents are not going to live any longer with their children, then where are they going to live?

Ms. GILMAN. Right.

CHAIRMAN FLEMMING. Do you know whether, in the handling of those cases, any contact was made with your office on aging in the city government in Philadelphia?

Ms. GILMAN. So far as I know, we haven't been utilizing that agency.

CHAIRMAN FLEMMING. Right. Any additional questions?

MR. CHOU. No, Mr. Chairman.

CHAIRMAN FLEMMING. It is certainly very, very encouraging to learn about the contributions that have been made through this project, and it's a matter of real concern that you do confront some serious problems as far as continued financing is concerned, and I would hope that, if it does continue, in thinking in terms of an advisory committee that you might think in terms of citizens of the community that could help to rally support for you, both in the public sector and the private sector, because it seems to me that we do have to make more and more of the leaders in the life of the community aware of this and bring them to the place where they are aroused enough about it to help provide support for it. Some of the things that you've done have obviously called it to the attention of the city in a way in which it hasn't been called to the city's attention before.

I would think that maybe an advisory committee made up of some outstanding leaders who would really get involved in this could be helpful both, as I say, in terms of getting public support as well as the private support. Thank you very, very much for being with us and giving us the benefit of your insights. Best wishes.

Counsel will call the next witnesses.

Ms. STEIN. Jane Greenspan, Marie Hegarty, and Bebe Holtzman. [Jane Greenspan, Marie Hegarty, and Bebe Holtzman were sworn.]

TESTIMONY OF JANE GREENSPAN, ASSISTANT DISTRICT ATTORNEY, CHIEF, DOMESTIC ABUSE UNIT AND PRIVATE CRIMINAL COMPLAINT UNIT, PHILADELPHIA DISTRICT ATTORNEY'S OFFICE; MARIE HEGARTY, PARALEGAL, SOCIAL WORKER, DOMESTIC ABUSE CLINIC, WOMEN AGAINST ABUSE; AND BEBE HOLTZMAN, ASSISTANT DISTRICT ATTORNEY, DOMESTIC ABUSE UNIT, PHILADELPHIA DISTRICT ATTORNEY'S OFFICE

Ms. STEIN. For the record, would you please state your name and length of time in that position, Miss Greenspan?

Ms. GREENSPAN. My name is Jane Greenspan. I'm an assistant district attorney. I am chief of the domestic abuse unit and the complaint intake unit in the district attorney's office in Philadelphia, and I have

been with the district attorney's office for about 4-1/2 years, and I have been chief of the unit for approximately a year and several months.

MS. STEIN. Ms. Hegarty?

MS. HEGARTY. Yes, my name is Marie Hegarty. I'm a criminal paralegal and a social worker with the domestic violence project. I work in the district attorney's office in Philadelphia and I'm employed by Women Against Abuse.

MS. STEIN. And you are accompanied by another attorney from your office; is that correct?

MS. GREENSPAN. That is correct. I would like to introduce Bebe Holtzman, who is also an assistant district attorney in the domestic abuse unit of the district attorney's office, and she has been with us since about October of 1979.

MS. STEIN. Thank you.

Miss Greenspan, would you please describe briefly how the Philadelphia district attorney's office is organized?

MS. GREENSPAN. There are approximately 160 attorneys in the district attorney's office. We are split into four divisions. Those are the pretrial division, the trial division, the law division, and the investigations division. The pretrial division handles all preliminary hearings, all ARD [accelerated rehabilitative disposition] diversions, which is a diversion program prior to trial, and handles the domestic abuse and complaint intake units.

The trial division handles all misdemeanor and felony trials, jury or waiver trials, as well as homicides, and the law division does all the appellate work as well as any legislative work that the office is engaged in, and the investigations division does all special investigations work, all grand jury investigations work, investigating grand jury work.

MS. STEIN. And would you please describe your duties and responsibilities as chief of the private criminal complaint unit?

MS. GREENSPAN. Well, as chief of the private criminal complaint unit I handle all the intake for the office, and by that we do all complaint intake, which is all cases that are referred to us, typically referred by police where they cannot make an arrest because, for instance, it is a misdemeanor not in their presence, all economic crimes, fraud crimes, which the police are not going to handle.

As chief of the domestic abuse unit, I am in charge of the domestic abuse project generally as well as all policy matters dealing with abuse and child abuse.

MS. STEIN. Can you tell us how many complaints are filed with your office in a year?

MS. GREENSPAN. Well, I believe you have a handout of the statistics for 1979.

MS. STEIN. Yes, and at this point, Mr. Chairman, I would like to ask leave to insert this into the record as an exhibit.

CHAIRMAN FLEMMING. Without objection that will be done.

MS. STEIN. Do you have a total at your fingertips or shall we refer to this later?

MS. GREENSPAN. I'm sorry, did you ask for the total number of complaints?

MS. STEIN. That is right.

MS. GREENSPAN. That we get into the office or where we issue summonses?

MS. STEIN. That you get in the office?

MS. GREENSPAN. Okay. We get about 24,000 complaints a year that come in. In other words, we log in approximately 24,000 people a year in our unit. Out of that we refer, give information, give summonses, send back to police, whatever is the appropriate disposition. Some people are logged in that are totally misdirected into the district attorney's office. They're really looking for something else entirely; however, they are logged in and handled and referred.

MS. STEIN. Out of that total number would you be able to tell us how many involve incidents of domestic violence?

MS. GREENSPAN. I would say a third, roughly a third that come in that are appropriate into our office, even though they may not be appropriate for complaints, the ones that involve criminal matters, so they are appropriately there for that reason, roughly a third would be domestic.

MS. STEIN. And how many complaints are issued in a year?

MS. GREENSPAN. We issue—well, in 1979 we issued 6,400 complaints, and I'd say out of these approximately 2,000, approximately a third, were in the category of domestic violence. Maybe it is greater than a third, slightly greater than a third.

MS. STEIN. How does your office define the term domestic violence?

MS. GREENSPAN. Very generally. What we determine for referral to the clinic is defined by the Protection From Abuse Act, but for our own purposes we define domestic abuse very generally. We include all people who have ever been legally married; all people who have lived together for a significant period of time, in other words, a common law relation; all people who may never have lived together but have children in common; and, of course, all interfamilial father/son, mother/son, mother/daughter, or people living together in the same household.

MS. STEIN. Would you be able to tell us exactly, or estimate for us impressionistically, how many out of those domestic violence cases involve abuse of a wife by her husband?

MS. GREENSPAN. All right. I can do that. In 1978 and '79 we have a difference in the figures as to the percentage of domestic cases that were interspousal, actually people who are married, and that would be 17 percent of the domestic cases in 1978 were interspousal as opposed to 15 percent which were among paramours. In 1979 it was—interspousal was 13 percent and among paramours 18 percent.

MS. STEIN. And the balance would be father/son or the other kinds of relationships?

MS. GREENSPAN. The balance of the 37 or 36, which is roughly the greater than a third percentage of the total amount of complaints that we issue. In 1978 the interfamilial was 5 percent and in 1979 it was 6 percent.

MS. STEIN. Can you tell us how many felony cases involving domestic violence are prosecuted in a year in your office?

Ms. GREENSPAN. We do have a handout, which you have, which gives the number of trials that we had from April 1979 to October 1979, so that's a 6-month period. We had in that time 20 that actually went to trial. We had 40 cases withdrawn at the preliminary hearing stage.

Ms. STEIN. Excuse me just a moment. Is this misdemeanors and felonies?

Ms. GREENSPAN. No, I'm talking only felonies now.

Ms. STEIN. Okay.

Ms. GREENSPAN. So you're talking of at least about 60 cases in that period of time that were felonies that went into prosecution, in other words, went at least to the preliminary hearing stage. We had, as you can see from our statistic, a very high number, roughly two-thirds, drop out at the preliminary hearing stage.

Ms. STEIN. Can you tell us what would be the reason for that?

Ms. GREENSPAN. Typically it is the complainant's unwillingness to proceed. We have—our policy in the office has been to continue those cases, not to withdraw prosecution on those cases but to continue them and give counseling to the complainant in that case. Unfortunately, our counseling has not been successful in that regard. We have not been able to keep people into the system despite our counseling.

Ms. STEIN. Have you ever, or is it your policy to respect the wishes of the complainant with respect to dropping charges or do you ever compel her to appear and testify?

Ms. GREENSPAN. If she is there, if she does appear, we may try and put her on and call her to the stand and put her on and have her tell her story. By and large, we handle that depending on what is in her best interests at the time rather than having a set policy of absolutely compelling the prosecution of that in every case, and, of course, in those situations you're subject to what the judge is willing to do or willing to hear, and you've also got a defense attorney who knows what's up, so to speak.

Ms. STEIN. All right, thank you. Miss Hegarty, could you please describe the process of filing and pursuing a private criminal complaint?

Ms. HEGARTY. Okay. What I do in the district attorney's office is that out of all those complaints that Jane spoke about, I only handle the domestic cases. What happens when a victim comes in is—it is primarily a woman, so I tend to use the word "she" and "woman"—but when she comes and she is interviewed by a detective or a paralegal and they determine a crime has been committed, and they have taken her statement. What they then usually do is give—after the statement is taken, after her complaint is drawn up, what usually happens is that the detective or the paralegal Xeroxes me a copy of her complaint and gives it to me or leaves it on my desk.

If I am available, I then can interview the client again at that time, not looking so much as to whether the criminal conduct has taken place but looking at the situation that the woman is in. Is she safe? Can she return to her home? Does she need financial assistance? Does she need housing assistance? Does she need any sort of casework, any sort

of counseling, any sort of referral? I would do that sort of interview if I'm available.

If I'm not available, she will be going to court on that case 3 weeks after she comes in, so during that next 3 weeks what I generally do, or one of the students that sometimes works with me does, is to contact the complainant, explain to her what is going to happen, what the criminal procedure is, the procedure at the arraignment that she's going to be going to, what the setup is, how, you know, what questions she might be asked, what the procedure is. She'll also be explained, it will also be explained to her what her legal options are, you know, what kinds of possibilities she can have happen there.

When the commissioner says to her, "What do you want the court to do?" she'll have an idea of what the possibilities are. So a phone call takes place—at least one phone call takes place within that time period. Also, if it is determined that the defendant is on probation or parole, a contact will also be made to his probation or parole officer notifying them that he is a defendant in another case and can they intervene, or an assortment of other sort of casework would be done with the person during that time period.

Then the other thing that I do is when the case does come up, what I do daily is I go to the arraignments each morning. They're usually like 9 to 12. And I go to the arraignment and I meet the woman there, and again I discuss with her what she wants to do. Is the defendant there that day? Are they going to issue a warrant for him? Back and forth, again explain to her the process of what's going on. I find out if anything new has transpired since she filed the complaint; again I go over with her her legal options and what is it she wants to do at that point.

You know, we discuss that in the hallway. And then when her case is called, I go in there with her and I stand there and I advocate for her. Basically, it depends on the complainant, if she's able to speak her case on her own and just say what happened and what she would like next, then that's fine, and I tend to take a back seat.

On the other hand, some complainants need a lot of help. I mean, they are very anxious; they are very nervous. They forget what we talked about in the hallway, in which case I sort of fill in. Again, when we leave, if there's additional sort of casework that needs to be done or questions, or the case is withdrawn without prejudice, and then there's a new problem occurs, I give her a card and she can always call me back again, to review the case on the phone or come back to court or whatever. It is a contact person that she has throughout the system.

MS. STEIN. Am I correct that in Philadelphia arraignments take place before a trial commissioner? Is that the name of the presiding officer?

MS. GREENSPAN. Arraignments on private criminal complaints?

MS. STEIN. Right. Thank you. What is the trial commissioner's role at the arraignment?

MS. HEGARTY. Primarily, what the trial commissioner's responsibility is, is number one, to either negotiate the case there, to try to resolve it, to arbitrate the case between the two parties, which comes out to being called withdrawing the case without prejudice; or she has the option to

list the case into municipal court; or if the complainant chooses to drop the case completely, the complainant can also do that. So the commissioner's responsibility, basically, is to present those options to the complainant and to hear both sides of the story and to come to some sort of resolution.

Ms. STEIN. Typically, does he try to resolve or mediate the complaint, or, he or she—

Ms. HEGARTY. It's generally a woman, and I would say that there is a tendency to have the matter settled at that level. What generally happens is that, in withdrawing without prejudice, the case there is open for a period of 2 years, and it is explained to the client that, "You are withdrawing the charges now on the condition that there be no more violence from the defendant. He will not threaten you, harass you, hit you for any time within the next 2 years. If he does violate this agreement basically that we're making here, then you can come back and reopen the complaint," and that certainly is the way the majority of the cases go at that level, and they go that way partly because there is a tendency at that level to recommend that they be settled in that manner.

Ms. STEIN. Do you know how many domestic violence complaints reached the trial commissioner in 1979?

Ms. GREENSPAN. It would be approximately the same number that are filed. Many do drop out between the filing of the complaint and the commissioner level.

Marie indicates that roughly 10 percent drop out between the actual filing of the complaint and the first hearing, that level in front of the trial commissioner. If they do drop out, of course, the case is discharged completely.

Ms. HEGARTY. Sort of, generally, to give you an idea in terms of the cases that I handle, I have, over the past—I've been with the project now for 13 months—so I have over the past, I would say, 8 or 9 months basically averaged about 100 clients a month, give or take a few. In the past 3 months that number has escalated considerably, such that this month I have 146 cases listed, partly, I think, related to the clinic, the Domestic Abuse Clinic that you just heard from, them cutting down on the numbers of clients they're seeing, thus increasing the number of private criminal complaints that are filed, thus increasing the number that I handle.

Ms. STEIN. Do you feel that your presence as a representative of the district attorney's office has any impact in the disposition of domestic violence cases before the trial commissioner?

Ms. HEGARTY. Absolutely. I think, on a couple of different levels. One is that, that overall, I think, the district attorney's office needs to have a representative there at the arraignment, not just on the domestic cases but on other cases, also. Frequently, what happens to me is I, just because I'm there and I'm talking to a lot of different people, other people with problems other than domestic cases approach me and ask me questions about what is going on. People just don't understand the legal system, the average person.

I think it is important for the D.A.'s office to have someone there on all cases, but specifically on domestic cases because often, first of all, basically, because people don't understand the legal system; they don't understand when they walk in and they say, "Well, a bench warrant's been issued. You'll be notified when to come back."

A lot of people don't understand what that means; they don't understand what happened. And particularly in domestic cases where you have a victim who might have been, like, sitting in the waiting room with the defendant, which is, you know, what usually happens, and is already very upset and very anxious and very distraught. It may be the first time she's seen him in the past 3 weeks. She's really very anxious, and it is real important, I think, for me, in terms of the client, to explain to her exactly what's going on, you know, that she really is safe here, that we have a Philadelphia police officer present and a sheriff's officer present and that I'm going to be there with her, and although I'm not going to go home with her, that this is a pretty safe environment for her to discuss her problem in, so I think I provide a lot of support for the woman.

I think I just provide the clarification of the whole legal system for her in a lot of ways, and I think that in terms of, besides her, I think in terms of my presence in the whole system. I think it provides a certain credence, you know, on the level of the other court personnel, the commissioner, the other people, the attorneys there, that indeed the domestic cases now are being handled seriously, that there is a person now assigned specifically to handle these domestic cases,

You know that there is someone who is real concerned, that this is an LEAA project. You know that the district attorney's office does support my being here, that the district attorney's office does consider these cases seriously enough to have someone there all morning to handle them. And I just think it really helps the person, the client, to feel really good that someone is there from the D.A.'s office, and I think it helps the rest of the court personnel and the attorneys to respect that client more. I've seen that happen. I've seen attorneys approach my clients in the hallway and, you know, talk to them about what to do about this case, that they represent the defendant, and then when I approach them and say, "We can all talk," it's a different sort of a perspective; it is a different sort of a way for them to look at these domestic cases which have traditionally been seen in not good terms, I would say.

Ms. STEIN. Do you think that your presence results in a greater willingness on the part of the complainant to carry through with the procedure?

Ms. HEGARTY. I would say that there's a greater willingness for the client to show up from the time that she files her complaint, from the time that she comes to the arraignment. Like, for instance, I know that when I don't have a student doing a lot of these phone calls for me, and I'm tied up in other things and I can't contact these people in that 3 weeks, I have a significantly higher number of women who fail to appear. It is significant. Whereas, when I have a student doing all that preparation, calling those people, telling them that I'm going to meet

them there, that this is what's going to happen, I do real well. I mean, my clients all, not all, okay, but a significant number of them show up, so there's a big change there. In terms of women who prosecute from the arraignment since I've been there versus the number that previously prosecuted, that's pretty much remained constant. Before I got there, the statistics from the court were basically one-fifth of the domestic—of the cases, you know, handled in front of the arraignment go on to municipal court.

That number pretty much is the same. It might be up to like 23, 24 percent. It may go up a little bit, but it hasn't risen significantly. So I don't think that I've made a tremendous difference in having them prosecute. I think that they understand better what happens; I've had a significant number of cases that come back and reopen. I think that there's been a difference there. I think they know now they can reopen; they thought they were dropping the charges before.

As I say, I mean, statistically, there're not a lot more victims necessarily going on to prosecute these cases in municipal court that I've seen. There's a couple percentage points, but it is not particularly significant.

But I think what's significant is the type, the quality, of the service that's provided for those clients, number 1, and number 2, the increase in the number of people who appear for the arraignment, the dropout level there has decreased.

MS. STEIN. Thank you. Miss Holtzman, do you handle any proceedings under the Protection From Abuse Act?

MS. HOLTZMAN. The only proceedings under the Protection From Abuse Act I handle are where there are contempts of court charged as indirect criminal contempt, and that would either be by a police arrest or by a private criminal complaint which would originate in room 170 of City Hall.

MS. STEIN. What is your role in handling those?

MS. HOLTZMAN. Prosecution. If I elect to proceed as a criminal complaint in municipal court, the municipal court judges in Philadelphia, under the legislation, do not have jurisdiction to hear the contempt of court; however, they do have jurisdiction to hear whatever the accompanying substantive charges would be, such as simple assault or defiant trespass or whatever act constituted the contempt of court.

I can elect to withdraw the contempt of court and proceed on the assault or trespass or whatever, or I can elect to transfer the case to family court and then follow it through to family court and take the case for a contempt hearing before the family court judge.

There was a problem in Philadelphia in that I started in the office in September, and initially when I would transfer a case to family court, the family court judges that had issued the original orders were refusing to hear the contempts and were transferring them back to municipal court, at which point the municipal court judges were transferring them back to family court. I finally wrote a letter to the chief administrative court judge of family court and indicated that the orders were being vitiated by the behavior of various judges, at which point he did issue

an administrative order which forced the family court judges to hear their own contempts in appropriate cases.

I find that there has been no difference in penalty whether it goes as a contempt under the Protection From Abuse Act under 10190 or whether it goes as an assault, threats, trespass, whatever the charge is. The penalties have been, in fact, more severe in municipal court than in family court.

MS. STEIN. Have you brought with you the correspondence between the memorandum you sent to the judge and the directive that he issued to the family court?

MS. HOLTZMAN. No. At one time I did give that to Ricki Seidman.

MS. STEIN. By brought with you, I meant—

MS. HOLTZMAN. No, I'm sorry.

MS. STEIN. Well, we have it here and I'd like to ask, Mr. Chairman, that it be inserted as an exhibit in the record.

CHAIRMAN FLEMMING. Without objection, that will be done.

MS. STEIN. Have the family court judges complied with that directive?

MS. HOLTZMAN. They have complied insofar as they are willing to hear the contempts.

MS. STEIN. But, as you say, the sentence has not changed?

MS. HOLTZMAN. No, the sentences have not been significantly greater and, in fact, there have been scheduling problems. Although the judges have complied in terms of hearing the contempts, the numerous problems associated with that have increased. You know, scheduling it at a time when that judge is available in a courtroom that is open, getting the parties subpoenaed, the appropriate—there's a speedy trial rule and things like that that have to be complied with, the paperwork that has to be there. It appears to be more burdensome to the family court judges at this point than it is to the municipal court judges, although the family court judges will hear them.

MS. STEIN. Thank you.

Miss Greenspan, I think the documents you provided that have been admitted into the record indicate how many of the domestic violence cases handled by your office last year resulted in convictions.

MS. GREENSPAN. That's correct. For, what we have here, and I'll refer to them, we're talking only about misdemeanors now, not about felonies, okay.

We've separated them. You have the felony sheet and then the four attachments would be for the misdemeanors.

MS. STEIN. I see.

MS. GREENSPAN. We have the cases, what we have here basically is what has occurred from September to June, which is the time what we've been—that Miss Holtzman has been trying these cases. The statistics have been developed since then, so all the information that you have is from September to June. Do you want me to list what is on here or—

MS. STEIN. Well, without reading what the totals are, can you tell us what penalties have been imposed by the courts on persons convicted?

MS. GREENSPAN. Well, by and large, you get a probationary term, and that's either through a negotiated guilty plea or at trial and guilty verdict. By far, the majority is a probationary term. We do have some—we have had some fines, some suspended sentences, some imprisonments. What we typically try and do is work out a probationary term that involves counseling or treatment, and we are instrumental, or whatever, in using the criminal justice system as a leverage to get treatment in the area of domestic violence and that's been significant, and we've had significant success in at least getting that disposition. What success comes from the treatment is yet, you know, yet remains to be seen.

MS. STEIN. Are you referring there to accelerated rehabilitative dispositions?

MS. GREENSPAN. It may be either a pretrial diversion, which is an accelerated rehabilitative disposition [ARD], or it may be subsequent to trial—

MS. STEIN. Can you explain?

MS. GREENSPAN. And guilty verdict.

MS. STEIN. Can you explain where the ARD program is?

MS. GREENSPAN. That's a pretrial divisionary program where both sides agree to going into the ARD program. There may be conditions attached. If the program is successfully completed after 1 year, then the entire case is expunged, and that is a significant tool that we use. It's particularly attractive to defendants in view of the expungement provision.

MS. STEIN. Is the same type of program available as a condition of probation after trial?

MS. GREENSPAN. Not the ARD, no. After trial it would be a normal probation, either a reporting probation or a nonreporting probation.

MS. STEIN. I see. Can you tell me overall what effect the LEAA-funded domestic abuse project has had on the use of the criminal justice system in combating the problem of domestic violence in your opinion?

MS. GREENSPAN. Well, in our view, the project has been tremendous in giving specialized care to these cases; both through Marie and Bebe there has been tremendous impact on the kind of care that these cases get and in getting appropriate dispositions as a result.

We also, through the system, do try and have had more success than we would have had without the system or without the project, of having some network in terms of between civil and criminal remedies. In other words, making sure that the woman has the option, that she knows what her options are in that regard of going either civilly or criminally or both, and doing whatever is appropriate to the given situation, and that has come through the project.

MS. STEIN. What effect has the Protection From Abuse Act had on the use of the criminal justice system?

MS. GREENSPAN. That's very, very hard to measure. I think that we can much more easily measure the impact of the project. As far as the act, there have been changes in terms of the court system, in terms of the police. There have been, you know, many changes that have occurred in what the police can do because of the existence of the act,

but something that I think is extremely difficult to measure and something that we have not as yet measured.

MS. STEIN. Thank you. Miss Hegarty, can you add anything? Do you have any additional views on what effect the project has had or what effect the Protection From Abuse Act has had on the use of the criminal justice system?

MS. HEGARTY. I think in terms of—I mean, I agree with everything that Jane said, too, and I think, too, that one of the other—we've already talked about this, basically, but one of the major things that the project has done, I think, is just to make this whole problem of domestic violence so incredibly more visible than it ever has been, the numbers of people that have been generated through this project, the number of women that have been brought into City Hall, that have come to City Hall, that have been sent in by the police, it's just tremendous.

You heard the numbers that the clinic has handled in City Hall, the numbers of women that have been coming into the D.A.'s office filing complaints. I just think that the number of women, that victims of domestic violence that have been generated through this project, the existence of the project, to the publicity for the project, it's just incredible, and I think that this visibility that the project has provided will be, just be everlasting. It will just be ongoing in terms of any future model that will be developed, in terms of how to handle this problem, in terms of any sort of future laws that would be enacted, in terms of anything in the future. I mean, I think, in terms of the needs assessment, basically, if you look at the project in terms of the needs assessment for the last year and a half, has been just incredible and I think that's been a really big thing that the project has also done, just brought this problem to light.

MS. STEIN. Miss Greenspan, has the district attorney's office been active in the area of police training?

MS. GREENSPAN. Well, the project has had some, has been working in the area of training. We specifically now are doing training bulletins for the police department. In fact, we have drafted a training bulletin that is going to go up to the Police Academy, and the way that that will—as soon as the draft is completed, which should, hopefully, take only the next couple of weeks, we will send it up to the academy, and the way the training will work is that the academy will assign field police officers to try out, so to speak, the training bulletin, to follow it and see how it works. Then they come back to us and we discuss the problems with the bulletin, you know, where it doesn't work, where it does work, where it needs help, etc., and then come to a final training bulletin which all police officers in the Philadelphia system will be trained in, and that's what we're in the process of working on right now.

Training of the police is crucial and I think that that is something that the project and the district attorney's office has—will make significant efforts in. Unfortunately, it hasn't happened as yet, but it is in the process.

Ms. STEIN. Thank you. I have one final rather general question for you. Could you give me your view of the effectiveness, overall, of the criminal justice system in dealing with interspousal violence and any suggestions you have for ways in which it can be made more effective?

Ms. GREENSPAN. As was said earlier, I believe, in the panel, two panels ago, there's no question that what occurs in the home, where violence occurs in the home, it is a crime just as it is on the street, just as it is in the subway, just as it is anywhere, and I think that people in law enforcement are, hopefully, becoming more and more committed to the idea, people in the criminal justice system more and more committed to the idea, that it is a crime.

I think that a lot of attitudes have to be changed, that there is always going to be tension between the family model, keeping the family together, and criminalizing the offender, getting control over the offender. It is a delicate problem, to a certain degree, but I think it is one that must be addressed in the hopes of eventually preventing the family violence that we're seeing, the incredible magnitude of family violence. Attitudes have to be changed, attitudes among the judges, attitudes among the police, attitudes among the district attorneys, attitudes among all the people in the criminal justice system, and, hopefully, we're getting there; hopefully, it's working. With better training, I think that things will, you know, changes can be made; improvements will be seen, hopefully.

Certainly, we've made tremendous strides in bringing the problem to the forefront and I think that there has been, by and large, a great deal of good response, especially among the police, as far as the problem of family violence, what to do about it, how to handle it, and, hopefully, we'll be making great strides in that area. I think that the level, the police level is an important one, very significant, where the actual violence occurred. They're the first ones in on the scene, and it's a tremendously important place to get started and through the system, and just to continue it through the system and get everyone into gear.

Ms. STEIN. Thank you very much. I have no further questions.

CHAIRMAN FLEMMING. Commissioner Saltzman?

COMMISSIONER SALTZMAN. No questions.

CHAIRMAN FLEMMING. Commissioner-designate Berry.

COMMISSIONER-DESIGNATE BERRY. Just one question. I can't tell from reading the statistics, maybe it is there somewhere, how many of, you said that many of the people who are convicted are put on probation?

Ms. GREENSPAN. Right.

COMMISSIONER-DESIGNATE BERRY. If I understood you correctly.

Ms. GREENSPAN. That's true.

COMMISSIONER-DESIGNATE BERRY. Do any of them commit violent acts or abuse their wives again while they are on probation? And if so, what is the rate of recidivism?

Ms. GREENSPAN. Recidivism among those who are on probation during the time—there is recidivism, no question about that. I'm not sure yet; do we have any statistics on that?

MS. HOLTZMAN. I've had calls where there is recidivism. In that situation what I do is contact the probation officer, recommend revocation of probation. The probation officer takes my recommendation, in the two situations where it happened, and sets up a violation of probation hearing.

COMMISSIONER-DESIGNATE BERRY. Is it likely, or do you know, that a person who is on probation and then repeats the offense would still remain on probation?

MS. HOLTZMAN. In this situation, neither of the violation of probation hearings have yet come to court. In one situation, the judge has given every indication that the defendant is going to be given an incarceration sentence. In the other circumstance, I don't know. I would certainly recommend it, for violating that probation. I don't know what the judge will dispense at that time, but that would be my recommendation.

COMMISSIONER-DESIGNATE BERRY. And also you, if I understood correctly, you said that the probation is accompanied by counseling.

MS. GREENSPAN. Yes, we have reporting probation, nonreporting probation, and either one of those can be with conditions. The conditions that we will put on the probation depend on what is appropriate to the situation. By and large there's a tremendous amount of counseling that goes with it and there may be alcohol therapy, drug therapy, whatever may be appropriate.

COMMISSIONER-DESIGNATE BERRY. Also, do you have any idea at all about how many of these women who are involved then file for divorce or, if they are just living together, no longer live with whom ever this person is or—

MS. GREENSPAN. There is a large contingent of people that do, or contingent of victims who are forever expressing the need, you know, "I want him out of there. I want him away from me."

There is a significant number of cases that come in that are accompanied by some kind of civil proceeding in terms of divorce, custody, etc., but actual figures on that I don't think we have. We have not developed them.

COMMISSIONER-DESIGNATE BERRY. Well, how can you assess whether or not the criminal justice remedy is effective in reducing domestic violence, that's first, and also in being used as a tool by women who may want to maintain a relationship but no longer want to be brutalized? How can you assess that, or will you need to assess it after you have some statistics on recidivism, on what happens to the relationships and the like?

MS. GREENSPAN. I think we will, hopefully, be assessing it, certainly in terms of, you know, the cases that go through the criminal justice system, but you are getting back to the idea of the appropriate remedy for the woman and what she wants, whether she wants a protection order under the Protection From Abuse Act or whether she wants to criminalize the offender.

Unquestionably, the goals of the criminal justice system in the area of domestic violence, as in all areas, remain the same—the retribution aspect, the rehabilitative aspect, and the deterrence aspect. And we

have that here, just as we do in any area of crime, and this is, you know, the purpose of—these are the goals of the criminal justice system and the purpose behind our prosecutions.

We do not, as I said before, the idea of holding the family together is not paramount with us, the idea of protecting the victim is; so where that, you know, where typically, hopefully, that will coincide with her own wants and her own needs, there are times when it may not, so each of those cases has to be developed individually.

We have to think about them individually, but our goals do remain the same. I think it is important, however, to assess in terms of recidivism where we're going in terms of the probationary sentences, the counseling, and the treatment, and that's why I said we're getting good dispositions so far in terms of what we want, and whether the treatment aspect will be successful in terms of preventing future violence remains to be seen.

COMMISSIONER-DESIGNATE BERRY. Thank you.

CHAIRMAN FLEMMING. As you probably noted, you constitute the final panel in connection with the hearing that we've been holding during the last 2 days and certainly you have provided us with some very, very helpful testimony, particularly as we have the opportunity of relating the testimony that you have given to the testimony that we have been receiving during the last 2 days.

We are very appreciative of your coming here and giving us the benefit of your insights. Personally, I react very positively to the fact that a constructive program is under way designed to deal with this very, very important issue in a far more positive way than has been the case in the past.

Thank you very, very much. We appreciate it tremendously.

MS. GREENSPAN. You're very welcome.

CHAIRMAN FLEMMING. At the opening of this hearing, Vice Chairman Horn indicated that it is the custom of the Commission near the end of a hearing to listen to persons who have not been previously subpoenaed as witnesses. Those of you who are here will recall the rules under which we proceed and that anybody who desires to be heard must have contacted staff and talked over the matter with the staff, and then that we are willing to listen to that person under a 5-minute rule, but with the understanding that if the person has a more complete statement, that statement will be made a part of the record of the hearing. I'll ask counsel at this time whether anyone has registered with the staff to be heard?

MS. STEIN. We have one witness, Mr. Chairman.

CHAIRMAN FLEMMING. If you will call the name of that person and the person will come forward so that I can administer the oath.

MR. CHOU. Will Miss Felicia Gaines please come forward.

[Felicia Gaines was sworn.]

CHAIRMAN FLEMMING. Counsel will keep track of the time and—what are you going to do, give a 1-minute warning?

MR. CHOU. Yes.

CHAIRMAN FLEMMING. When you have 1 minute left, he will so indicate, and again I want to emphasize the fact that if you don't

complete what you want to say in that 5 minutes, if you then want to round it out in a written statement, we'll make that a part of the record of the hearing. Thank you. You may proceed.

MR. CHOU. Go right ahead.

TESTIMONY OF FELICIA GAINES

MS. GAINES. It is my understanding that the purpose for this Commission having gathered here on this campus for these past 2 days is to, indeed, hold a hearing with respect to the relationship of women, and maybe men, in the state of domestic violence in the United States of America. I indeed have come before you today to relate a specific incident that comes to mind, with the hope that, indeed, it will enable you to get a more complete picture of the item which you are dealing.

If it pleases the chair, I would like to inform the body for their point of information that I have submitted a statement to be entered onto the official record, that indeed enables me to speak in a relatively vague manner today so as not to incriminate any individuals or anyone that may be close to me. However, I would like to say that the circumstances I will be relating to the body today involve an incident involving family members about which I have personal knowledge.

I would like to zero in, so to speak, on the actual implementation of legislation of this type, and how indeed it is handled by local authorities. Approximately 2 years ago in the month of July a family I have knowledge of who resides in Swatara Township, district of Dauphin County, were indeed victims of what I feel ignorance on the part of their local authorities.

If it pleases the chair, I would like to at this time set a scenario for you. The father of this family had been known to drink relatively heavily and upon coming home intoxicated was known to incite arguments with his wife, involving his children, where, indeed, violence was often the end product.

On one particular evening, however, this father elected to carry the extent of their disagreement to what I believe to be, from my personal perspective, and let me note that it is only that, the extremes, in the sense that an argument around what was being served for dinner turned into an opportunity for the man to draw a gun on his wife. She had no knowledge if indeed the gun was loaded; however, in view of the safety of her children, she felt as, indeed, that were insignificant at the time. He told her, indeed, that her "best bet" would be to take the children and leave the house for she was, indeed, too domineering a wife and that he would do anything he had to do to "put her back in her place."

The wife at that time, in view of the safety of her children, letting that be first and foremost in her mind, decided to take the children and leave the home. The children involved were three children who in the State of Pennsylvania at the time the incident occurred, all except one, were minors. The one child was 18 years of age, but he still, you know, left with the family, so on and so forth.

They went out into the street, to the best of my knowledge, having had little or no time to prepare for such an occurrence. They left very spontaneously, unprepared. The mother left without a pocketbook, for

example, without keys to her vehicle, and the children left without shoes. They stayed in the neighborhood, very much in the vicinity of the home, in the immediate area, as a matter of fact. They found a nearby telephone booth, approximately two or three blocks away from the residence, and called the local authorities.

The wife actually made the call and the authorities responded as follows: they told her, they said, "Did your husband strike you?"

She said, "No, he did not. He drew a gun on me."

They wanted to know if the gun indeed were registered in his name. She said she had no knowledge that he even owned a gun but that just in the heat of this argument, he had just drawn it on her and that she had decided to flee with the children.

He asked her if she had another dime to make another telephone call, preferably to a local taxi service where, indeed, she could be transported from that point to the home of one of her relatives or somebody close to her for the purpose of shelter, for the purpose of getting the children out of the street.

The woman said, "No, I don't have another dime. Is there anything that can be done?"

He then proceeded to tell her that, if indeed she were the man's spouse, under the law of Pennsylvania, if, indeed, the home were registered in his name, that there would be at that time little or nothing that he could do.

I only ask that this testimony, hopefully, enable the Commission to get a clearer picture that even despite the fact that the State of Pennsylvania has already passed legislation to prevent this type of thing, or to aid the battered woman in this kind of situation, I just ask that it take consideration into seeing to it that local authorities are not only aware of this legislation, but make it part of their everyday duty to actually strive towards some effective implementation. I thank you for the time.

CHAIRMAN FLEMMING. Thank you very much. We appreciate your coming and making the presentation. Thank you.

This public hearing is now adjourned.

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