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Child Support Advisory Commission
August 15, 2014

[Child Support Advisory Commission]

The Child Support Advisory Commission met at 9:00 a.m. on Friday, August 15, 2014, in Room 1113 of the State Capitol, Lincoln, Nebraska. Members present: Senator Brad Ashford; Angela Dunne; William MacKenzie; Hon. Paul Merritt; Hon. Karin Noakes; Troy Reiners; Monty Shultz; Corey Steel; Eric Thompson; Byron Van Patten; and Amy Williams. Members absent: Senator Kathy Campbell.

ANGELA DUNNE: (Recorder malfunction)...order. Senator Ashford is stuck in traffic this morning on his way to Lincoln so I'm going to be temporarily filling in. My name is Angela Dunne. I am a divorce attorney here in Nebraska. I practice primarily in Omaha and I serve on the commission as the attorney representative. This meeting is subject to the Open Meetings Act and there is a binder on the table there if you want more information on the Open Meetings Act. All business will be conducted according to the provisions of that law, so that's available there for public inspection. It contains the same material that the commission has in its binders here in front of you. Any binding action the commission takes will be initiated with a motion followed by a second and a roll call vote. Do we have a motion to approve this morning's agenda?

_____ : I'll so move.

ANGELA DUNNE: Do we have a second?

_____ : I'll second.

ANGELA DUNNE: Do we have a motion to approve the meeting minutes from the last meeting?

_____ : I'll so move.

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ANGELA DUNNE: Thank you. Do we have a second?

_____: Second.

ANGELA DUNNE: Ollie, will you please call the roll?

OLIVER VANDERVOORT: Troy Reiners.

TROY REINERS: Here.

OLIVER VANDERVOORT: Judge McDermott (sic). Judge Noakes.

JUDGE NOAKES: Yes.

OLIVER VANDERVOORT: Dr. Thompson.

ERIC THOMPSON: Here, yes.

OLIVER VANDERVOORT: Amy Williams.

AMY WILLIAMS: Yes.

OLIVER VANDERVOORT: Judge McDermott (sic).

JUDGE MERRITT: Judge Merritt.

OLIVER VANDERVOORT: Merritt, I'm sorry.

JUDGE MERRITT: Yes.

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OLIVER VANDERVOORT: Judge Merritt. Angela Dunne.

ANGELA DUNNE: Yes.

OLIVER VANDERVOORT: Bill MacKenzie, William MacKenzie.

WILLIAM MACKENZIE: Here.

OLIVER VANDERVOORT: Byron Van Patten.

BYRON VAN PATTEN: Here.

OLIVER VANDERVOORT: Corey Steel.

COREY STEEL: Here.

OLIVER VANDERVOORT: Monty Shultz.

MONTY SHULTZ: Yes.

ANGELA DUNNE: And now we will move to this morning's agenda. I'd like to have all of the commission members go around and introduce themselves. Let's start here to my right.

TROY REINERS: Yes. My name is Troy Reiners. I am the director of the Nebraska Child Support Payment Center representing the State Treasurer's Office.

JUDGE NOAKES: My name is Judge Noakes. I am a judge in the 8th Judicial District, a district judge.

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ERIC THOMPSON: My name is Eric Thompson. I'm an associate professor of economics at the University of Nebraska-Lincoln.

AMY WILLIAMS: I'm Amy Williams and I'm here as a custodial parent.

JUDGE MERRITT: I'm Paul Merritt, district judge here in Lancaster County.

ANGELA DUNNE: Again, I'm Angela Dunne. I'm a divorce attorney in Omaha, Nebraska.

WILLIAM MACKENZIE: William MacKenzie, a deputy Sarpy County attorney.

BYRON VAN PATTEN: I'm Byron Van Patten, director of child support with Health and Human Services.

COREY STEEL: And I'm Corey Steel. I'm the State Court Administrator.

MONTY SHULTZ: I'm Monty Shultz. I represent a noncustodial parent.

ANGELA DUNNE: This morning we will be taking public testimony on the issue of child support, and I want to remind anybody who wishes to testify this morning that there are sheets on the podium that you need to fill out and hand to Ollie or Jenn back there in the white blazer. So if you want to give testimony today please fill out the sheet; bring it to the podium. Typically, we have a three-minute cap on testimony. This morning, because we have a limited number of potential testifiers, I don't think we'll follow that. So we'll allow you to testify. Of course, if it's getting into 10-15 minutes, we'll probably ask that you wrap up your remarks. So with that being said, we'll take the first person who'd like to testify if you want to approach the chair and hand your sheet to Jenn. And if you would please state your name.

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JEREMY BARNHILL: Jeremy Barnhill.

ANGELA DUNNE: Okay, go ahead.

JEREMY BARNHILL: Good morning, committee members. We all know why we're here today. It's a known fact that the child support system in the state of Nebraska is clearly broken. There are so many noncustodial parents and, more importantly, the children of these parents in this state that are suffering more than the reason why we're here today. Our kids are kids, and that's why I started the group that I founded called Kids Have Rights Too, because I'm sure--we have two family court judges on the committee--kids pay the ultimate price for what goes on in family court more than any noncustodial parent, more than any custodial parent will ever pay, especially when you take two parents that have been equally involved, equally loving, been there just as much as the other parent when it comes to their child. And when you get divorced or you split up, you now have a judge that 80 percent of the time demotes one of them parents to a part-time visitor which, in the long run, the child pays the price for that because they don't understand what's going on and why. In the process of making that one parent, regardless if it's a mom or a dad, the part-time visitor, the Child Support Guidelines in this state are one-sided and biased due to the fact that one parent is responsible for coming up with the lump sum of money that's needed for the child. Now, for example, I've been fighting the family court system for eight years. I'm a divorced single dad; I have my ex-wife and my three kids that live in Saunders County. And I'm in the middle of a family court case in Otoe County which started in Sarpy County where I ended up spending 90 days in jail on a contempt issue for a child support order that actually violated section R of the guidelines that you all are sitting on this committee that need to be fixed. What happened to that? I'd sat 90 days in jail for something that I should never have been put in handcuffs for. My ten-year-old daughter seen me be arrested. But most importantly, my kids went 90 days without a dad. And the fact that the state of Nebraska has one of the highest child support awards in the country but yet which...and I don't know if my number is exactly correct, but it's around...the Nebraska child support

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awards are approximately 120 percent of the national average. But yet the cost of living in Nebraska within the metropolitan areas is 90 percent of the national average approximately; and in the outlying nonmetro areas it's approximately 80 percent. So based on the guidelines in the statutes of this state of ours, child support and the cost of living are supposed to work hand in hand. But with the way the child support system is working now, for example--and mind you I'm not here to relitigate my case; I'm just merely using it as an example--my net income, which according to these guidelines is what child support is supposed to be based off of, my net income after my self-employment tax is approximately between \$1,500-1,600 a month. Now I have one child support case in Saunders County that I pay \$400 a month for my kids out there. The current order, which I'm...which is in violation of the guidelines that I'm in the process of trying to get fixed in Otoe County, is \$451 a month, which means I'm paying \$851...I'm ordered to pay \$851 a month for child support. I only make \$1,600 a month net income. That is 50 percent of my income that is ordered to go to child support which is also in violation of state statute.

ANGELA DUNNE: Mr. Barnhill.

JEREMY BARNHILL: Yes, ma'am.

ANGELA DUNNE: Could you educate the commission members on subsection R and why you feel there is a violation? I think that might be something that we want to look at.

JEREMY BARNHILL: Section R states...now I believe since my court case the poverty level actually went up. Section R is actually called the poverty level. Not only is it guaranteed by state statute but it's also guaranteed by federal statute. And it states that no child support order in this state is supposed to force anybody to live...and again, when that...last time I looked it was at \$850 a month net income. I believe it's been raised since then within the last couple of months. But it clearly states no child support order should force anybody to live below either \$850 or \$950 a month. That's why

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there's also another section within the guidelines that also clearly states that, yes, child support has to be paid, but there's a minimum amount of child support that's not usually offered in cases like that or it's based on a certain percentage of your income, which is what is supposed to be the status quo for the guidelines. My example, that doesn't take place. I let the family court system know for a year and a half, two different judges. Nothing got done, and I've got certified transcripts to back that up. Now if that's happening in my case, how many other cases throughout the state is that same thing going on too? Which, in turn, when child support don't get paid, a mom or dad goes to jail, gets their license suspended, they can't work. But most importantly, the child goes without a parent.

ANGELA DUNNE: Mr. Barnhill,...

JEREMY BARNHILL: Yes, ma'am.

ANGELA DUNNE: So if we're as commission members looking at the guidelines, do you agree or disagree that there should be a poverty level set?

JEREMY BARNHILL: No. I totally agree because...

ANGELA DUNNE: You agree. So is it more the enforcement or...I guess what it is that you want us to look at in terms of reviewing the guidelines?

JEREMY BARNHILL: To find...to set up some type of accountability as to where the guidelines actually are followed...

ANGELA DUNNE: Okay, thank you.

JEREMY BARNHILL: ...because what's happening is child support is not a mother's rights issue, it's not a father's rights issue. It's supposed to be an issue that's in the best

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interest of the child. Okay, that money, when two parents are together, the child got used to a certain lifestyle because mom and dad contributed to one unit. Now they get divorced, they split up, they say you shouldn't blame a child for mom and dad not being together because it's not their fault; but these...the system is making these kids suffer the ultimate price for it and they don't know why. Now you split up that unit. The child was used to a certain lifestyle. Now you got mom and dad separately that are now...should be responsible for looking out for the best interest of their investment, being that child. But the way the system is working now and the guidelines that aren't being followed now, you've got a custodial parent, noncustodial parent. The custodial parent is only being held to a minimal amount to support, being responsible to support their child, and you've got the noncustodial parent that's "brunting" the majority of the money that has to be put up for the child which, for example, studies show it costs about \$9,000 a year to raise a child.

WILLIAM MACKENZIE: What study are you referring to, Mr. Barnhill?

JEREMY BARNHILL: It's...that study will be issued later by Mr. Trader. He actually has that information with him.

WILLIAM MACKENZIE: Because I'm looking at the Department of Agriculture, their Web site contains information on estimated annual cost of raising children, and it's broken down by geographic area of the country to some extent, also by age of the children. And that...those studies, I plugged in figures for parents at different income...different number of children and different ages of the children. And it seems to be fairly consistent from Department of Agriculture that the average annual cost of raising a child is around \$12,000.

JEREMY BARNHILL: Well, like I said, the study that we looked at that Joe Trader will be touching on, the amount that they gave us was from birth to the age of 18 that it cost an estimated \$161,000 to raise a child.

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ANGELA DUNNE: Okay, Mr. Barnhill, we're coming up to about ten minutes.

JEREMY BARNHILL: No problem. I'm almost done.

ANGELA DUNNE: Do you want to just give us your concluding...?

JEREMY BARNHILL: I'm almost done. But for example, like with my case, again, this is only an example. Let's just use that term, \$9,000, or we can...let's just use the term \$9,000 for an example. If my child support order is \$451 a month, I'm court-ordered responsible to pay two-thirds of what it's going to cost to raise my child a year, but I'm getting less than 20 percent visitation time. Where is it fair or in the best interest of the child that one parent be ordered to foot the brunt of the load when it comes to the best interest and making sure their child is taken care of? Because, granted, even though the custodial parent may have the child more, the noncustodial parent still has to take care of that child when that child is in their custody. And they're having to pay the same things for that child when they're in their custody that technically should be probably paid by child support. Basically the noncustodial parent is paying child support twice.

ANGELA DUNNE: Okay, thank you very much for your testimony.

JEREMY BARNHILL: Thank you very much, and you all have a great day.

ANGELA DUNNE: I'm going to call Ms. Heaney.

MONTY SHULTZ: Ms. Dunne,...

ANGELA DUNNE: Yep.

MONTY SHULTZ: ...if Mr. MacKenzie is going to reference material that the rest of the

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committee members don't have, I would suggest that he either make it available...

ANGELA DUNNE: ...make it available to the commissioners?

MONTY SHULTZ: ...make it available or not reference that material.

ANGELA DUNNE: Bill, are you willing to do that?

WILLIAM MACKENZIE: (Inaudible.)

ANGELA DUNNE: Thank you. Sure. We're going to call up Ms. Heaney because she needs to leave here. But I'll do (inaudible)...

MARIAN HEANEY: Good morning.

ANGELA DUNNE: Good morning. Did you fill out a sheet?

MARIAN HEANEY: I did not.

ANGELA DUNNE: Jenn is going to hand you one.

MARIAN HEANEY: I'd be happy to do that. I brought some written comments for the commission if that's okay, if you'd be kind enough to distribute that.

ANGELA DUNNE: And if you would please state your name.

MARIAN HEANEY: My name is Marian Heaney and I am an attorney with Legal Aid of Nebraska. And I appreciate the invitation and the opportunity to speak before you this morning on a very specific issue that is the Child Support Guidelines and how they interact with modification of child support orders. Legal Aid is a private, nonprofit law

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firm and we provide free legal services, civil legal services to low-income Nebraskans statewide. Many, many years ago, the Social Security Act was amended to include what is referred to as Title IV-D and that was an act meant to assist with the enforcement and establishment of child support orders. By definition, the act is meant to collect money to reimburse the state for welfare funds that are spent for children, the idea being that the state will provide welfare funds to help custodial parents who need assistance for their kids, but they're going to go after the noncustodial parents to make sure that they pay their share. And that good idea over the years has led to some problems, and that's why I would like to address them to you today. There are two threshold presumptions to my remarks: one, it is absolutely just that parents financially support the children they bring into the world; and second, the standard for modification that currently is in the guidelines is not an inappropriate standard. I think it's an appropriate standard. It's the implementation of that standard that's an issue. With those presumptions in mind, please consider the following facts. Thirteen percent of Nebraska's population live at or below the poverty level. A full-time salary at minimum wage is \$1,276.66 per month. The current annual poverty level for a family of one is \$972, and that's actually the current figure under subsection R that was referred to in the previous comments. There are 520,786 Nebraskans living at or below 185 percent of the federal poverty guidelines. The population of noncustodial parents--poor noncustodial parents, commonly referred to as deadbeat dads--is a pariah population. These people are painted with a broad brush as deadbeat dads. About eight years ago, in response to a needs assessment, Legal Aid decided to devote some resources to this population in Douglas County because we discovered that they were a completely unserved population. At first we began extended representation, mostly because we had to learn how it was done. And because of press on resources, that has evolved to offering a variety of assisted self-help clinics which focus on providing clients with the tools to modify their child support orders on their own or to reduce the amount of their obligation and/or to modify an existing child support order to get a court-ordered visitation plan. And I want to talk to you a little bit about our clients. Of the over 160 people that we have assisted in the last three and a half years, approximately only 10 percent of those people could fall within

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the category of a deadbeat dad. Most of our clients work. They're more likely to work a part-time job than a full-time job. They generally work between...they generally earn between \$7.25 and \$10 an hour. They're more likely to work more than one job, and they are just barely making ends meet. What we have found in...we have analyzed our data from 2010 to 2012 and we have those results. We are now looking at data from '11 through 2014. What we find is that when parents are able to modify their child support orders in a manner that's consistent with the guidelines, 85 percent of those noncustodial parents pay their child support. Now these were all people who were behind, and they are behind because a child support order became unrealistic, their circumstances changed. And the problem was that it's...there's no mechanism by which somebody who has suffered an economic change in circumstances can get that changed. There is an administrative process through the state, and I can tell you from my experience that it takes anywhere from six to nine months after an application is filed for the Department of Human Services to reach a decision. The Department of Human Services reviews that if they think there's a basis for modification. Then it goes to the local county attorney or the state's attorney who then have a second-tier review, and they decide whether or not it warrants filing a claim for modification.

WILLIAM MACKENZIE: Ms. Heaney.

MARIAN HEANEY: Yes.

WILLIAM MACKENZIE: I don't mean to interrupt you. I handle an awful lot of modification cases that come to my office from the Department of...

MARIAN HEANEY: Yeah.

WILLIAM MACKENZIE: Good morning...Department of Review and Modification. And it's been my experience that those are handled very expeditiously, that they...

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MARIAN HEANEY: Well, my experience with Sarpy is that they are and...

WILLIAM MACKENZIE: Okay. Well, thank you. But I don't mean the individual counties. I mean that the department when the Review and Modification Office receives the questionnaires, there's a...if a parent calls Review and Mod and wants a free review, that the department sends out a questionnaire to that parent and gives them 30 days to fill it out and return it with supporting information--payroll, tax information--and then once that's received the department--and Byron will correct me if I'm wrong--the department will then immediately send out to the other parent a similar questionnaire asking them to return it within 30 days completed with the supporting financial information. And then the department, it's been my experience, reaches a preliminary decision within days, if not weeks, whether to refer that on or not. And then once that preliminary decision is made, the parties are notified of what the preliminary decision is. And then they have 30 days to ask for an appeal if the state...if the party thinks something is missing or the department came to an incorrect conclusion. There's a 30-day period where either parent can protest it, in effect, and then provide information why it's...why they were wrong. After that 30-day period, then the department will forward on their recommendations to the local county attorney's office. So it's three to four months typically, not nine months, is what I've seen.

MARIAN HEANEY: You know, Bill, I can tell you that it's absolutely not my experience with my clients.

WILLIAM MACKENZIE: Okay.

MARIAN HEANEY: I mean on an average they wait six to nine months. And I don't know how quickly the department reviews it and what happens when it gets to a county attorney's office, but I can tell you there are two problems with that. Number one, I have reviewed several cases where there was a legal basis for modification, and that was denied at the administrative level. Okay.

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WILLIAM MACKENZIE: Do you recall what those denial reasons were?

MARIAN HEANEY: There wasn't a substantial...a material change in the circumstances.

WILLIAM MACKENZIE: Oh, okay.

MARIAN HEANEY: Now as an attorney I can tell you, if I review something, I look for the legal standard--is it there according to how the law has been interpreted in Nebraska? When these same clients come to me and I review the situation, it's clear to me that there was a material change in circumstances or I would not be representing them. I just don't have the resources to represent somebody for fun, you know, so there has to be a legal basis for my office to act. And we're not going to waste the court's resources, and I'm not going to take a case to lose. And in those circumstances there are two problems: One is taking too long--three problems; it's been denied when there was a basis for modification; and, three, the law doesn't allow the child support to be changed dating back to the time of the application that was denied. So if I've filed petition to change child support, the law does allow, no matter when I go to court or when I have a final hearing, to change it back to the date of filing. Well, if the circumstances have changed from the date of filing a request for modification at an administrative level and I then have to a year later file a complaint in district court, that should date back, if there has been a change in circumstances, to the date that I filed that administrative request.

WILLIAM MACKENZIE: Do you understand though that that's based on case law?

MARIAN HEANEY: Oh, I do understand that that's based...and that's why we're here.

WILLIAM MACKENZIE: It's not the guidelines, yeah.

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MARIAN HEANEY: I mean that's exactly why we're here.

WILLIAM MACKENZIE: Right.

MARIAN HEANEY: The...I mean, and, you know, I think we all know this, that we create solutions to problems, and those solutions somehow at some point in time create problems of their own. And this commission is gathered, I assume, to address those difficulties. What I can tell you--and I will tell you this--when we look at these guys for clinics, they walk in, I review their ICHARTS reports, which is the state's database for child support payment history. I review the JUSTICE. I review how many cases they have open. Time after time after time I can tell you what's happened in their lives by looking at their child support payment histories. I don't take cases for people who have never paid child support, who have successfully been able to fly under the radar their entire lives and not take support for their children, who have paid the minimum amount to keep the authorities at bay or to keep their driver's licenses intact. We just don't do that. What I see are people who, number one, figured that if they didn't show up they couldn't file a child support order, so they made a bad decision at the threshold. An order was established that they could not manage at that time based on earning capacity. I am talking about a very specific population, and that is people who are eligible for our services. All of our clients are at 125 percent of the federal poverty level or lower, so we're talking about a very specific population of poor people, okay?

ANGELA DUNNE: Ms. Heaney.

MARIAN HEANEY: Yes.

ANGELA DUNNE: We're coming up to about ten minutes of testimony if you want to think of your concluding remarks, and then we'll take questions from the commissioners.

MARIAN HEANEY: Great. What I would recommend is that...what I would ask this

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commission to do is to look at making the guidelines implemented and to making it possible. What I can tell you is this: Fathers who can't...fathers want to work; noncustodial parents want to work. They want to support their kids. When they lose their jobs and they're unable to make their obligation, meet their obligation, they fell into not only a rut about being unable to pay money; they're incredibly broken and ashamed. And when they are broken and ashamed it interferes with their relationship with their children. When we compartmentalize issues regarding children into a box for child support, a box for custody, a box for visitation, we're not serving children. And when we make it impossible for fathers to meet their child support obligation, we are not serving children. As I said, the standard is appropriate for modification. What I would ask this commission to do is look at how that can become more effective. And specifically with respect to incarcerated individuals I will tell...

SENATOR ASHFORD: I was going to ask you about...

MARIAN HEANEY: Yeah. Let me just briefly state, there is absolutely no mechanism for them to modify their child support order. The Legislature created a remedy and found that incarceration under certain circumstances was not a voluntary reduction in child support. The Nebraska Criminal Justice Review did a study just a couple years ago. There are hundreds of men currently incarcerated who have child support orders over \$100 a month. When they get out, they are not going to be able to meet their debt. And when they can't meet their debt, we have completely eliminated the incentive for legal work. The state can take 65 percent of their minimum-wage income when they get out of jail. That means they're not going to be able to pay rent; they're not going to be able to pay food. So either they turn to the state for public assistance or they work under the table. That's what happens to people. So I'd ask you also to take a look at how the guidelines can be implemented specifically for the incarcerated population. And I really appreciate the opportunity be here today.

ANGELA DUNNE: Thank you. Any questions from the commissioners?

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WILLIAM MACKENZIE: I have a couple. I've marked three notes or three bullet points down from your presentation. Correct me if I've missed any. You like the guidelines...you'd like the support to be able to be modified retroactive back to the date that someone called the department to request a review?

MARIAN HEANEY: That wasn't in my original request, but I'll take that as something to take away, yeah.

WILLIAM MACKENZIE: But is that your position or...?

JUDGE MERRITT: Well, I thought she said when something was filed with the department.

ANGELA DUNNE: From the administrative determination.

WILLIAM MACKENZIE: Oh, well, that's the way it is now. As I understand it now, the default way of a modification, if a modification is eventually awarded, it will relate back to the first day of the month after the case is...the modification action is filed in court. Is it your...

JUDGE MERRITT: No, she's saying filed with the administrative...with the agency to have them start reviewing the process,...

WILLIAM MACKENZIE: Okay.

JUDGE MERRITT: ...as I think what she was saying is, should be the effective date when the person actually starts to process through the agency.

MARIAN HEANEY: Right.

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JUDGE MERRITT: And if he or she is not successful, has to go to court, it should go back to the date they first appeared to the agency and filed something with the agency to have it modified.

MARIAN HEANEY: If they're successful in court, yes, and...

ANGELA DUNNE: Right, if the district court finds that...

MARIAN HEANEY: ...because it's my experience that these guys try and try and try administratively to do this. And they'll come to our office prepared for a clinic and say, I have this packet, which is lengthy, it's cumbersome for a poor population. And, you know, I tell them, look I can get you in and out of court with an order before you finish completing your application. That's how much of a barrier it is to get their child support changed. So that's one bullet point.

WILLIAM MACKENZIE: Well, yeah, and I agree that it does take...if you don't want to pay it does cost to have it done administratively. And it is correct that if you were to hire your own attorney or go over to your office it'd be done quicker, no question about that. But it is your...one of your concerns is that, if a case is modified, it's not done retroactive far enough back. Is...

MARIAN HEANEY: If somebody has applied administratively and the circumstances at the time of winning a court decision were the circumstances at the time of filing a request administratively, yeah, it should date back.

WILLIAM MACKENZIE: Is that something you think that the guidelines commission can recommend to the Supreme Court?

MARIAN HEANEY: Yes.

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WILLIAM MACKENZIE: Because right now it's case law and not...it's not...it's...the guidelines are silent on the issue but the Supreme Court has issued numerous rulings that indicate that it should relate back to the date...essentially the date of the case being filed.

MARIAN HEANEY: Right.

WILLIAM MACKENZIE: Okay.

MARIAN HEANEY: I would ask that you recommend that to the Supreme Court.

WILLIAM MACKENZIE: Okay. But the district court judges have the discretion to not do that if they think that that's appropriate.

MARIAN HEANEY: Sure.

WILLIAM MACKENZIE: Your other one is the default, and I absolutely agree, if I understood you correctly, that a huge problem is created when so many people don't show up for court hearings and then the court is left somewhat in a fog as to how to...where to set the child support. And when you have one side there presenting evidence that support should be, say, \$500 a month, and you...and the person that's going to be paying it doesn't show up, you know, the voice that's there and heard is probably going to be followed more than the one that doesn't bother to show up. And is that your belief that a lot of the cases you look at are...the problem goes back to when they...nobody showed at the initial hearing?

MARIAN HEANEY: That creates one of the problems. But, I mean, you're talking about a situation. And if somebody can pay \$500 a month, they're definitely not eligible for my services. And I'm talking about a very specific population of people that IV-D applies to.

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And what I can tell you is that...two things. One, there is...my population of clients has no reason to believe that the judicial system is going to help them in any way, shape, or form. What they do find out when they do this assisted pro se clinic is that when they go in and they prove their case, they walk out transformed. I can tell you that without reservation. And they have learned...first of all, they've done what a lawyer can do so they think they're as smart as I am--and they are. And the second thing is that they have learned for the first time the justice system can work for them. Okay, so, yes, there is a huge problem with my client population not showing up for the hearing. But the key word that you used was "evidence," and what I do know is that HHS and the state has at its disposal more information regarding a person's work history and current work status than any other agency in the state. And what the state knows...I mean, I understand a noncustodial parent is in need and that a child's life circumstances change drastically when parents split. But a parent in need claiming that somebody makes \$5,000 a month that are tax free is not evidence. And the state that prosecutes a child support order has at its disposal Department of Labor information about work, whether or not somebody currently is working, what their earning capacity has been in the past, and so what I'm concerned about is evidence. And if there is evidence that is objective and not subjective, you go with the flow. I think it's a big problem for my clients and I'm not asking that they be excused. But I do think that the key word there is "evidence."

ANGELA DUNNE: And we...are you...do you have one more?

WILLIAM MACKENZIE: Just one more. You mentioned the prisoner modification. As you know, a few years back the state did amend the statutes to allow...

MARIAN HEANEY: Yes.

WILLIAM MACKENZIE: ...incarcerated prisoners that are there more than a year to file for modification. Before that change in law, they were just...the doors were slammed shut on them.

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MARIAN HEANEY: Right.

WILLIAM MACKENZIE: Now it's maybe...you would consider it a pyrrhic victory because they have the right in statute, they just don't know how to do it or they don't have the resources to go ahead in court. We see a handful of these cases come through, and my office is prohibited from getting involved. And any IV-D office is prohibited from getting involved in those prisoner-initiated modification actions. And it's been my experience that a lot of them just sputter out because they don't know to get service, they don't...

MARIAN HEANEY: Right, they do.

WILLIAM MACKENZIE: Right.

MARIAN HEANEY: And maybe...and let me share a little story with you about that. When the law was changed, which was a tremendous remedy...and here's the point: If you're going to create a remedy, it's not a remedy unless there's a way to access the remedy. And that's the problem. The statute is a great statute. And when it was enacted, prison librarians contacted our office and said, look, our prisoners have created some forms, we'd like you to take a look at them and see if they are legally correct to do the job. And I was really impressed with the forms that were presented to us. And we made some changes and sent them back to the prison librarians, and then those were distributed. And you're correct, what happened was there was a flurry of filings and a flurry of requests to waive filing fees, and then they didn't know what to do.

ANGELA DUNNE: Ms. Heaney, I hate to interrupt, but we're going to have to move forward.

MARIAN HEANEY: Sure, absolutely.

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ANGELA DUNNE: We had...

SENATOR ASHFORD: Let me...let me just, if I could, just real briefly. Does someone else have a...?

ANGELA DUNNE: We had two questions over here.

SENATOR ASHFORD: Okay.

ANGELA DUNNE: They've been answered, or do you still have...?

AMY WILLIAMS: I would ask you to continue with the story about the forms and the librarians. My question is, what happened?

MARIAN HEANEY: So these petitions started coming in, and we saw that they were kind of falling apart. So what we wanted to do was try and put together a pilot program in Douglas County where we could kind of shepherd these through, create a calendar, and set up, you know, teleconferences because the prisoners can't come in. So it all dissipated and it...and we've talked with both the Department of Corrections...and I asked them specifically, what has happened to those forms? And I was told they have been removed from the prison libraries. So...and I asked why. And they said, well, it hasn't been approved by the Supreme Court. Well, there are a lot of filings that have never been approved by the Supreme Court. And it requires some assistance for pro se because there's always an adversary in a child support proceeding by definition. But then we approached HHS and we asked them...we approached HHS through the access grant to see if we could get some funds to address this particular issue. And we were told specifically, we are not going to fund anything that deals with prisoners or modification. So...

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SENATOR ASHFORD: When did that happen, Marian?

MARIAN HEANEY: That happened I would say approximately a year ago.

SENATOR ASHFORD: Because this was our bill...

MARIAN HEANEY: Right.

SENATOR ASHFORD: ...that changed the modification proceeding. And that's a great question. I mean, clearly, in LB907 with the reentry plan that's now in statute, part of the discussion was, as you recall and those who were here when LB907 was passed, is to address that issue and that whether it...so I think that we have to...and we will from our office send specific requests to the department to develop a renewed process to address that issue. It is a massively important part of reentry.

MARIAN HEANEY: Yes.

SENATOR ASHFORD: And it needs to be addressed effectively throughout the state, not just in Douglas County. But I know when we passed that bill and what...and, of course, one of the frustrations, and Bill was kind of alluding to it, one of the frustrations that we have is when we pass a bill, and this one is about two, three years old, I think now, is that that then, you know, the agencies don't follow through. So I think that, I mean, we will make a...but to your point, which is a very important point, we will make a specific request as soon as possible to the department to reactivate or rebuild the process. That has to be done. So I really appreciate the question and the answer. Thank you.

MARIAN HEANEY: Well, and just as a suggestion, the federal pretrial or preprison sentence, pre...anyway, before they go to jail but after they've been sentenced,...

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SENATOR ASHFORD: Well, and now that's changed a little bit because we've added this reentry plan which is in additional step to try to...

MARIAN HEANEY: Right.

SENATOR ASHFORD: The minute that inmate comes into any institution in the Department of Corrections there is a plan in...if they're going to...if it's not a life sentence, there is a plan for them to come out, and that plan to come out, even if it's 10 or 15 or 20 years down the line, that plan is supposed to be implemented immediately.

MARIAN HEANEY: Okay.

SENATOR ASHFORD: And so your point is very relevant to that, and...

ANGELA DUNNE: Let's get to our last question.

SENATOR ASHFORD: Yeah.

ANGELA DUNNE: Do you have...

ERIC THOMPSON: Oh, well, I...thank you for the work you do, by the way, and I understand your point about expediting when someone's situation changes and they need an allocation, making that happen as...expediting the process so that would happen as quickly as possible. Is six to nine months really an unreasonably long amount of time? Don't most financial experts argue that a person should have six to nine months of savings when life-changing and emergencies come along to, you know, to temporarily deal with situations because that's the amount of time people usually have to make adjustments when there's changes in their lives?

MARIAN HEANEY: For you and I, I think that is a very reasonable period of time. For

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the poor, who live day...I mean, you know, the poor are taxed for being poor every single day. Payday Advance, they have to cash their paychecks to meet their bills, they're taxed in order to cash that check to meet their bills. They rent furniture. They're taxed in order to rent furniture. They're charged interest on unpaid child support. They're taxed for failing to pay child support. And for you and I, I've been blessed with opportunities that have allowed me to plan for unplanned events. The IV-D population doesn't have that luxury, and I live in Douglas County with the largest poor population in the state of Nebraska, the largest percentage of poor African-Americans, one of the largest percentage of unemployed, poor African-Americans in the country. The unemployment rate in north Omaha is 16 percent. Those folks were never in a position, ever, to plan for not being employed, never. And so for my population, no, six to nine months is not reasonable. For somebody who lives above the poverty level, lives above 125 percent of the poverty level, it may very well be reasonable. But I'll tell you why it's not--because these gentlemen who have lost their jobs, tradespeople--you know, when the economy tanked, tradespeople lost their jobs--when they've come to modify their child support, they have been in a 20-foot ditch and somebody handed them a 10-foot ladder. So they have exhausted unemployment, you know, and their child support has been taken from unemployment, as it should have been, and they have exhausted looking for a job. You know, they've got nothing now. They've got nothing; it's gone. And I think three months, if you haven't been able to find a job and if it looks like you're not going to be, when...I'm not talking about guys with college degrees and Ph.Ds. I'm talking about people who maybe finished high school, who maybe got a GED. They are not skilled in the marketplace. And when there are hard economic times, those are the first people to suffer. They get cut, they go.

ANGELA DUNNE: Ms. Heaney, thank you for your work and thank you for your testimony.

SENATOR ASHFORD: Yeah.

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MARIAN HEANEY: Thank you.

ERIC THOMPSON: Thank you for your perspective on that.

MARIAN HEANEY: Thank you.

ANGELA DUNNE: Did...could you give your sheet to Jenn, please?

JOE TRADER: (Inaudible.)

ANGELA DUNNE: Would you please state your name.

JOE TRADER: My name is Joe Trader. I'd like to acknowledge the committee sitting before me today. According to the nation's top child researchers, the average cost to raise a child living in Nebraska and making less than \$60,000 a year is \$161,000. That averages to \$372 a month for both parents with 50/50 custody to support a child; therefore, the 30 percent of time at best a noncustodial parent is allowed to see their children should leave them, in all fairness, obligated to pay \$223 a month. That, however, does not include an average another \$600 a month we must pay for day care and insurance obligations. That would come to over \$800 a month we must pay if the child support is where it should be, based on visitation time. This is not including the additional cost of living. Nebraska child support awards are the highest in the entire country, in fact, 30 percent higher than the national average across all income segments. According to the U.S. Census Bureau, the average cost of living in Nebraska is well below the national average and should be between 85 percent and 90 percent of the national average for national child support awards. Because of these facts, many simply cannot afford the additional average cost of living and child entertainment costs after child support, leaving many parents sleeping in basements and on couches. Research shows that noncustodial parents whose child support obligations are more than 20 percent of their income are less likely to pay, resulting in more jailings at

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taxpayers' expense, increased poverty levels; and more concerning is the unfortunate living conditions our children experience while with their noncustodial parents. In much of the same regard to the judges making custody decisions I ask you what guidelines and statistics you are basing the obligations you're giving us. More importantly, how does the state of Nebraska determine that \$20-25 a day total is good enough for the state to pay for a child in foster care but has the right to determine each child deserves a different way of life based on what their parents make? How is okay for all children in the state's hands to have free health insurance and day-care support but tell the poor and middle class they must remain struggling in order to pay those costs? Child support needs to have a legitimate calculation based on cost of living and the average cost to raise a child. This will greatly decrease the poverty levels of both custodial and noncustodial parents, increasing child support payments, a decrease in absent fathers, jailings, and any question in any sort of equal parenting bill being only about wanting to get out of paying child support; more importantly, a better and equal way of life for our children. I believe dealing with this issue will ultimately solve the majority of issues economically and politically in parenting roles. It's a tragedy that this state has taken equal rights from many of us in this room, but segregating our children into a class structure and a lifestyle is morally and ethically wrong. I ask you to put yourself in the mind of a child who lives in the poverty that some of you are responsible for rather than the mind of someone whose salary is based on the millions of dollars incentive the state gets out of child support. It's not, as many of you believe, all about the money to us. We have proven it's all about the money for you.

ANGELA DUNNE: Thank you. Any questions from the commissioners?

WILLIAM MACKENZIE: I just have one question, Mr. Trader. You indicated that Nebraska's guidelines are the highest in the nation across all income levels. What study or survey are you basing that on? Because I'm not familiar with that study, can you cite to a particular study?

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JOE TRADER: The U.S. Census Bureau, I mean, there was a big article probably within the last month in the Lincoln Journal Star that stated that. An attorney by the name of Chris Johnson was also responsible for that study. So that's that. Like I said, the U.S. Census Bureau, so they did a study recently on that.

WILLIAM MACKENZIE: Okay, but you can't cite the specific study or when it was issued? You said it was in the Lincoln Journal Star.

JOE TRADER: Lincoln Journal Star posted something probably within the last month or two.

ANGELA DUNNE: Thank you. Any other questions? Yes.

COREY STEEL: Mr. Trader, just so I'm not confused, your first opening statement said that if a parent should have 30 percent of parenting time, it should be...is your statement that that's what should be considered for payment as well? It shouldn't be an equal 50/50? It should be based on parenting time as well?

JOE TRADER: I believe it should be, absolutely.

ANGELA DUNNE: Pro rata, is that a pro rata share?

JOE TRADER: What was that?

ANGELA DUNNE: So if you have 30 percent of time you should pay 30 percent of support, is that what you...

JOE TRADER: I believe that's, in all fairness, what we should have to pay. I mean, if we...obviously, myself, and I know a lot of other people, we would rather pay 50/50. We would rather have 50/50 percent of the time with our children. But allowing us to pay for

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something, it's just pretty much as simple as that. Why are we paying for something that we don't fully...you know, we're paying basically full-time payments and benefits for our children, but we get to see our children at minimal at best.

ANGELA DUNNE: I understand your point about time. However, how do you reconcile the disparity between parent incomes? How do you think we should look at that? Do you understand what I'm saying there?

JOE TRADER: I know Mr. MacKenzie pointed out that one of the studies that he found, it was about, like, \$12,000 a month...

WILLIAM MACKENZIE: A year.

JOE TRADER: ...a year, \$12,000 a year. Myself and Mr. Barnhill acknowledge right about \$9,000-10,000 a year.

JUDGE NOAKES: But, sir,...

JOE TRADER: I'd say either (a) I mean, where does the state of Nebraska determine that \$20-25 a day...

ANGELA DUNNE: I'm not...okay, so let's forget about the amount. Pretend the amount was in a...something that you agreed with. Fundamentally, one of the principles that the guidelines are founded on are that we look at the respective growth incomes of both parents to arrive at what an appropriate support level is.

JOE TRADER: So basically you're segregating one child, saying that they deserve a better way of life than another person.

ANGELA DUNNE: No. Okay.

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JOE TRADER: So how is that fair though?

JUDGE NOAKES: So, sir, I guess, is it your suggestion that, regardless of whether a parent makes \$20,000 a year or \$200,000 a year, the child support amount should be the same?

JOE TRADER: I believe it should be. I mean, whether Mr. MacKenzie found one study, I found another, maybe find out what study the state of Nebraska found out or what they decided is good enough to pay for foster care and, you know, for a child in the state's hands. Let's find one statistical, legitimate guideline for what it costs to raise a child and let's do it that way.

ANGELA DUNNE: So your suggestion is a flat rate of child support based on the proportion of parenting time.

JOE TRADER: Yes.

ANGELA DUNNE: Okay. Any other questions from the commissioners? Thank you for your testimony, Mr. Trader.

JOE TRADER: Thank you.

ANGELA DUNNE: Sir, did you happen to fill out a sheet for (inaudible)...

BENJAMIN MARKSMEIER: Yeah. Yes, ma'am, she should have it.

ANGELA DUNNE: Okay, thank you, and please state your name.

BENJAMIN MARKSMEIER: Benjamin Adam Marksmeier.

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ANGELA DUNNE: I'm sorry, your last name?

BENJAMIN MARKSMEIER: Marksmeier.

ANGELA DUNNE: Marksmeier, can you spell that for us, please?

BENJAMIN MARKSMEIER: Yep, it's M-a-r-k-s-m-e-i-e-r.

ANGELA DUNNE: Okay, please continue.

BENJAMIN MARKSMEIER: My name is Ben Marksmeier. I currently pay \$872 for one child. My only line of income is my Social Security benefit for my children, my Social Security disability benefit, and my Army retirement. I get this income because I am a disabled veteran with an honorable medical discharge. I currently only see my child for four hours a month, four hours. My ex constantly asks me for more and more money and has found a way to manipulate the child support system by double dipping the child support. The child support agency employee even said and noticed that my ex has been double dipping, but she can't do anything about it to fix the situation. And what they do to double dip is basically, like I stated, my three lines of income that I get, they credit my ex-wife with the \$500 for the benefit of my child Social Security benefit, they credit that to her. They give that \$500 to her, and then my other lines of income, they use that to calculate the child support. Well, they give her that \$500 but then they use that same thing that they credit to her and calculate that in the calculation. So she gets \$500 plus she gets the calculation within that \$500. You guys see what I'm saying?

ANGELA DUNNE: So are you paying child support in addition to the Social Security benefits that your children receive?

BENJAMIN MARKSMEIER: Oh, yeah. Oh, yeah.

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ANGELA DUNNE: Okay.

BENJAMIN MARKSMEIER: So, well, basically my three lines of income, they use those to get the calculation, and with the credit, my child's benefit, so they give that \$500 to her, but then they use that \$500 still in the calculation.

JUDGE MERRITT: Of your...

BENJAMIN MARKSMEIER: So they get that \$500 plus the calculation with the \$500.

JUDGE MERRITT: Are you saying that \$500 is included to determine what her monthly income is for the total?

BENJAMIN MARKSMEIER: I honestly, sir, have no idea how they do it. That's on you guys.

JUDGE MERRITT: Okay, thank you.

ANGELA DUNNE: But, well, I guess his question is, are they assigning it to income for you or are they assigning it...

BENJAMIN MARKSMEIER: They assign...they credit it to her but then they assign it for me, so that's how she is double dipping. Do you get that?

ERIC THOMPSON: So that \$500 is included in your monthly income and then...

_____ : It's counted as...yeah.

BENJAMIN MARKSMEIER: Yep, so...but she get it. Well, and, well, let me...

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ERIC THOMPSON: I see what you mean, yeah.

BENJAMIN MARKSMEIER: Yeah, they...it's included in my income. I get my Social Security disability, my children's Social Security disability benefit, and then my Army retirement. They use that to do all the calculations and take 25 percent whenever.

ERIC THOMPSON: On what you owe, yeah.

BENJAMIN MARKSMEIER: But they give that \$500 to her, but they still use that \$500 as my benefit.

ERIC THOMPSON: Yep.

BENJAMIN MARKSMEIER: My ex actually went to the Social Security Office and had our son's check actually assigned to be mailed to her. So she now gets this \$500 directly to her but I'm supposed to still pay Nebraska Child Support Payment Center. I haven't paid the \$500 portion of this because, like I said, I pay \$872. So I've been paying lately the \$372 extra, but she gets the \$500. So I've been paying this because I don't get that income. So how am I supposed to pay that when I don't get it and she gets it directly--which is fine, I completely agree with my son getting that benefit--but...

ANGELA DUNNE: Is she the representative payee?

BENJAMIN MARKSMEIER: I am. But because...and the law states because basically, since she has full custody, physical, and parental rights, basically, since she has full custody, anything that his name is on she has rights to. So because it's my name with my...it basically was my name with my son's name under it. Because his name is on it, she went in there and just took it. And then the Social Security Office, they can't say who took it from me. But, I mean, it's pretty obvious because I trust my government. I

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know no stranger off the street went to the Social Security Office, you know, so it's obvious, okay? But that's what they told me. So now I actually owe Nebraska child support \$4,600 is what it says. My attorney has sent my ex-wife's attorney paperwork to fix this problem, but due to the negligence of my ex and her attorney, the problem has only got larger. So I'm sitting in the rut of the law basically being lazy. Now I have another son who...a four-month-old child. My Social Security benefit for my children is now basically split between them. My oldest son gets \$254 and my youngest son gets \$254. Guess whose child support doesn't change; take a guess. My ex-wife stays the same. So now the benefit, because I am a disabled veteran, sacrificed not only my life, my children's life, you know, to be with their father, my newest son's benefit is \$254. He gets...doesn't go to him. I'm on a fixed income and I'm limited to work. So basically that income that my son gets to feed him, put food on his table, goes to my ex-wife. My ex-wife basically, and she knows this and she's proud to say, even in court she'll bluntly stand up and say, I'm entitled to his new son's money. She has bluntly said that. I am 110 physically...110 percent physically disabled and obviously have a few work restrictions. My ex is not disabled and can work full time. She uses money as a fighting tool which can cause several problems between us. She's even stated that if I don't pay more I can't see my son. And my son will be eight in November; I've missed four years of his life because of this reason, four years. This is one way how the system is hurting my child and many more children of Nebraska. This happens way too often in Nebraska. The child support system is very unfair and there isn't enough time and research put into both parents getting the best solution. Instead, facts are overlooked and situations are all around to be a one-sided favor for the mother's benefit. It would be fair for finances to be 50/50 to avoid power struggles, conflicts, using children as leverage to get more money in divorce cases. Statistics show that when there is equal parenting, which includes finances, it best benefits the children. Children in these situations where it is 50/50...where it is the 50/50 responsibility do better in school, society, socializing, do better with...you know, in divorce cases, and they handle life better, they understand how to handle life's situations a little bit better. Instead, they see all this shady, backstabbing, all this stuff, and that's all...that's how our new society is

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going to be. That's what our kids, the people that are going to take care of all of us when we're old, they're going to see this stuff and they're going to...oh, it's okay to stab people in the back, it's okay to hide around little laws, and that's not cool. In the end, in the future, it's going to demoralize our society. That's how I feel. I fought hard and proud for my country because I believe in my country. Freedom, fairness, equality, doing the right thing, people having good morals, values and traits, that's why I signed up to defend my home. Not only did I stand up when my country asked me to...when my countrymen asked me to, I ran to the front of the line. You're looking at a man who did go overseas and die for his country. They actually did take my dog tag and I did die for, well, they said a little bit, but most of it's kind of a blur, so...I came home with one less leg but I came home to my family. The passion that I have for my country is by far smaller than my passion for my children. But the state laws restrict me from being a father. God gave me the right to be a father, not none of you. It puts a tear in my heart to see that all I gave for my home, my state, to just have my state be the reason why I don't see my son by allowing people to use something small as money to determine if they see their children. That's all I've got to say.

ANGELA DUNNE: I want to thank you for your service. I'm sure I speak for all of the commission members.

BENJAMIN MARKSMEIER: It was my honor, my pleasure.

ANGELA DUNNE: Any questions from the committee members? No questions. Thank you for your testimony.

BENJAMIN MARKSMEIER: Thank you. Appreciate for giving me the time to talk to you all.

JUDGE MERRITT: I just want to say, sir, that I am a veteran and I really appreciate what you've done for the country.

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BENJAMIN MARKSMEIER: Well, thank you, sir. And you being a fellow veteran, I appreciate you led the way for me to be a better soldier. So thank you.

ANGELA DUNNE: Next. Good morning. Will you please state your name?

LANCE BALKUS: Lance Balkus.

ANGELA DUNNE: Would you spell your last name for us, please?

LANCE BALKUS: B-a-l-k-u-s.

ANGELA DUNNE: Okay.

LANCE BALKUS: I wanted to thank everyone for their time today. Today I kind of wanted to talk about the Child Support Guidelines and specifically fiscal issues that I see with the current guidelines. I believe that...I operate on two premises when it comes to being a deadbeat. You can be a deadbeat fiscally and you can be a deadbeat in your time with your children. I believe, as you've already used the dictionary, it would...the actual...the word itself would mean those two things. But some of the issues that I'm going to talk about I have an understand of social programs in the state of Nebraska and how child support currently affects them. And when I said deadbeat, I'm not late on my support. I'm current, so...actually, I'm above current. But in the issue that the state has with there's been a fight of custody rights that I think nothing will ever change with that, but I think the Child Support Guidelines that they were more fair that a lot of those issues I think would find themselves going away. I feel like people talk about the poverty level as being a good indicator of what child support should be. Well, as a family you can get food stamps and be above the poverty level. So basically, if you're using that, you're taking someone that would be eligible for food stamps and then telling them that they can't have food stamps because their gross income is too high. There are issues

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fiscally with your taxes that a judge will sign an order saying that you get to use the child as your...as a tax deduction. But you go to your CPA and your CPA says the IRS doesn't care what a Nebraska judge says. You would have to go take your ex back just in order to sign the document to be able to use the child as a tax deduction. One thing I learned with doing my taxes, my day care, I pay half of day care. I pay over \$600 a month in day care. And I found out I didn't get to write any of that off because the kid isn't residing with me more than 50 percent of the time. So now I've moved to taking it out pretax. Your student...I have a degree; I'm working on an advanced degree. My student loan that I have, since I don't have my kid more than 50 percent of the time, they won't look at me as having one of them in my custody when it comes to doing my taxes and getting a lower student loan payment. There are issues like...there's an economist here. If you go and look on a...any mortgage lending site, which I consider a good business practice, go put in there what a person's income is and then take out what they pay in child support, take out what they pay in day care or any bills, it would tell you, you basically can't afford to have a place to live. So right now with the...and I would recommend all of you spend some time and go to different states and look at what their child support calculators say. New Jersey has a very interesting way that they calculate it. I've gone to a site where you can actually go and it'll tell you if you have shared custody, if you have joint custody, if you have sole custody. But there are lots of solutions out there, and the idea that a father could be forced with making a decision on, do I get a second job, do I go spend time with my kids when I can...my daughter just started kindergarten this week and she was in tee-ball. And I missed one tee-ball game all year regardless of if I had them or not. I was able to see my daughter's dance recitals this year. I've taken her to dance. But the idea of...and I've talked to state senators. I've called because it's an important issue to me. And the...I was speaking to Senator McGill on the phone and, you know, when this...when things changed she said, you shouldn't have to have a second job. But if you go take what a person makes...I do work for the state of Nebraska. And if you go take what a social service worker makes and do the calculations on child support, even figure a small...even if you had a small car payment, you have to decide who you pay, who do I not pay; do I not pay my child support; do I

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not pay for day care; do I not pay for my car; do I not pay my student loan, and all these things have a negative effect on me. So changes that I would like to see is more before any reduction is done in a child guideline, I would like to see it be accountability based, you know. Is dad fulfilling his duties as what the court order is, regardless of what that is?

ANGELA DUNNE: And how do you propose that that impact the child support amount?

LANCE BALKUS: Well, I think the child support amount, I think it's high right now, especially when you consider...I mean, you can go do all sorts of research on-line on the cost of living.

ANGELA DUNNE: But for the commission, if we were looking at an accountability-based system, what do you believe the measure should be?

LANCE BALKUS: I believe the measure should be that...are you fulfilling your time with the children that you agreed to.

ANGELA DUNNE: Okay.

LANCE BALKUS: I don't think a person who is paying \$800 a month but not seeing their kids when they were supposed to be should be awarded with a lower child support amount.

ANGELA DUNNE: Should their child support be increased if they're not spending time with their children then for the system to be applied fairly that way?

LANCE BALKUS: I would say I would use the calculator that's used now instead of raising it from what it is, because it's pretty high right now. You know, I took a job and I'd be willing to share my pay stubs with all of you on the committee that I have, you know,...the state empowered me to make benefit decisions to employment for people

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that live a higher quality life than I do because I don't qualify for any benefits. But none of that's...I have an amazing support system in my life that I hope that when my daughters grow up I have that relationship with them. And I don't know, if I have to work multiple jobs and I don't get to see them and they're sleeping on my couch, I don't know how that relationship builds. And it's amazing with all the things you read in the paper about the state of Nebraska and the high number of foster children and all that, I think a lot of that kind of goes hand in hand. If you take a human being and they're forced to make a choice on how to live that is, I would say, substandard and you don't...there's no way to look at them and say, here's a helping hand. There's that fight-or-flight mechanism that kicks in, and I think a number of issues happen because of that. You get so far behind so fast that it just snowballs and you have...it's hard to catch up. I mean...

ANGELA DUNNE: What other suggestions do you have for the commission to make the guidelines more fair?

LANCE BALKUS: Well, you know, I think to look at what...with how they determine social benefits. I mean, some people want to say the Affordable Care Act has changed. I don't...how child support should go. I don't see that. I don't know how that's the case. But I think you should be able to say, well, there's a standard of living where we ask people that would receive benefits--food stamps, child care, ADC; ADC is really low--but, you know, if you would be income eligible for this, how are we asking people to live below that and not offering them help? And, you know, I think judges over the years have started to give more time to dads, but it's kind of a Catch-22 here because then you can't work the second job, then you still don't get benefits and you're having to provide more meals. I mean, I don't...to be honest, I don't know how to fix the calculator to make it work. All I know is right now everything that we have in society to say what poverty level is, we're asking people to live below that because they are unfortunate and they may have been married and they got divorced. And in my case it was we don't argue in front of our kids, you know, let's do something different. Anyway, I think there

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are a number of things that you can just look at in society, solid business decisions on how much a person can afford for rent, and asking yourself, hey, go plug in a \$15-an-hour job in the child support calculator and figure in day care and ask you ask yourself how...what would I not be able to do this month, or what would I not pay?

ANGELA DUNNE: All right, Mr. Balkus, we're running up to time. So if you'd like to think about your concluding remarks and then we'll take questions.

LANCE BALKUS: Okay. I just want to thank everyone for having a public hearing about this. It's nice to be able to share your opinion with people who make decisions, and we'll go from there, so.

ANGELA DUNNE: Any questions from the committee persons?

WILLIAM MACKENZIE: I just want to thank you. Your comments are obviously heartfelt, and I appreciate the fact you've testified that you are paying your support on time and etcetera. You mentioned day care. That, I think, is a big issue for when you deal with younger kids. Right now our guidelines do not allow a credit for day care, you know, and day care can cost a parent more than the child support does. Do you have any suggestions or would you recommend to the committee that we consider allowing some sort of a deduction for the cost of day care when we figure child support?

LANCE BALKUS: Yes. That, to me, is my biggest concern, is the cost of day care. I have no problem paying the child support. But my day-care costs are so astronomical that...

WILLIAM MACKENZIE: Can I ask what they are?

LANCE BALKUS: My day care?

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WILLIAM MACKENZIE: Yes.

LANCE BALKUS: Right at \$600 a month.

ANGELA DUNNE: And...

WILLIAM MACKENZIE: Is that for one child?

LANCE BALKUS: No. I have a daughter that is in kindergarten. She now...she was \$150 a week at the day care, and we chose a good day care, so...and that's actually pretty good for a day-care center, not an in-home.

ANGELA DUNNE: Yeah, yep.

LANCE BALKUS: My other daughter is...Hailey (phonetic) is almost three and she is \$150 a week. So...

ANGELA DUNNE: So is this \$600 your...that's 50 percent.

LANCE BALKUS: Yeah.

ANGELA DUNNE: So it's \$1,200 a month for the parents, yep.

LANCE BALKUS: Um-hum. And so I think if you do the math it's a little more because they figure you pay every two weeks, so it's more than the \$150 a week. I just used the weekly amount. But when you look at that, now my daughter is in school and you would think it would go down. Now it's \$90-something a week, but now I have to pay school lunches.

ANGELA DUNNE: Yeah.

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LANCE BALKUS: So when you factor that in...and I don't know, maybe if you took...if you set funds aside...I don't know if...what the options are. But, you know, like, I paid for half of my kids' activities. I don't know if that money can be set off side for things like that or what. But I think right now when you add in all those other costs, if I didn't have \$600 for day care, I would be fine. But when you add in all those costs or gave some sort of credit for that, so...

ANGELA DUNNE: Any other questions? Thank you for your testimony this morning.

MONTY SHULTZ: I have a matter of housekeeping that I'd like to bring to the committee's attention.

ANGELA DUNNE: Yes.

MONTY SHULTZ: I am a veteran, and I appreciate your service. I find this totally appalling that the legislative aide to this committee would send a text message to our State Court Administrator that says, "Shoot me." I find that totally appalling. She should be removed from this commission. She's an employee of the judiciary, and that's inexcusable.

SENATOR ASHFORD: Why don't we go to the next.

ANGELA DUNNE: We'll go...take the next testimony. Please state your name.

EDDY SANTAMARIA: Eddy Santamaria. I'm a noncustodial parent, and I'm here. I do have child support obligations and I'm very fortunate that I'm able to meet those. I'm here to...in support of those parents and those dads that want to be dads. They maybe are not as fortunate as I am. But I also, I want to bring light that regardless of the custody agreement that you may have...in my case, and I use my case as maybe a

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case that's out of the ordinary, my children spend four nights a week (sic--month) with me. Regardless of the four nights a week, I have to...I provide them with their room, clothing, everything they need to be able to have the same amount of lifestyle they had when we weren't...I had a spouse. Some other parents are not as fortunate as I am to do that. But the cost outside of child support, I don't know where my money goes. I pay it. There's no...we had a marriage and my ex-spouse is...we were very wealthy. And I went to my preliminary hearing. I wasn't ordered to pay child support. But when the final verdict came out, it says, well, you need to be in the system so we're going to make you pay child support. I will be more than glad to see that money go to children that really need it rather than our family. I would be very happy to be able to say...to have accountability of the money that I give, and I think there's other families and children that would use it a lot better than we do as a family. Because of the court system and how it was related to income, there was no other solution but to be part of the system. I don't see any accountability. I'm...I try to be as nice as possible and say, would you please pack our children a suitcase for vacation, and the response is, well, you show me where it says in the state and in the statutes that I have to provide you with clothes or any other items for the children. Mind you, we live in a...I...if my children need to play, activities, I pay for them. If we take vacations, I pay for...I'm required by court to bring an adult with me to any vacations, so I need to pay for that. And the list goes on and on and on about expenses outside of the required child support and day care and medical bills. These are expenses so my children can have a home with me, a home that is only used four times a month when we have dinner together. So I think the guidelines need to represent...they need to...every case is different and I understand that. And some of us...I didn't have any understanding of divorce or family court as I went through this process. This is heartbreaking. It is the hardest thing to do, especially when a mother uses the children as a tool not because of money but because of the idea that I can use the law to reduce your time with them. I'd be more than happy to pick my children up from school. I'd be able to leave my office and my business at any time to be with them; I do. I'm not going to see them again until Wednesday. But you know what, Monday I'm going to have lunch with them because I want to be a father. And regardless of what the

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statute says, we have to look deeper into a social conscience about how we are allowing this monetary level and disorganization to be able to continue to go forward, denying us the idea that we can no longer be fathers. I can't see my children unless I want to. I have a phone call. I'm allowed to call them and I pay for that. I pay for computer so we can Skype. I pay for accounts so they can...we can be connected. But I'm constantly denied that ability. So for me it's not a monetary issue. For me it's the idea that other parents that are more than willing to help...if my money went to a parent, to a veteran, to help him see his children more, I'm more than happy to do that. But I have no rights to do that. I was on vacation overseas and I was late on my child support payment and I didn't know that the interest compounded daily. I didn't know. I wasn't aware of that. So if I get behind, then my interest...it's daily interest. And I come from the...I'm saying, why is it over? Now I keep a surplus, but I can't keep too big of a surplus because then I'm going to be able to...I'm going to be taken back to court. I say, well, can I pay a year ahead? Oh, I wouldn't suggest to do that. So if this commission is going to look at...you need to look at the income level of the parents and you need to look at also the idea that we want to provide equality to the children on both sides of the fence, the noncustodial and custodial. There has to be equality. And we also need to be able to have some kind of system to help other children. I can go adopt two or three children and have them with me 100 percent of the time. The state don't care. I would be doing a better thing for the state. We would have beautiful children. But you know what, the children that I help bring to this day, to this life, I can't communicate with them daily, regardless of money. So my suggestion to you is: Fix this so dads can be dads, and the payment needs to be able to allow them not to give the money away. If there was a way to trade money for time, believe me, I'd be the first one in that line. I would be. If you tell me I pay \$1,000 a day, that I can have my children every day after school, I will be there. I don't have that choice, neither some of these other fathers who can't make the amount of money they are required to do to have a life, to have their children be proud of them as fathers, to be able to sign them up for soccer or sign them up for dance lessons or guitar lessons. We forget about that. We're only concerned about this was the order and then this order needs to be followed. But we're keeping many fathers

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from being fathers, and I think those of us who grew up with a father in our home are blessed and we're not doing the same for our children in Nebraska.

ANGELA DUNNE: Thank you, Mr. Santamaria. Any questions from the commissioners?

SENATOR ASHFORD: I would just say that...thank you for your testimony and also your constructive suggestions throughout the last year. I think what you've...you hit on is something that I keep mulling over in my mind is we have to fix somehow the child support issue to sort of free up the process to make sure that we get to equality. I mean that's...not that one comes first and the other comes later, and it should be parallel. But we've had good conversations and very constructive ones and I get it.

EDDY SANTAMARIA: Correct.

SENATOR ASHFORD: I get it. And we have people from all sorts of places--wealthy, middle class, less fortunate, whatever it is--but somehow, someway, the child support part of this process has...even we could talk about people who have been incarcerated. You know, when we're trying on that level, we're trying at least on the state level, the Department of Corrections, and we appropriated significant dollars to try to reunite children and their fathers or mothers with...while they are still incarcerated. So we're trying to think about that. But this is a very compelling testimony because I think what you're...what you've said to me over the last year, and we've had other conversations and have been very constructive, I'm getting it, is that we're kind of running on parallel courses here when everything should be...we should be thinking about this in a...

EDDY SANTAMARIA: Cohesive.

SENATOR ASHFORD: ...cohesive, holistic way. And I think it...I get it. And it should never be...and, you know, and I've mentioned, you know, doing...working on the mediation bill, the Parenting Act, which is a bill I introduced. The idea of that was not to

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separate people more but was to think about, you know, let's get the best interest of the child thought about and then let's try to connect the money to that. It sounds to me like what you've said to me before and are saying today is there's a disconnect, and I, you know, I'm very...I think your testimony is very helpful, as is everybody else's, but I know we've had opportunity to talk before, so.

EDDY SANTAMARIA: Yeah, and in my case, if I was actually to write it down, I'm raising six children...

SENATOR ASHFORD: Right.

EDDY SANTAMARIA: ...instead of three because I have to provide the same accommodations and the same thing in my home.

SENATOR ASHFORD: Right. No, I get your case is very...I get it totally.

EDDY SANTAMARIA: Yep. Thank you.

SENATOR ASHFORD: So thank you very much.

ANGELA DUNNE: Any other questions? We are scheduled to take a break at 10:30, so let's advance that up four minutes. So we'll break now until about 10:37 and reconvene.

_____ : 10:37?

ANGELA DUNNE: 10:37; it's 10:27.

BREAK

ANGELA DUNNE: I'm going to ask you to take your seats, please. If you could please

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take your seats. I'm going to keep us on task. We have to be complete with the hearing by noon. So I'm going to keep moving along. Again, I'm not trying to interrupt for...to be rude. It's just to keep us so that we have an opportunity to hear from everybody present today. So we will resume. And would you please state your name for the record.

ADAM ASTLEY: Good morning. For the record, I'm Adam Astley, A-s-t-l-e-y. And thank you, Ms. Dunne. I'm wearing two hats today. I'm a private-practice lawyer from Omaha. I'm a partner with the law firm of Slowiaczek, Albers and Astley. And I'm also the owner of Advanced Legal Software, LLC, which develops one of the two child support calculators that are widely used in the state of Nebraska. Wearing each of those hats, I don't have any particular interest in what this commission does from a policy standpoint except that, as a lawyer, I have a fundamental interest that the guidelines be fair, which I have every confidence that you're going to accomplish. And as a software developer, I have an interest that the guidelines that you develop be implementable. So I wanted to share a few observations that I have had just based on the questions that I get. Mr. MacKenzie, I know, gets questions all the time from Nebraska lawyers. I'm sure he gets some of the same questions that I do. So I wanted to share kind of some of the open issues that I think could use a little bit of clarification in the guidelines, and then I wanted to give you just some thoughts or some things that you can consider. So in terms of the last part, I don't have any specific recommendations. I'd just like you all to put your heads together and give some thought to these issues. By and large, the biggest question that I get in terms of ambiguity in our current Child Support Guidelines is that there is no specific answer for what to do in what I call a joint/split custody situation. In fact, the manual for my software says to lawyers, if you're one of the few that are unfortunate enough to have this situation, you're on your own, good luck. I've specifically not written a mechanism to perform an automatic calculation for that type of situation because there's no legal authority and of course the last thing that I want is to get some Court of Appeals Opinion that comes out of nowhere that says Adam Astley got it wrong. That would be devastating.

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JUDGE MERRITT: Can I ask you to define what you mean when you say joint/split custody?

ADAM ASTLEY: Yes, thank you. Thank you, Judge Merritt. What I...when I say joint/split custody, I mean where one parent has what we would call sole physical custody of at least one child and both of the parents share joint physical custody of at least one child. It seems as though those situations, I think, when we had our last iteration of the guidelines, were pretty rare. I think the guidelines were last modified in 2009. At that point in my career, I had been doing this for about five years and I had seen one case like that. Now I get calls almost every week asking what to do about that, and I have come up with what I think is the most logical mechanism for doing that. And when lawyers call I always give them the same answer but I also give them the disclaimer which is that you're on your own, this is not a case with subsequently born children where there's the Prochaska Opinion that tells us that this is a safe harbor and you're not going to get reversed if you do it. There's no safe harbor out there. The judge has to use some common sense. Now I provided Jennifer Piatt, the legislative counsel, with a sample calculation that implements this method. And in effect what it does is it takes the support that's on Worksheet 1 for two kids but it would work for three or four or five. But it takes it for two kids and it just cuts it in half and it allocates one half to the sole custody calculation and it allocates one half to the joint custody calculation and then it walks down the joint custody worksheet. That's what it does. And every lawyer I have talked to has said that makes sense to them; it's certainly better than what they could come up with on their own. But like I say, we have no legal authority, and so people are kind of off in the desert fumbling along trying to figure out what to do.

WILLIAM MACKENZIE: Could you be...maybe you went by too fast.

ADAM ASTLEY: Sure.

WILLIAM MACKENZIE: You used Worksheet 1. Say there's two children involved--and

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heaven help us if there's three or four, which sometimes I've seen.

ADAM ASTLEY: Right.

WILLIAM MACKENZIE: But there's two, and one child is living 80 or 90 percent or whatever with one parent. Another one (inaudible)...

ADAM ASTLEY: Enough to have sole physical custody, right.

WILLIAM MACKENZIE: The other one is 50/50 or 40/60 or whatever. How do you do that or how do you suggest it be done?

ADAM ASTLEY: So what I do is I take...and I should have printed this off to bring it with me, Bill. I apologize. I take the table amount that is shown on Worksheet 1, the table amount of support before health insurance is applied, and I cut that...

WILLIAM MACKENZIE: For two kids?

ADAM ASTLEY: Sorry?

WILLIAM MACKENZIE: For two kids?

ADAM ASTLEY: For two kids.

WILLIAM MACKENZIE: Okay.

ADAM ASTLEY: It would work for three or four, but I cut it, pro rata, based on the number of kids. So when there's two kids, pro rata just means half.

WILLIAM MACKENZIE: Sure.

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ADAM ASTLEY: I then take the half for the child that is sole custody to one parent and I multiply that by the noncustodial parent's income share percentage, and that's what the noncustodial parent pays for that child. The other half then I take...

WILLIAM MACKENZIE: So that's just like the normal one.

ADAM ASTLEY: That's just like a normal calculation, except you're not running a Worksheet 1 with one child because, of course, those children are not treated equally. The second child is cheaper on the table.

WILLIAM MACKENZIE: Right, right.

ADAM ASTLEY: So I'm taking half of the amount for two. For the other half I then take that and I plug that into the top of Worksheet 3, Where Worksheet 3 starts with...on line 2 or 3 it starts with the amount of the child support from a child support table. Instead of that, I would plug in the half that's remaining that I took off of Worksheet 1, and then I would walk it all the way down Worksheet 3 where first you multiply it by 150 percent, then you prorate it for income, then you prorate it for time, then you adjust it for health insurance.

WILLIAM MACKENZIE: (Inaudible.)

ANGELA DUNNE: And then is there an offset or is that the net number that should be transferred between the parents?

ADAM ASTLEY: It depends on whether the same person owes support under each of the worksheets. So if the mom has full custody of one and the dad makes more money, the dad is going to owe support on Worksheet 1 for mom's full-custody child, and the dad is going to owe support on Worksheet 3 for the joint custody, in which case you

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would add it together. If the mom makes less money...I'm sorry. If the mom makes more money than the dad, then the dad pays the mom for Worksheet 1 and the mom pays the dad for Worksheet 3 and you would subtract, so. And I think that the worksheet that I gave to Jennifer had the two scenarios of this much and that much, so.

ANGELA DUNNE: Jenn, will we be able to get copies of that for all of the commissioners?

JENNIFER PIATT: That's already in there in the public comments document (inaudible)...

ANGELA DUNNE: Okay, thank you.

ADAM ASTLEY: And, frankly, I don't care if you folks use that or if you come up with a better idea. It would just be really nice if we had an answer so that when people called me and said, Adam, what do I do, I can say, click the button and pay your bill. So that's the first issue. The second issue that I'd like you to consider, and I don't have a proposed solution for this, is how to handle health insurance and medical expenses. Anecdotally, we have found in my law practice that more and more employers are going to high-deductible health plans and, as a result of that, the health insurance premium cost is lower sometimes, depending on the dynamics of the plan, and the out-of-pocket medical expenses tend to be higher. Now that's the anecdotal evidence that I've seen. My practice is very, very different than some of the other practices that are in the state. We represent a wide range of people but we also are...we represent, I will say, more wealthy people and fewer people that are at the 125 percent of the poverty level, like Ms. Heaney testified about. So my anecdotal experience may not be representative of everybody's experience, but it's been consistent enough to us that we felt we should bring it to your attention. That may perhaps cause you to reevaluate that \$480 threshold for unreimbursed medical expenses. Anecdotally, I will tell you, I found that that's a little bit low in terms of a typical case. We find that most parents are typically incurring

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between \$500-700 out of pocket per kid per year. And so, I mean, the \$480 threshold works there, but as a practical result, if the custodial parent pays the first \$480 and you have \$700 total, now you have two parents that have been just given an issue that they have to fight over the allocation of \$220, which is not always the most healthy thing for people to be quibbling over. The other...and so there's two implications of these high-deductible plans. The first is that you have HSA money that can come into play, and sometimes you have employers that give people free HSA money. So they will, if the deductible is \$3,000, the employer may give the employee \$3,000 of tax-free money into their HSA which is...I mean it's factored into their overall compensation, but it may not necessarily be looked at from a child support standpoint. One way you could do that is you could just count that as their income under the Child Support Guidelines. Another way that you could do that is you could give the authority to the court using equitable principles to make some sort of allocation of that HSA money on a pro rata basis or something like that for the kids. But the other issue that dovetails into the HSA money is you have what I will call the deductible lottery. And the scenario is this: A father is ordered to provide health insurance for himself and three children. That health insurance policy carries with it a \$5,000 annual deductible. One child gets very, very sick in January and has \$5,000 of out-of-pocket medical expenses, which are then incurred by the mother and then are allocated however it is, \$480 and then a split or however the allocation is. And so the point is that those are expenses for the child that have been shared. Then, in June, the father gets really, really sick and has \$30,000 worth of medical expenses that would have been subject to the deductible and gets that treatment for free. And that's what I call the deductible lottery because it is fundamentally unfair when you have multiple people that have shared in this deductible, which can be very large for some families, and it's purely up to chance and timing in terms of who incurs it first. The father could have got sick in January, incurred the entire deductible himself, and then the child gets sick in June and there's no out-of-pocket expense for either parent, and that wouldn't be fair either. And I don't know what you do about that. Perhaps you could explicitly give the court discretion when considering medical expense claims to apply equitable principles and factor that in. But that's

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something that I think that you folks ought to consider and you ought to gather some data and find out if that's as big of a problem as I think it is.

ANGELA DUNNE: Thank you, Mr. Astley. Any concluding remarks?

ADAM ASTLEY: The concluding remark I would make is that there are many custody battles that are truly child support battles in disguise. Notice I said many, I didn't say most, and I definitely didn't say all. But I have represented people, and I can't tell you who or when because of attorney-client privilege, but I have represented many people who truly wanted joint custody to get a reduction in their child support. And I think that that...those battles are caused in part by the fact that we have a cliff. Up to 109 days per year it is an abuse of discretion for the district court to give the noncustodial parent any break on child support below Worksheet 1 regardless of what the circumstances are. Between 109 and 142 there's some discretion; above 142 it becomes a rebuttable presumption. And so the result is that you have this step system. And something that you could consider would be to somehow take the steps out of the process. And then, if I may, I want to address Mr. MacKenzie's comment about including day care as a deduction on the child support calculation worksheet. I think that's a good idea that's worthy of some consideration but, Mr. MacKenzie, I would remind you, you and I had an issue that we worked through over lunch about cash medical support where we had what I would call an infinite loop but what you all would call a chicken-and-the-egg problem. In certain circumstances, under our current guidelines to calculate cash medical support you had to first calculate child support, and then child support would be used as the basis for calculating cash medical support when somebody was close to the poverty line. But since cash medical support is now a deduction from income to calculate child support, you had to know what the cash medical amount was before you could calculate the child support amount. And so you had something where you couldn't actually get to the end result. And Bill and I engaged in a little bit of creative thinking and found a way to do it that was faithful to the guidelines. If you had day care as a deduction from income before you calculated child support but then the percentages of

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income were used to calculate the basis of somebody's day-care obligation, you'd have a similar infinite loop or chicken-and-the-egg problem. And I'm not saying it can't be done; I'm just saying that you should think about that as part of your deliberation on that issue.

ANGELA DUNNE: Thank you. Any questions from the commissioners?

WILLIAM MACKENZIE: I just have one question. Health insurance is becoming a bigger and bigger chunk of people's expenses than it was 10 years ago, 20 years ago.

ADAM ASTLEY: I agree.

WILLIAM MACKENZIE: Employers used to cover health insurance. It was just one of the perks, like vacation or anything else, and now it's just darn expensive for the employers; it's darn expensive for the employees. The way our guidelines work now, the parents will get a deduction or, at least, a partial deduction for the cost of adding their child to their health insurance. But they get no deduction for the cost of themselves being on the health insurance, which in some instances can be hundreds of dollars a month for mediocre insurance. Do you think that the way we're doing it now is adequate or do you have any suggestions as to whether that should be changed?

ADAM ASTLEY: I will tell you that there is somewhat of a fundamental unfairness with the notion that the government is now...I mean, let's just say that the government is requiring us to have health insurance. I mean, yeah, you could pay the fine or whatever, but the policy of the Affordable Care Act is everybody carries insurance. And there's some issues of fundamental unfairness where, in fact, there was a discussion yesterday on the family law Listserv about certain employers just charge one fee for insurance and they don't have an add-on that it's \$200 for the employee and \$400 for the employee and family. And one of the lawyers posted, and I think it's a correct interpretation of the law, that if it's one flat fee for yourself or for yourself and eight children and one spouse,

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that you get no deduction under our current law, and I think that's a correct legal interpretation and I think that's unfair. So from that angle, certainly, you have a point. From the other angle, I mean, are you suggesting that if the mother and the father are divorced that they could each deduct the cost of their own health insurance, just like we allow, like, a 4 percent retirement deduction?

WILLIAM MACKENZIE: Well, I'm putting that out there as something I think the commission probably needs to at least investigate.

ADAM ASTLEY: Seems like a good idea. And the other thing that I would suggest you at least contemplate is the IRS now, by statute, is required to mandate that on the W-2 form that the employer cost of health insurance be included for information purposes only so that the government knows what the employer is paying. I submit to you that they are doing that so that they can then tax that as income someday. And it may not happen this year or next year, but I would bet anybody on the commission lunch that it happens before the next time this commission is called into action in four years.

SENATOR ASHFORD: I sincerely hope that isn't the case.

ADAM ASTLEY: Well, and, Senator Ashford, you may have a hand in crafting that policy at some point in the future. But I strongly suspect that's where they're heading. And it may be worthwhile for the commission to at least contemplate the possibility; maybe not necessarily limit it to health insurance, but of having employee benefits that are nonearned taxable income and at least allowing folks like me to include a field in the calculator where you can allow deduction there.

SENATOR ASHFORD: Well, isn't the most likely...I mean, to your point, and I think this is a huge point, it's looking into the future. But isn't a more likely scenario that employers will utilize other forms of paying for portions of insurance that are maybe not...instead of paying employer-based insurance, they'll be paying individual insurance and they'll be

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paying out of...they'll be paying in an IRA form of some sort of an IRA contribution form.

ADAM ASTLEY: And actually, Senator Ashford, that's a very good point, which is something that the commission should also contemplate,...

SENATOR ASHFORD: Right.

ADAM ASTLEY: ...because it seems very unfair that if...whether it's an IRA or an HSA or something like that,...

SENATOR ASHFORD: Right.

ADAM ASTLEY: ...if they pay it to the employee and the employee is responsible for paying it, if employer A does that and then employer B just bites the bullet and pays the cost themselves, you may have two people that earn the same salary, so to speak, but that under our current law show two different incomes, and that seems to be very unfair.

ANGELA DUNNE: Thank you, Mr. Astley. We might be inviting you back to answer questions about implementing our ideas into the calculator if you have...

ADAM ASTLEY: And my full contact information is on the information sheet, and I would welcome that opportunity. I want to be a resource to this commission. Like I say, I don't have any agenda in what you do, I just would like you to do it right.

ANGELA DUNNE: Judge, did you have a question or...?

JUDGE MERRITT: No, it's fine. Go ahead.

ANGELA DUNNE: You're okay? Okay.

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ADAM ASTLEY: All right. Thank you all.

ANGELA DUNNE: Thank you.

TIM PRATT: Good morning.

ANGELA DUNNE: Good morning. Please state your record (sic).

TIM PRATT: I'm pretty raw. I wasn't planning on speaking today, but I'm not hearing some things that I would hope that other people would have addressed. So if...

ANGELA DUNNE: Did you state your name? I'm sorry.

TIM PRATT: Tim Pratt, Tim Pratt, yeah, from Omaha.

ANGELA DUNNE: Pratt, okay, thank you.

TIM PRATT: Feel free to stop me at any time if you have any questions. But I'm basically here to talk about the emotional and physical well-being of my kids. I have two kids, nine and ten. I take time off of work. I work a 40-hour work week, but it's called an alternate watch schedule, so I can work ten hours a day so I can take one day off a week. Well, as your standard Wilson plan, dads get Wednesdays, Wednesday evenings and every other weekend, right? Well, that's what we got. Okay. So also incorporated into that decree was if my children are out of school on Wednesdays, then I can get them first thing in the morning. So I take Wednesdays off from work throughout the year so that I can pick them up from school at 3:00 and have them until 8:00. And then through the summer I get them 7:30 in the morning all day until 8:00, which is really nice, okay? I know a lot of other people don't have that benefit, so I feel very blessed to have that benefit. Okay. My concern is the emotional well-being of children, my children particularly. I can't speak for anybody else's. But when they have a father who is

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struggling to provide a place for them when they're with their dad...in other words, I sacrifice everything socially and anything on top of just the basic necessities so that I can provide my children bedrooms that they can call their own when they're at their dad's. Okay. I know other parents, other fathers who are divorced and have children, who live with somebody else because that's the only way they can make ends meet. So when their children come over to visitation--which shouldn't be visitation anyway because it's not a funeral, it's parenting time, okay?--but they have to sleep in sleeping bags or they're sleeping on couches and stuff like that because dad can't afford to provide a place of his own that he can provide bedrooms for each of their children. My children, when...in my place they have their own room. They may only get to sleep in those rooms every other weekend, which is four nights a month, okay, but it's...my daughter's is purple and my boy's is blue, and they picked that purple and they picked that blue and they picked whatever is on their walls and they picked their bedspreads, okay? My ex, she does not send clothing with them, okay? And to be honest with you, it doesn't bother me, you know. I mean, my daughter, she loves Justice, okay? Now go shopping at Justice and I can pretty much set my daughter up for a season--and what I mean by a season is May through probably October or so--with, you know, four sets of summer clothes that she can wear when she's at dad's, okay, and then we need some summer jammies, too, okay, and then we need winter jammies for that other round trip, okay. So, you know, I'm paying for the same things that mom is, okay? I'm paying for the same food that mom is because when...I have to feed myself, correct? Okay, so I make a casserole and it'll last me two, three days, you know. And when my kids come over, really, to be honest with you, I sacrifice everything that I sacrifice so that me and them can have a little bit of time to go...a little bit of extra money to go to McDonald's, okay? That's \$15, all right? Now I have a great-paying job, I really do, okay? And I can tell you my home bills, okay, I live in a \$130,000 house, okay, and you add up all the other bills, it's under \$1,400 a month, okay? Guess what my child support is: \$1,400 a month. Okay? My wife, my ex-wife, she lives in a \$130,000 house, okay? Guess how much her bills are: \$1,400 a month. I am paying for her complete set of bills. She has a \$50,000 job on top of that. She lives with a boyfriend with another \$50,000 job on top of

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that. I am paying her and his complete way. They take all of their earnings and they go, thank you. The \$1,400 a month I'm giving her is totally tax free to her. She does not have to claim it. That \$1,400 I'm giving her is what I've got left after I've paid taxes, okay? What I would like to do in some way or another, and I'm obviously unhappy about the parenting schedule, the parenting time. I'm fortunate, more fortunate than a lot of others, okay? I served time in the military. I'm an eight-year veteran of the Air Force. I served in...behind the Iron Curtain in West Berlin, okay? I did my thing for my country and I would hope that my country would do their thing for me, okay? What should be done is...and I can't say, you know, because, like I said, I have a decent-paying job and I can make ends meet. It's close but I can make ends meet by sacrificing and not having a social life and such. But what should be done is it should be reasonable to say that, you know, even though dad only has these guys four days a month, four overnights, okay, he still has to be able to provide them a healthy environment mentally when they're there, okay? And what I mean by that is when dad is struggling all the time, and I think you can see how emotional I am about this, when dad is struggling all the time, that's an emotional beat down. It's a consistent emotional beat down, okay? And when the kids come over, don't they deserve to see a smiling dad? Don't they deserve to see a dad that's like, hey, let's go do something today that's actually going to cost a little bit of money? Okay, but, you know, when it comes to my kids, it's particularly through the course of the divorce, okay, which took two-and-a-half years to finally settle, you see, I'm paying lawyers for two-and-a-half years, you know what our entertainment was? Scheels, they've got a \$1 Ferris wheel ride.

ANGELA DUNNE: Mr. Pratt, what suggestions do you have for us to address either the fairness...or I know you're talking from an emotional standpoint.

TIM PRATT: Right, but...

ANGELA DUNNE: But for us, we're looking at this on a practical level.

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TIM PRATT: And I understand what you guys are trying to get to, a foundation here.

ANGELA DUNNE: So what suggestions...

TIM PRATT: But what I think is...she should have some sort of a contribution in regards to providing the roof over their head and food and electricity and water and gas and cable and phone as well, because I can guarantee you my stuff is right around the \$1,400 mark when you add it all up, okay, but there's very little left for food and entertainment and car and stuff.

ANGELA DUNNE: Well, the calculation right now does assign support to both parents. So how are you wanting us to look at that to make adjustments? Because when you run the calculation, it shows support owed by mom, support owed by dad, and then it's dependent upon what happens with the custody order, who is paying what. So it does calculate mom's portion, dad's portion, it's just how it's used. But how do you think we should look at that?

TIM PRATT: It's really a farce though. I mean, I've looked at those calculations and stuff like that. Okay, when you look at what I make and what I pay her and what she makes and what...okay, she is making a considerable more amount of money than me. You know, in other words, in reality I make two times more than her.

ANGELA DUNNE: Okay.

TIM PRATT: But once you get to the bottom line, she makes two times more than me but, yet, I still have to provide the same stuff, okay?

ANGELA DUNNE: So what would you have us do to make change?

TIM PRATT: I would start out basically, what I would really do is for good dads that are

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fit and proper, give them half the time, okay? That's the simple thing, but that's outside of this room, okay? That's outside of this realm. Mr. Ashford knows about that, right?

ANGELA DUNNE: ...which, when we do get a path...

TIM PRATT: What I would do though I would start as a foundation and say, you know what, dad has as right to be able to take care of himself and provide for his children the basic foundations, Maslow's hierarchy of needs. Does that make sense to everybody? Maslow? Maslow's hierarchy of needs is a pyramid, and it says these are the fundamental basics of--what do they call it?--you know, mental...putting it all together, right? And that foundation--shelter, food--those things are a foundation of a mental being, okay?

ANGELA DUNNE: So it sounds like to me you want the...

TIM PRATT: And you need to start from a basic somewhere and say, you know what, dad and mom both need to be able to provide for those kids.

ANGELA DUNNE: So increase our minimum level? We've heard a lot of testimony today about the poverty. If we increased it such that parents shouldn't be...

TIM PRATT: I can't speak for poverty because I'm not in poverty, okay? I am in a social sense but not...I mean, I'm a middle-class guy, okay, and I live in a middle-class home.

ANGELA DUNNE: But what I'm hearing you say is, if we had a...say we said dad can't fall below \$1,500 a month because he needs \$1,500 a month to provide for a healthy environment for his children at his noncustodial residence. Is that what you're...that's what I'm hearing.

TIM PRATT: Well,...

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ANGELA DUNNE: And then you set the support after that.

TIM PRATT: Yeah.

ANGELA DUNNE: It's similar to the poverty level.

TIM PRATT: I'm good with that; I'm good with that.

ANGELA DUNNE: Yeah, so...

TIM PRATT: I'm saying, you know, before they got divorced and before there was a split up, they both lived on 132nd and Maple. They were in a middle-class neighborhood, right? Dad doesn't need to be sent down to a poor neighborhood just because...he should be able to maintain that same lifestyle for the kids when they're over, see? So, yeah, exactly pretty much what you said; in other words, there's a foundation that says that, you know, we can't let him drop below the poverty level, so we're going to take that out right there, and then we're going to start working on the other parent's contributions because the kids are over there with her more, maybe she pays for dance, okay. And my ex does pay for dance. I take them to dance, but she pays for it, okay? But I pay for my boy to go to the Strike Zone, to the batting cages and stuff, and we have a monthly membership there, okay?

ANGELA DUNNE: We're closing in on time, so I'm going to ask if there are any questions from the commissioners. Yep.

AMY WILLIAMS: Thank you for your testimony, and I thank all the parents for testifying today. I appreciate it and I appreciate hearing the real-life story, not just the legal implications of what we're talking about. My daughter likes Justice, too, so I can relate there. It's not cheap.

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TIM PRATT: (Laugh) It's frilly and, you know what, it takes me back to the '70s because everything's got peace signs on it, and I thought those days were long gone, man.

AMY WILLIAMS: It is interesting.

TIM PRATT: Yeah.

AMY WILLIAMS: My question to you is, do you think that your ex-wife would agree to 50/50 time if that question was put to her today?

TIM PRATT: After the divorce probably not because she's very motivated by money. And what caused the divorce was she racked up \$47,000 in credit card debt without my knowledge, okay? I had sacrificed. I didn't golf; I didn't have fancy cars; I didn't have motorcycles; I didn't have boats, okay? I ate hot dogs and baloney sandwiches at work while she was out with her sister eating \$100 Cheesecake Factory bills and such, okay?

AMY WILLIAMS: So if you...

TIM PRATT: When I asked her, I said, you know, I would ask her, I said, Carol (phonetic), what does your credit card debt look like, because she had her own credit cards. "You're being controlling, you don't trust me," and then she dropped the \$47,000 on me, okay? When I was done with the relationship she...

AMY WILLIAMS: Okay, so if it...let me just ask you this then.

TIM PRATT: Yeah.

AMY WILLIAMS: I get what you're saying.

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TIM PRATT: Yeah.

AMY WILLIAMS: If time with the children was not tied to...

TIM PRATT: I would get half time easily.

AMY WILLIAMS: Do you think she would agree to that today?

TIM PRATT: Absolutely, yeah. If the money wasn't the motivation, I would have more time. There's not a doubt in my mind, okay? Thank you all for being here, okay?

ANGELA DUNNE: Any other questions from the commissioners? Thank you very much for your testimony.

TIM PRATT: Thank you.

ANGELA DUNNE: Anyone else?

JEREMIAH SALAZ: Hello, everyone.

ANGELA DUNNE: Good morning. Please state your name.

JEREMIAH SALAZ: First name is Jeremiah, last name is Salaz, spelled S-a-l-a-z. And I guess I can't speak for everyone because everyone's situation is unique in itself. But I think the root of the issue is when two people that are getting divorced can't agree on custody because there's some type of financial motivation behind the whole decisionmaking process for that divorce, that one parent is treated unequally to the other one, whether it be time with the child, paying higher child support because you're not spending as much time with your child. So I think we need to address that root issue where I think Senator Hadley has a bill passed up to the Supreme Court. I believe it's

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LB22. And basically what that states is, in cases where two parents can't get along with...or can't agree on a parenting plan, as long as there's no drug or alcohol abuse, no child abuse, no domestic violence, that child custody should actually be divided equally, 50/50, and on the child support side of it meaning, hey, when my daughter is with me, daddy can take care of her. Of course, if it comes to any type of medical bills or whatnot, regardless of what parent our daughter is with, we split that 50/50. When our daughter is with mom, mom should be able to take care of her. Does that make sense? So there should, like...

ANGELA DUNNE: For medical bills? So if the child is injured in her care, she should pay it; if they child is injured in...

JEREMIAH SALAZ: No, no, no. Regardless of whose care the child was in, both parents should be held accountable equally, 50/50. However, as far as child support goes, when my daughter is with me, I can take care of her. I don't need mom's money for child support or anything like that. When my daughter is with her mom, her mom should be able to take care of her without needing any additional support from me aside from medical bills, maybe day care, or stuff like that. And like I said, the root of the problem is that I want to say in the majority of cases where fathers are not being awarded full custody, part custody, and it's just unfair.

ANGELA DUNNE: I'm going to ask you a question.

JEREMIAH SALAZ: Go ahead.

ANGELA DUNNE: I'm a divorce lawyer and I've been practicing for 15 years and I practice in Omaha. I have a lot of joint custody cases. One of the issues that we as lawyers struggle with and that my clients struggle with repeatedly are that when...okay, so, generally, what you're saying, when we move to the joint custody worksheet, which is Worksheet 3,...

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JEREMIAH SALAZ: Uh-huh.

ANGELA DUNNE: ...what you're saying actually tends to happen. Child support isn't paid; parents are splitting all of the expenses. So we split uninsured medicals, we split day care, we split extracurriculars. We have a one-page sheet in our decrees that sets forth how are we going to divide this. What often happens is that then parents start arguing over how much things cost. So, well, you sent her to this dance class and that cost \$72 a month and I could have sent her to something else that cost \$50 a month; or you bought jeans at Justice and you spent \$65 because you didn't get your 40 percent off coupon and you could have bought them at Target for \$20. You guys are laughing, but this is what I hear all the time as the lawyer. People are paying me ridiculous sums of money to gripe to me about what the expense sharing is. So what I often say to my dads is, listen, pay the full child support, your...and we've calculated it because we're neurotic this way. Dads pay less in when they pay a monthly child support--now this is usually for older children--than they would in the child support obligation, but we struggle constantly with the post-decree battle that expense sharing causes. And it's one of my concerns on this commission about what...how are...and I think it should be fair. I think child support is high. But on the flip side, when we direct that parents are doing more expense sharing, it's been disastrous. We call it an insurance policy in our office because we're going to see you back. We're going...you're going to have to come back in, you're going to have to do a show cause, you're going to have to modify it. So I'm looking for some answers or solutions as to...we all here want it to be fair, but one of the problems is that we kind of set it to the parents who have divorced for usually a reason. It creates more conflict. It ends up costing a lot more money in the long run. So I understand the principle about dad covers his expenses, mom covers hers. There are a lot of, you know, shared expenses that we really...I really struggle with in practice in terms of what's the fair way to do that. Do you have any comment on that?

JEREMIAH SALAZ: Right, and that's like...and I...

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ANGELA DUNNE: And I know I've kind of caught you off guard and I'm...

JEREMIAH SALAZ: Nope, nope. That's like a post decree. I heard a gentleman earlier talking about, well, hey, what bills do I have to pay this month, do I pay my house payment and not pay my child support, do I make the car payment, pay the child support and the house payment? The situation I'm going through is pre-decree.

ANGELA DUNNE: Okay.

JEREMIAH SALAZ: I'm ordered a temporary order to pay X amount of dollars for child support. My ex no longer lives in the marital home, and she no longer takes care of any of the community debt. I've incurred all that community debt. Because I've incurred all that community debt, I can only give her half of what the court ordered for child support. Now I'm in jeopardy of going...I have to go back in front of a judge on the 26th because I'm actually in contempt of court because I'm not paying the full amount of child support ordered in that temporary custody order. Now if the judge finds me guilty and holds me in contempt of court and sends me to jail, I'm not paying child support, how am I going to pay child support in jail? I'm not making the house payment. I'm not making the car payments. I'm not paying all the community debt that I'm paying now and child support which, like I said, I'm paying half of it, I'm doing what I can to try and save our home, our cars, because, of course, my ex wants benefit from that when we split our assets, when the divorce is finalized. But due to the fact that we have to establish custody first, I'm, for example, eating hot dogs and ramen. But even though mom's not getting the full 100 percent of the child support, she's already, you know, established a new home, bought new furniture, she's driving a new car, and I'm struggling to make ends meet so that at the end of the day our daughter has a good quality of life whether she's with mom or with dad. However, on the flip side, I'm like, what bills do I pay? Pay the full child support, lose the house--obviously, that's one of the financial motivators. Mom wants to get half of the equity when I refinance the house. Same thing with the vehicles, she

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wants one of...probably one of the cars. But we're in jeopardy of losing all that because I can't fulfill my obligation to pay the higher child support that the judge ordered and possibly go to jail. If I go to jail we lose everything, and how does that...

ANGELA DUNNE: Support...yeah.

JEREMIAH SALAZ: How is that in the best interest of the minor child? I just...I guess I don't understand it, so I'm asking for your help in that. And this is, like I said, pre...

ANGELA DUNNE: Decree.

JEREMIAH SALAZ: Exactly, because most of the cases we've heard are post-decree, after the fact.

ANGELA DUNNE: Yeah. Any questions from the remaining commissioners for Mr. Salaz? Thank you for your testimony.

JEREMIAH SALAZ: Thank you.

ANGELA DUNNE: Anyone else? Last call.

JEREMY BARNHILL: Can I make a quick closing statement for the committee, please?

SENATOR ASHFORD: Sure.

JEREMY BARNHILL: I just would like to (inaudible)...

SENATOR ASHFORD: Well, but go up here and make it.

JEREMY BARNHILL: I apologize, sir.

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SENATOR ASHFORD: No, you're not...don't apologize to me. I'm just trying to make sure we get you on the record or...

ANGELA DUNNE: And let's restate your name, please.

JEREMY BARNHILL: Jeremy Barnhill.

ANGELA DUNNE: Okay.

JEREMY BARNHILL: I just wanted to make sure all you committee members know, and I already know there's a couple district court judges that are already on the committee that would be aware of this, and of course you, being an attorney and all, no matter what recommendations that you make, no matter what you send to the Supreme Court, this is only part of the problem. If district court judges don't follow your recommendations and they don't follow what the Supreme Court puts into play, anything that you accomplish or that we have done here today is another waste of time. So when you guys do your recommendations, I'm just asking for...on behalf of all the noncustodial moms and dads because, like I said before, this isn't a father's rights or a mother's rights issue, this is about the kids. Just, please, keep that in mind.

ANGELA DUNNE: Thank you very much.

JEREMY BARNHILL: Thank you.

SENATOR ASHFORD: Okay. I think we'll...done.

ANGELA DUNNE: Okay, that will conclude the public hearing portion of today's meeting. Thank you all for coming. It shows your commitment to your children, and that is not lost on us as a commission. Thank you. So the next issue on the agenda is to set

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our commission meeting schedule and I think...did you want to set that through December, if we could?

JENNIFER PIATT: That's up to the commission members. But the issue was when could Dr. Venohr come to Nebraska for the initial meeting, and those range of dates, keep in mind she has to factor in for travel time, so she gave us a couple dates: September 8-12 would be one time that she could come. And again, we would need just a day on the front and a day on the back for travel, so we couldn't nail down specifically that date. And then September 22nd to the 26th would be the second set of days that she could come to Nebraska. And so then...

_____: What was the first one again?

JENNIFER PIATT: September 8th through the 12th, and so until she could look at flights and sort of get that confirmed, that's what we're struggling with is confirming loosely on those days.

WILLIAM MACKENZIE: And the second dates are when?

JENNIFER PIATT: September 8th through the 12th is one block, and September 22nd through the 26th is the second block.

_____: So we would...

JENNIFER PIATT: So what I would need from you is what availability in that time frame, because there may be days where all three of those days don't work for you, and then the commission's decision as a whole on which one of those blocks to try for.

JUDGE NOAKES: So the 22nd isn't an option though because she'll be traveling on that day. Is that the way I'm understanding it?

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JENNIFER PIATT: But she's traveling from Denver, so she could come in the 22nd...

JUDGE NOAKES: Okay.

JENNIFER PIATT: ...if she could get a flight. It's just the issue of wiggling out the flights. So...

WILLIAM MACKENZIE: Just speaking for myself, the 22nd would work, but I'm out of town the rest of the week.

JENNIFER PIATT: Okay.

_____: Yeah, I'm out of the state that whole week.

ANGELA DUNNE: So...but should we look at the first week then...option? It's sounding like...

JENNIFER PIATT: September 8th through the 12th?

ANGELA DUNNE: Any of those days work for me.

_____: Wednesday is very difficult for me until early afternoon, in the morning and early...in the morning through the noon hour.

OLIVER VANDERVOORT: September 8, Senator Ashford and the Judiciary Committee won't be in town.

JENNIFER PIATT: Oh, yeah, that's right, Ogallala.

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ANGELA DUNNE: But she could travel in on the 8th if we...if the 9th worked?

JENNIFER PIATT: Yeah, and she also...one thing she asked me to ask you is that she requested that there be an additional public hearing after her presentation. Usually she likes to present to the commission and then reserve time at the very end for public who would come and listen to the testimony and then have questions on her presentation. So that was another thing that I wanted to put to you for your consideration, whether that would be acceptable to you or not.

WILLIAM MACKENZIE: Did she indicate how long her presentation would be?

JENNIFER PIATT: No.

ANGELA DUNNE: Does anyone else have conflicts for...

_____ : September 9?

ANGELA DUNNE: ...yeah, the week of...

COREY STEEL: The 10th through the 12th I'll be gone.

_____ : How about September 9?

COREY STEEL: The 9th is the day that would work best for me that week.

ANGELA DUNNE: Raise your hand if September 9 would work. Monty, does that not work for you?

MONTY SHULTZ: No.

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ANGELA DUNNE: Was that the majority?

MONTY SHULTZ: I think there's probably a quorum that it works for though, but...

ANGELA DUNNE: Okay. Should we set it for September 9?

JENNIFER PIATT: That's your call if you want to...so I'll...what I'll do then is I'll say the week of September 9 works for everyone and see if she can't get the flight. Now if she comes back and says, I can't get a flight situated, then I'll circle back with everybody and try to get another date. That sound reasonable?

WILLIAM MACKENZIE: I can't imagine she can't get a flight from Denver.

JENNIFER PIATT: Right. I'm just putting it on the record.

JUDGE NOAKES: So September 9 we will...what are we doing? We're meeting with her or she's having us...is this going to be a public meeting where she presents or...?

JENNIFER PIATT: Well, that's what she wanted to know, what the commission wanted.

JUDGE NOAKES: Okay.

JENNIFER PIATT: Normally, she said, her typical thing is that she gives a presentation about...she lays out the federal law, the state laws, case law, and what she's done in our state previously, and then she reserves the last portion of the time for public testimony. She said most commissions do it that way but it's...obviously, it's up to you. So she just wanted to know whether or not she should anticipate answering public questions in addition to commission questions.

ANGELA DUNNE: Sounds good, yeah.

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_____: Probably, yeah.

_____: Well, we've already presented to her, as I recall, certain things we...that were of interest to us and I think were included perhaps in her contract. Is she going to be addressing those things, too, or is this going to be a generic presentation?

JENNIFER PIATT: It's going to be both, both generic...

_____: Oh, okay.

JENNIFER PIATT: ...so that we have a better understanding of federal and state law, and then also addressing sort of the issues that we raised to her, including the Affordable Care Act, and then some of those things that are in that public comments document that you all can link right to.

ANGELA DUNNE: I think it sounds good to have the public be able to ask her questions.

_____: Well, all of our hearings are open to the public, I mean, at any times.

SENATOR ASHFORD: Yeah.

JENNIFER PIATT: Right.

SENATOR ASHFORD: I don't know if you...do you want another public...is that what you're trying to determine?

JENNIFER PIATT: Yes, Senator.

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SENATOR ASHFORD: You want another public hearing?

ANGELA DUNNE: She's saying that's her preference.

SENATOR ASHFORD: Another public hearing?

JENNIFER PIATT: To give...she gives a presentation and then she reserves time at the end of the presentation to take questions from the public. So the commission members would have the opportunity to ask questions throughout her presentation and then we would...and for the Open Meetings Act we have to indicate on the notice whether or not we're going to take public testimony. So for us it matters just in the type of notice that we provide.

ANGELA DUNNE: Can we limit it to they have to ask questions specific...that were germane to her presentation so it's not...

JUDGE NOAKES: The same thing we've heard, yep.

ANGELA DUNNE: Yeah, that we've already done, so that we're being efficient that way. Are we allowed to...

SENATOR ASHFORD: Well, you can limit the time. It seems to me if you're going to do that, I think you can ask that questions that are asked are relative to the testimony. That's going to be very hard to enforce, but you can base it...you really can't enforce any of that kind of stuff. So you really...it's...the only way you can do it is by time. So if you say 45 minutes, you would be relegated...or, you know, set aside for asking questions of the expert, then you can do it by time. But that's how I'd do it, and I'd put that in the notice so everybody knows there's 45 minutes for talking, you know, for that process, and...

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JUDGE NOAKES: Beyond the questions we would ask.

SENATOR ASHFORD: Yeah, yeah.

JUDGE MERRITT: How long is her presentation?

JENNIFER PIATT: Yeah, I apologize, I didn't...that was asked of me previously and I didn't ask her how long it generally takes. I know, looking through the last presentation that she gave us, which I believe you all have an e-mail copy of, it was a pretty extensive PowerPoint, so...yeah.

SENATOR ASHFORD: Was it an hour or an hour and a half or two hours?

JENNIFER PIATT: I...you know, I wasn't there that time so I don't exactly know the time. I just know there were a number of slides.

SENATOR ASHFORD: Bill, you do remember?

WILLIAM MACKENZIE: I think it was longer than an hour.

ANGELA DUNNE: An hour?

TROY REINERS: I think it exceeded an hour. I mean, I think it was, like, not a whole lot over an hour but...

SENATOR ASHFORD: Because we didn't do it last time, so I don't...I can't remember. I mean, I have no memory of that.

TROY REINERS: Bill, do you remember? But it seemed to me like hers went...I mean...an hour long.

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WILLIAM MACKENZIE: It seemed like it was at least two hours, but that's eight years ago, so I don't recall.

TROY REINERS: I was almost leaning toward that, too, but, I mean, it was lengthy.

JUDGE MERRITT: Yeah, I would have guessed two hours.

ANGELA DUNNE: Well, I guess the question is, do we think questions from the public would be...add to questions that we might have of her, right, because it's the benefit of...for us to help make decisions. That's the question we need to ask. Do we think that questions coming from the public will be...

TROY REINERS: She would probably have a good idea if we'd say, you know, ask her, what size of a block of time do you need, given if we had...you know, because she'll have a history.

ANGELA DUNNE: Yeah.

JUDGE NOAKES: Did you say she usually takes questions from the public?

JENNIFER PIATT: That's what she indicated to me, yes, that that...her normal practice is to provide a presentation to the commission and then answer questions as they ask them, and then she usually reserves time to answer questions from the public.

SENATOR ASHFORD: Well, why don't we find...well, we don't know because we're going to decide it now, how much time this takes. I mean we need to have an indication of how much time this takes.

JUDGE NOAKES: Will all of this take...be done in the morning or you think...?

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_____ : When you weren't here we picked a date already.

SENATOR ASHFORD: Oh, it's a day.

_____ : September 9.

JENNIFER PIATT: It's my feeling that 9:00 to 12:00 would be sufficient and we could reserve some...

_____ : Okay.

SENATOR ASHFORD: Okay, that's fine. I mean every day is bad now for me but...

_____ : Is that...that's when my time...9:00, is that what it's going to be?

_____ : Yeah.

_____ : Okay.

JENNIFER PIATT: Unless that completely doesn't work for anybody.

SENATOR ASHFORD: Oh, September 9.

_____ : So 9:00 to 12:00 we'll schedule it.

SENATOR ASHFORD: Well, I have a hearing in Ogallala on the...well, I won't be here then.

_____ : You're on the 8th I thought they said.

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SENATOR ASHFORD: On the 8th, so I won't be here but that's...I'll be in Ogallala.

_____: When's your hearing, Senator?

_____: From 9:00 to 12:00.

SENATOR ASHFORD: On the 8th, but I have to be in Ogallala, and then I'll be coming back the 9th probably, so....

_____: Oh.

_____: Well, wait a second.

_____: Could we...would it be better to try to schedule the afternoon?

_____: We could do it in the afternoon.

_____: Wait a second, Senator. I've gotten up in Ogallala and been here to testify at 9:00 in the morning. You just have to leave early. (Laugh)

SENATOR ASHFORD: What? How early?

_____: We could do it at 1:00.

_____: Well, I...because I practiced in Ogallala for years.

SENATOR ASHFORD: But I need eight hours or...

_____: And I had to come in here to testify for the Senate.

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SENATOR ASHFORD: Oh, I...what time were you going to start at?

_____: Unless we start at 1:00.

_____: Maybe we could start at 10:00 and go to 1:00 or...

_____: I mean, one option would be doing it at 1:00, noon, or...

JENNIFER PIATT: We could start at 1:00 in the afternoon, too, do 1:00 to 4:00.

_____: Yeah, that's true.

_____: Yeah.

ANGELA DUNNE: That works.

SENATOR ASHFORD: Okay, and I'm not able...I can't be there. I can't.

JENNIFER PIATT: Then they...we could have it overlap to five if there...if we needed it.

_____: She has to confirm she can get a flight.

JENNIFER PIATT: Right, right.

_____: So, you know, we're waiting to hear back anyway.

SENATOR ASHFORD: Why don't we do this. I mean, I'll be here at 9:00 in the morning. That's the...to your point. (Laugh) Let's do it at 9:00 because I'm...I can't be here in the afternoon.

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JENNIFER PIATT: Okay.

_____: Okay.

JENNIFER PIATT: So tentatively September 9, 9:00 to 12:00.

_____: All right.

JENNIFER PIATT: Okay.

_____: You can even leave when you need to.

SENATOR ASHFORD: No, I will get out. (Laugh)

_____: Well, no, no. You can...you can leave in the evening and stay at Kearney overnight.

SENATOR ASHFORD: If you order me to get up, I will get up.

_____: No.

ANGELA DUNNE: Do we want to look at an October date? I know for me, the sooner we can get dates on the calendar, it's useful to my trial schedule...gets set. I'm sure some of you have obligations like that too. Is that okay? I would prefer that.

JENNIFER PIATT: Yes, that would be my suggestion as well, because it's getting difficult to get everybody's schedule. So if there is an October date...

ANGELA DUNNE: And I'm gone in October from the 1st to the 13th.

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WILLIAM MACKENZIE: The week of the 13th for me...

SENATOR ASHFORD: I thought the testimony today was good.

WILLIAM MACKENZIE: The 13th is a holiday.

SENATOR ASHFORD: You did a really, really nice job. I am now delegating to you
(Laugh)...

WILLIAM MACKENZIE: But I don't have any scheduling conflicts that I can't get around.

SENATOR ASHFORD: ...all the rest of this, "Chairmanship-y" things. (Laugh)

WILLIAM MACKENZIE: I don't have my calendar in front of me.

_____: Later in the week would be better for me that week, Thursday and
Friday.

JENNIFER PIATT: Which week are we...?

WILLIAM MACKENZIE: Fridays or Thursdays work best.

JUDGE NOAKES: Why don't I have our judges...

WILLIAM MACKENZIE: Oh, there is a Bar Association meeting.

_____: Eighth through the 10th.

_____: Yes. When is that?

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_____: It's the 8th.

WILLIAM MACKENZIE: Is that the first full week?

_____: Yeah, that's the 8th through the (inaudible)...

_____: Eighth through the 10th.

WILLIAM MACKENZIE: Okay, so we wouldn't want to do it that (inaudible)...

SENATOR ASHFORD: Why don't you do it after that probably?

JENNIFER PIATT: So the week of the 13th?

JUDGE NOAKES: The 13th is Columbus Day, right?

WILLIAM MACKENZIE: Right.

JENNIFER PIATT: Is it? Oh, yeah.

WILLIAM MACKENZIE: Do we want to shoot for Thursday or Friday that week?

JENNIFER PIATT: Thursday the 16th or Friday the 17th?

_____: Thursday the 16th would work better for me.

_____: In the morning works some...

SENATOR ASHFORD: Thursday.

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ANGELA DUNNE: So October 16th in the morning, 9:00?

JENNIFER PIATT: That work for everybody?

JUDGE NOAKES: It doesn't...I won't know if that works for me until a week before.

JENNIFER PIATT: Okay.

JUDGE NOAKES: So do you want to just schedule it for then? If I can't make it, I can't make it.

JENNIFER PIATT: Okay.

ANGELA DUNNE: Okay, raise your hand if October 16th works for you.

JENNIFER PIATT: Okay, that's a quorum.

ANGELA DUNNE: Okay. All right. Can we be brave and go to November too?

SENATOR ASHFORD: What...why don't we just get through...can we get through October and then...

ANGELA DUNNE: Oh, let's do November.

SENATOR ASHFORD: Really?

ANGELA DUNNE: Yes,...

JENNIFER PIATT: And so then November...

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ANGELA DUNNE: ...because all my trials are getting set so...and I can't move those once they get...

JENNIFER PIATT: So then November would be around the time that she would then come back to Nebraska and...

ANGELA DUNNE: Oh, so maybe get dates from her.

JENNIFER PIATT: Well, I think she's...her schedule opens up significantly in September, so we can set it now...

SENATOR ASHFORD: I'm not available on the 16th of October.

JENNIFER PIATT: ...and say, this is when we'd like you to come. So I think it actually would be better to set it with your schedules and then we can say, this is when we want you to come.

SENATOR ASHFORD: I can't be here on the 16th of October, but you guys can go, I mean, if you want to go ahead. I just can't be here on the 16th. Just go ahead without. I mean, I cannot be here.

JENNIFER PIATT: Okay, so if we did then...

_____: What was the 17th? Because I heard the 16th and the 17th.

SENATOR ASHFORD: Seventeenth I can do, 17th I can do,...

_____: Works for me.

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SENATOR ASHFORD: ...which is Friday.

JUDGE NOAKES: I would be much more likely to be able to make the 17th than the 16th.

_____ : Seventeenth works for me.

JENNIFER PIATT: Seventeenth, okay.

SENATOR ASHFORD: Okay.

ANGELA DUNNE: Okay, raise your hand for the 17th. We just want to make sure we have enough.

SENATOR ASHFORD: I can do the 17th.

ANGELA DUNNE: Okay.

ERIC THOMPSON: Okay, is there any way it could be the afternoon? I can leave and come back. I just...I got to teach a class.

SENATOR ASHFORD: The afternoon would be...

JENNIFER PIATT: It's your schedule, so I'm only taking notes.

_____ : Right.

ANGELA DUNNE: Yeah, then we just...we end and we go home.

_____ : Just bring your class here.

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ERIC THOMPSON: Yeah, that's right. They'd learn a lot.

SENATOR ASHFORD: Okay, let's...what do we...okay.

ANGELA DUNNE: So 1:00 on...

JENNIFER PIATT: October 17, 1:00.

SENATOR ASHFORD: Okay. Oh.

JENNIFER PIATT: Okay, and then if we did approximately a month later we would be looking at either the week of November 17...

ANGELA DUNNE: Any time that week works for me. Does anybody have any known conflicts that week so we can work?

COREY STEEL: Just Friday the 21st.

ANGELA DUNNE: Friday the 21st.

_____ : It's deer season, so I...

ANGELA DUNNE: I'm sorry?

_____ : Deer season? (Laugh)

ANGELA DUNNE: Oh, for...okay.

SENATOR ASHFORD: Don't let...Judge Merritt starts to hear that kind of stuff, he's

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going to start...(laugh).

_____: Mondays (inaudible)...

JUDGE NOAKES: That's not a good week for me really because that's the week I have to...but if it was Monday or Wednesday I would...I could probably rearrange things.

JENNIFER PIATT: Monday the 17th or Wednesday the 19th?

_____: Um-hum.

JENNIFER PIATT: Anybody have a preference?

_____: Wednesday.

_____: Wednesday.

JENNIFER PIATT: Wednesday, morning or afternoon?

_____: Afternoon, if possible.

JENNIFER PIATT: I'm sorry?

_____: Afternoon, if possible.

JENNIFER PIATT: Afternoon, 1:00?

ANGELA DUNNE: Okay, so raise your hand November 19. All right.

_____: What time did you say?

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ANGELA DUNNE: 1:00.

JENNIFER PIATT: One o'clock, and I'll send out...I'll just send out one e-mail with all the times that everybody agrees. You can click on an add it to your calendar...anything like mine.

_____: I'll try to reschedule (inaudible).

JENNIFER PIATT: Okay, so then the issue with December becomes we possibly may need a couple meetings because we will have received the final results from Dr. Venohr, and then...

SENATOR ASHFORD: Why don't we wait...why don't we wait on that. Can we wait on December until we just...let's just get through this a little bit, and then we'll...

JENNIFER PIATT: Okay. Okay.

SENATOR ASHFORD: This was a good hearing, actually, I thought, really good, primarily, because we had somebody who knew what they were talking about in charge.

WILLIAM MACKENZIE: What was that November date again, November...

JENNIFER PIATT: November 19, which is a Wednesday, at 1:00.

_____: Yeah, I got, like, a hearing to do...

SENATOR ASHFORD: Yeah, I got to go, too, actually, pretty soon, so...

_____: I've got a hearing (inaudible) so sorry.

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ANGELA DUNNE: Okay.

SENATOR ASHFORD: Are we done?

ANGELA DUNNE: I think so. Are we done?

JENNIFER PIATT: Just need a...

JUDGE NOAKES: And what was our September one? I just...I think I put it in there wrong. Was it the 9th?

JENNIFER PIATT: September 9.

JUDGE NOAKES: Okay. And that was at 9:00 though?

ANGELA DUNNE: Yes.

JENNIFER PIATT: Yes. And I'll...that day, given that we have her presentation, I'll reserve 9:00 to 12:00 and then 1:00 to 2:00 as a backup in case we need it, so...

ANGELA DUNNE: I would suggest that for our October meeting we have Adam Astley come back--that will be after we hear her testimony--because he knows that calculator inside out and I feel like by that time we'll be having ideas about what we want to do and he can just tell us how they work. (Laugh) So I don't know if anybody is opposed to...because, for his calendar, too, we'd want to get that on his calendar sooner rather than later, I'm guessing. Does anybody...do I have to move for that, Jenn, or can we just decide that we're going to invite him to...

JENNIFER PIATT: It's binding, but technically it's binding action, so I suppose lawyers

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can get creative about what that means.

_____: I'll move.

_____: What's binding action?

JENNIFER PIATT: That's when you need to do a roll call vote is whenever you take a binding action, if the commission takes a binding action. So it's what I was saying: Lawyers could get creative about what a binding action means, I can foresee that.

SENATOR ASHFORD: I don't think you need to do that.

ANGELA DUNNE: Yeah.

_____: Yeah.

JENNIFER PIATT: Okay, so I'm just...

SENATOR ASHFORD: Yeah, I don't think you need to vote on it but...

ANGELA DUNNE: But do we just generally agree that that would be useful?

WILLIAM MACKENZIE: I think so.

_____: I agree.

_____: (Inaudible)...yeah.

ANGELA DUNNE: All right then, Jenn, I'll go ahead and extend that invite.

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JENNIFER PIATT: Okay.

ANGELA DUNNE: And any other next steps based on today's testimony?

_____: Will we have access to all these if we...you'll provide that to us if we leave our binder here like we've been in the past?

JENNIFER PIATT: Yeah, actually, I was going to ask you about that, if you wanted to...you might have a heart attack, Ollie, but if they could maybe bring your binders so you could read it all and then you could just let us know if you're taking your binder and just make sure to bring it back so we don't have to use more state resources to reprint it.

_____: Well, I can take it back. I mean, I'll just take...I mean, that's for...

JENNIFER PIATT: Does that work? The only thing with the binder that we were concerned about is we don't want to keep printing, kind of a waste.

_____: Correct. Well, a lot of times, if I can get it digitally, you just pull it up on your screen and I don't print it.

JENNIFER PIATT: Right. Absolutely. But I...it...

WILLIAM MACKENZIE: Do you have Wi-Fi here?

JENNIFER PIATT: Yes.

WILLIAM MACKENZIE: Okay.

JENNIFER PIATT: So if you would prefer, I could scan the documents that were submitted. I think the Legal Aid society submitted and then another person submitted

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written testimony. If that would be easier, I could scan that in and send it to you all electronically.

_____: Will it be "OCR'd," I mean, so that you can, like, highlight? I might even check to see if you could get it from them. It's just sometimes when you scan and you use images,...

JENNIFER PIATT: Yeah.

_____: ...then you're not able to actually, like, highlight in yellow certain sentences and that type of thing.

JENNIFER PIATT: Oh, yeah.

_____: Which when I'm...that's what I like when digitally I'm doing it is because then I can scan certain things and...

JENNIFER PIATT: I think you may have better technology in your agency than we do here at the Legislature, but I'll ask if that's possible. I don't think so. I think we have this old scanner you've got to feed one page in at a time.

_____: It's just an image; it's not OCR.

SENATOR ASHFORD: Yeah, we know. We haven't bought...we don't buy stuff (inaudible)...

_____: Yeah, it just scans as an image.

_____: Ouch.

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JENNIFER PIATT: Yeah.

_____: I mean, the copiers, ours are State Office copiers.

JENNIFER PIATT: So you're volunteering?

_____: Well, I mean, I could scan it in.

JENNIFER PIATT: Okay, so I'll scan the documents and send them electronically. I can't promise that they'll be...

_____: I'll see what they're like.

JENNIFER PIATT: Okay.

WILLIAM MACKENZIE: Is there anything that came up today at the public hearing that we think would be additional topics that we would like Dr. Venohr to address?

ANGELA DUNNE: The day care maybe?

_____: Yes.

_____: Yeah, the day care.

JUDGE NOAKES: Yeah. I don't know how she would address it, but I think that's some...

ANGELA DUNNE: Yeah, I'm curious.

JUDGE NOAKES: ...some policy thing that we need to consider because it is a

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major...you know, but it's temporary too.

ANGELA DUNNE: Yep.

JUDGE NOAKES: So how would we figure that out?

TROY REINERS: Well, I thought Mr. Astley's case about the one full here and then split there...

ANGELA DUNNE: And he's a liar because he sends them to me. (Laugh) He says, Angie is on the commission, call her. So I (inaudible)...

TROY REINERS: Well, I mean, I thought that was a good point. I mean, it seems like it was rarer in the past but now it's becoming more and more common.

ANGELA DUNNE: It's with teenagers. It's what we see with the older kids.

TROY REINERS: Right.

ANGELA DUNNE: One child is primarily with one, and then another...

TROY REINERS: I think it will help even to figure the calculations...

ANGELA DUNNE: Agreed.

TROY REINERS: ...I think and then in variances when people are trying to determine any type of variance...

ANGELA DUNNE: Agreed.

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TROY REINERS: ...even when it's not the case, I think, is...

ANGELA DUNNE: Yeah.

ERIC THOMPSON: A couple of the witnesses were struggling with the issue of second jobs for noncustodial parents. Is that an issue she's going to look at carefully?

WILLIAM MACKENZIE: Well, right now the guidelines are based upon 40 hours of income per week.

ERIC THOMPSON: Is that by law, that's some change in...?

WILLIAM MACKENZIE: Well, no, it's not by law. It's by the guidelines. But the thing...what we're seeing more and more now is people can't get 40 hours a week of work because, you know,..

ANGELA DUNNE: Health...

WILLIAM MACKENZIE: ...employers are cutting their hours to 29 or 30 hours a week, so they're not considered full time. But it's essentially full time.

SENATOR ASHFORD: And the employer...and to your point, the employer mandate, it affects that as well because it forces...jams down the time.

WILLIAM MACKENZIE: Well, and it's keeping them from having to provide the benefits.

SENATOR ASHFORD: Right.

ANGELA DUNNE: Yeah.

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WILLIAM MACKENZIE: So I think that's an issue that she might want to address the difficulty...

SENATOR ASHFORD: That's reality. That's reality. I mean, that is...

ERIC THOMPSON: Well, it may be reality, but as an economist I'm skeptical of that.

SENATOR ASHFORD: You don't think that's...

ERIC THOMPSON: I think there's plenty of opportunity for multiple job holding...

SENATOR ASHFORD: No, no, I mean on any single employer is all I'm saying is that (inaudible)...

ERIC THOMPSON: Oh, sure, that's happening. I can...

SENATOR ASHFORD: Yeah.

MONTY SHULTZ: So now is the question of...for the district court judges, is that...can't they assume earning potential into some of that calculation as well?

ANGELA DUNNE: They...

MONTY SHULTZ: That creates some problem.

ERIC THOMPSON: Yeah, that's gets into a gray area. You go based on what someone actually earns or what they could potentially earn if they work more, and I don't...maybe that's not appropriate. I just...

ANGELA DUNNE: We...the...how the...

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JUDGE NOAKES: Well, and I (inaudible), too, and one spouse who marries someone who's very wealthy and, you know, the...I don't know what we can do in the Child Support Guidelines about that, but it just gives the appearance of...

ANGELA DUNNE: It's an impact that is not accounted for.

JUDGE NOAKES: Right.

ANGELA DUNNE: Yeah.

JUDGE NOAKES: And so I don't know what you do.

TROY REINERS: But should it be (inaudible)...

JUDGE NOAKES: I know. I don't know.

ANGELA DUNNE: I don't know. I don't know. I...

SENATOR ASHFORD: I think it...

_____ : You're starting a new life. You do really well or, you know...

JUDGE NOAKES: Yeah, I...

ANGELA DUNNE: It's...I can say I'm a divorced mom and my spouse is remarried and we don't have child support, but there's not...he has additional income in his household. So it's one of those things you always think, well, I don't...you know, it's that fairness question: Is this fair? But then his spouse is divorced. I mean, there's a whole effect that it trickles down into all of these mixed families.

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TROY REINERS: I think in most cases it benefits the children more than anything.

ANGELA DUNNE: Yeah, yeah.

TROY REINERS: And the other one that I was curious about was the gentleman that said, you know, he's not at the poverty level, but due to the fact that he...and he only has the children four days a month but he's not getting their clothes sent over. I mean, we tote it all up and we ship it is what we do and it's...that is a hassle, too, but, I mean, to me, where, you know, where does that come into play when, you know, it's not hardly even 50/50...

ANGELA DUNNE: Exactly.

JUDGE NOAKES: Yeah.

TROY REINERS: But that NCP, noncustodial parent, is having to literally, completely support themselves, as well as clothes, as...I mean, everything.

SENATOR ASHFORD: And not have the benefit of having the children.

TROY REINERS: Correct, and not have the benefit of the child support weighing to their effect. I mean, that was a strong thing.

ANGELA DUNNE: Yeah. That's why I liked the guy's idea about are we properly assessing the base for noncustodials before we're...I don't...the poverty level I don't think is an appropriate base.

_____: No, I don't think so either.

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JUDGE NOAKES: I think that needs (inaudible)...

ERIC THOMPSON: Well, but I think we if we have to set up two parallel homes where we had one before, somebody needs to work more, right?

JUDGE NOAKES: Well, and that's an expectation when you divorce.

ERIC THOMPSON: I mean, how is it possible? How is it going to happen?

JUDGE NOAKES: You don't (inaudible) money.

ANGELA DUNNE: Well, you either need to work more or go with less.

_____: That's the kind of...

SENATOR ASHFORD: Or have...marry a very wealthy new spouse and then they...

_____: That's (inaudible)...

ANGELA DUNNE: If we could all be so lucky.

_____: So I think when you make that statement, "somebody needs to work more,"...

_____: Yeah.

_____: ...is it the noncustodial parent that needs to work more?

SENATOR ASHFORD: Right.

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_____: Or is the custodial parent?

_____: It should be both, yeah.

_____: (Inaudible.)

_____: It strikes me as a contradiction that you have to have two homes of similar living arrangements to what you had before the split and then...

ANGELA DUNNE: Built out of the same...

SENATOR ASHFORD: And how far down does your...

_____: ...and then, I mean, something's got to give on one side or the other, I guess, is what I'm saying.

SENATOR ASHFORD: How far down does the noncustodial parent's...

_____: Yeah, I mean, I just think it should be equal though, too, is the thing, because I don't think now...

_____: So there's a double-edged sword there.

SENATOR ASHFORD: ...quality of life have to go down? How far down does the noncustodial parent's quality of life have to go down?

JUDGE NOAKES: Right, and on the other side, the custodial parent...

SENATOR ASHFORD: Goes up.

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_____ : Correct.

SENATOR ASHFORD: Where...how do you...that's the biggest dilemma for 30 years that I can't resolve.

MONTY SHULTZ: And then there's the perception of, okay, let's just work more.

SENATOR ASHFORD: Yeah.

_____ : Doesn't it...and it doesn't consider, like, a custodial spouse who gets a huge inheritance or anything like that.

MONTY SHULTZ: So then they...your ex-spouse goes to court and gets a new order...

SENATOR ASHFORD: Right.

MONTY SHULTZ: ...for more child support because you're working more.

TROY REINERS: I mean, you have noncustodial parents that cannot afford a single apartment with an extra bedroom for their children. They are living with old buddies of theirs, and then they feel apprehensive about even having the children come over because they don't feel they have a house. I mean, that...

SENATOR ASHFORD: I think that is a very real thing.

_____ : Huge real.

SENATOR ASHFORD: I think that is a very real thing.

MONTY SHULTZ: And I've seen more than one order that says you cannot have your

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children overnight because you don't have a bed for them to sleep in.

SENATOR ASHFORD: Because you don't have enough bedrooms or whatever, yeah.

ANGELA DUNNE: See, we don't...our judges are very...they'll say, sleep on the...we don't...I don't see those types of impairments placed.

JUDGE NOAKES: I haven't seen that either.

ANGELA DUNNE: I'm not saying that they don't, but it's..

JUDGE NOAKES: There are issues though where, you know, if you're at a homeless shelter, you know, there are times where, yeah, you can't have overnights because of whatever situation you're in is not healthy for the child. And most dads would agree that, yeah,...

ANGELA DUNNE: And Mr. Santamaria, I happened to have been his divorce lawyer. So just for full disclosure, his wife made five times what he made. We were successful at the temporary not to have support ordered because they kept arguing, these are not children in need, and the judge agreed. At the time of decree, the judge was really struggling and he kept saying to me, Angela, give me the case law that will let me not order support because I think he thought that was the right outcome. But there was nothing I could give him that said...

SENATOR ASHFORD: That's the problem.

ANGELA DUNNE: ...you can deviate. And so, you know, so there is that, too, where you have a huge economic disparity between the parents where the custodial is this...in this case, made a lot...I mean, these children will want for nothing and yet he was not in that situation, that child support was going to ding him down, and there was...I

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couldn't...Judge Kelch kept saying to me, Angela, give me something that will let me do this.

JUDGE NOAKES: And by the way, the custodial spouse can have another family with someone. This noncustodial person who can't even pay this support in reality,...

_____: Yeah, this is a big problem.

JUDGE NOAKES: ...how is he going to be able to...I mean...

ANGELA DUNNE: Exactly, so...

SENATOR ASHFORD: And if you...let me propose this problem. If you...what I kept out...it doesn't matter what I kept arguing. But if you can adjust or begin to fix this problem that we're talking about, this sort of disparity that's resulting from the decree, is it...the question was asked. It was a good question, I thought, a good answer. If you can do some of that in the guidelines, are...is it more likely that you're going to get more of a fair and equitable distribution of the time? I mean, if there are other ways of adjusting...I mean, if you have a presumption of fit and proper and then you have the guidelines that start to begin or do reflect some of these disparities, is the motivation, the economic motivation, to, you know, sort of have the Wilson v. Wilson apply, is that going to start to erode? Is that going to go away and people are going to start agreeing? Because the problem with the Parenting Act, and I respond...I...it was my bill, 1991, you know, but it doesn't...it makes no difference...in the parenting bill law doesn't work. And that's why I didn't like what the Supreme...the Supreme Court's study, you know, because I thought it wasn't getting at the real problem, which is the parenting thing doesn't really work, the mediation doesn't work effectively, because you still have the economic disparity built into the guidelines and there's nothing you can do about it in mediation. And...

ANGELA DUNNE: In fact, you're not supposed to be mediating.

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SENATOR ASHFORD: No, you're...in fact, it says don't mediate on economic things.

ANGELA DUNNE: Yeah, yeah. You have to have agreement to (inaudible)...

SENATOR ASHFORD: I really think that's a big issue.

JUDGE NOAKES: I wonder if our Child Support Guidelines, instead of defining total monthly income, it could be household income, and that could include all sources. And by all...

ANGELA DUNNE: But then here's the trick. You'll have...I already...I know...

JUDGE NOAKES: I know, they may break up.

ANGELA DUNNE: They'll have boyfriend, they'll have live-ins,...

JUDGE NOAKES: And they leave, they move. But it could be of a married...if you're married you...if you do marry...

ANGELA DUNNE: Then they just won't get married. They'll just live with them...

JUDGE NOAKES: I know.

ANGELA DUNNE: ...because that's the trick.

SENATOR ASHFORD: Do you think so?

ANGELA DUNNE: Yes. No, I know so. (Laugh) I'm like...

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SENATOR ASHFORD: But if you...do you think...

JUDGE NOAKES: They'll wait until the kids are old enough.

ANGELA DUNNE: Yeah, I know what...

TROY REINERS: One of the things I think is...

ANGELA DUNNE: ...because it happens in alimony all the time.

SENATOR ASHFORD: Okay. All right.

ANGELA DUNNE: They wait until alimony, then they get married.

SENATOR ASHFORD: But if you really like somebody, you want to get married to them, don't you?

_____ : But maybe they...

ANGELA DUNNE: No, no, not after you've been divorced.

_____ : And one of the things I think though is that the thing is...I mean, while you don't want to complicate it, I think the more parameters that you allow for that consider these multitude of variables,...

SENATOR ASHFORD: Expenses, the expenses.

_____ : ...and then you spell it out and you put them in line and you say,...

SENATOR ASHFORD: Well, you know what they did in...

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_____: ...this is the way it's going to be, you're going to take out the
lucrative-ness of, well, hey, (inaudible) figure him for this and, by golly, I'm going to roll it
in.

SENATOR ASHFORD: You know,...

ANGELA DUNNE: Yeah.

_____: And I know it's going to complicate...

SENATOR ASHFORD: You know, in...and we struggled with this for a year in the
committee and we looked at what Illinois did with this. And what Illinois did with this,
which I still think is the best thing to do, you throw out the word "custody" altogether and
then you basically set forth what each parent does do. And you allocate in the
economics of that, you give that a number, you give that some sort of economic factor
so that you're in effect...you throw out custody altogether and you say, okay, this is
where the child is going to be and this is who is going to do what and so forth and so on,
and then you have the economic factor attributable to that, whether it's going to summer
camp, I mean, I don't even know, whatever it is.

_____: Well, I mean, whether it's three worksheets, five worksheets, seven
worksheets, I mean, well, you don't want to complicate it. You just want to consider...

SENATOR ASHFORD: Right.

_____: You just want to consider more of the variables than we're
considering...

SENATOR ASHFORD: Right.

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_____: ...because people are sacrificing, willingly doing it, and then later it comes back to hurt them, I mean,...

SENATOR ASHFORD: Right.

_____: ...because there's no other...

SENATOR ASHFORD: It's crazy; it's counterintuitive; the whole thing is counterintuitive.

_____: Yeah, yeah, I mean, you don't want to complicate it either, but you need to spell it out, I mean, you know, it's...

SENATOR ASHFORD: Right.

_____: I think if you go back to Eddie's remark, "I would pay \$1,000 a day just to see my kids more,"...

SENATOR ASHFORD: Yeah.

_____: Yeah, yeah, it's like...

_____: Well, and...

_____: And I think there's a lot...I'm...I don't know that I'd pay...I could afford to pay \$1,000. But, you know, I would pay my current child support amount just to see my kids more.

SENATOR ASHFORD: Yeah.

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JUDGE NOAKES: And I guess my thought as a judge is, I want child support out of the custody determination.

SENATOR ASHFORD: Right.

_____: Yeah, yeah.

_____: Exactly.

JUDGE NOAKES: It should not even be on the table.

SENATOR ASHFORD: Right.

JUDGE NOAKES: That shouldn't be anything people are bargaining with...

_____: Yeah.

JUDGE NOAKES: ...at all, and...

WILLIAM MACKENZIE: But how do you separate it?

ANGELA DUNNE: Yep.

_____: Yeah, I know, that's...

SENATOR ASHFORD: And that's what we tried to do in the Parenting Act. We had hearing after hearing after hearing: separate it, separate it, separate it. So we'd separate it in the statute, but, to your point,...

ANGELA DUNNE: Yep.

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SENATOR ASHFORD: But it never gets separated. It...yeah.

TROY REINERS: But no matter how complicated you make it, you can have a software guy, they'll figure it out, because they're better with the what-ifs and the what if this, this.

_____ : But...but, see,...

TROY REINERS: And could (inaudible) you're still pushing one button.

JUDGE NOAKES: You want a final order too. You don't want all of these what-ifs because things come up afterwards and, just like you said, people will argue to the death over something that is so petty and it's a \$200 thing so my kid can go to camp but they spend \$4,000 in attorneys fees to decide (inaudible)...

ANGELA DUNNE: It's insane.

TROY REINERS: But the more what-ifs...

SENATOR ASHFORD: It's the blender problem. But if you take the...to some extent, or if we can somehow incrementally take the economic piece and adjust it so that the actual which we're all here to try to resolve in the end is in the best interest of the child, if we take some of those economic factors and redo them so that the best interest of the child can really be determined as opposed to the economics of the situation, we would be doing a great service it seems to me.

AMY WILLIAMS: I think you have to then invest a percentage of time in how that's...how that impacts the...and I'm coming from, you know, a custodial parent perspective. I have half-and-half time, and that greatly impacts the support that I receive. If I had, you know, 60 percent...

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JUDGE NOAKES: Um-hum.

AMY WILLIAMS: ...time, the child support amount would go way up.

ANGELA DUNNE: It's...yep.

AMY WILLIAMS: But that doesn't make any sense given that we're able to agree and, you know, that, too, I think, is sort of the tipping point. And I've clerked for a divorce attorney and I know that the majority of people don't agree. Can we incentivize people to agree? And when is there a responsibility to these parents to work things out amicably? They're adults. I understand they got a divorce. But can we say, look, this is about you two coming to some kind of agreement, we're not going to do it for you. I mean, there does need to be a final order, but I think you can incentivize the two.

JUDGE NOAKES: It's rare though. I mean, and I tell people who are in front of me when I see how they are able to operate that way, you're the exception. I mean, it's very rare, and that's why a lot of judges have a hard time with joint custody, because that's what you get, what you end up with.

ANGELA DUNNE: And we tried to...I was working on the compromise legislation bill just this last winter, and we were trying...we kept getting hung up on child support. That was our biggest barrier.

SENATOR ASHFORD: It was a problem.

ANGELA DUNNE: And we kept trying to build into exactly...we were trying to address how do we disincentivize parents from creating conflict because we see it...because right now, if you have conflict, you're not appropriate for joint custody. It's real easy to create conflict.

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_____: Sure.

ANGELA DUNNE: So we wanted the judges, the mechanism to take that into account like, look, we see where this...we see...because you can usually see who's doing what. I mean with texting and...I mean we get it all. We see who is...and so we were trying to do that but we couldn't figure out how to link that into a child support recommendation.

SENATOR ASHFORD: That's why we stopped.

ANGELA DUNNE: Yep.

SENATOR ASHFORD: We stopped because we couldn't get this problem solved.

_____: And I...go ahead. I'm sorry.

SENATOR ASHFORD: No but, I mean, that was the...so what we're saying, okay, you change wording in the statute on what the judge...how the judge is supposed to divide time and you change that wording and then you're still...it's better maybe, but you're still left with this underlying toxic problem which is the economic impact. And I...if, to your point, if we could somehow, someway think about how to incentivize coming together on...people will agree on who...where the child goes and what days. I think if the economic repercussions of that are somehow lessened to the person who is going to have more...because Wilson v. Wilson makes no sense necessarily to the...in a situation where both parents are good parents and they should have more time with their parents or with their children.

ANGELA DUNNE: And I can tell you I represent lots of dads. If they've got 50/50 time, they don't care when I say, pay full support because we want to avoid expense sharing.

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SENATOR ASHFORD: Right.

_____ : Right.

ANGELA DUNNE: They say, okay, like, done. And I represent, I mean, I represent really good parents across the board.

JUDGE NOAKES: And maybe when you order that, okay, one parent has to have the final say, that parent then would get support because they would be the person deciding are you going to go to that camp, are you going to do this.

ANGELA DUNNE: Yeah.

JUDGE NOAKES: And so if we could come up with an amount...

WILLIAM MACKENZIE: Well, you can...

SENATOR ASHFORD: You can divide that, can't you?

WILLIAM MACKENZIE: You can divide those out.

SENATOR ASHFORD: Can't you divide that, Judge? Can't you divide it?

ANGELA DUNNE: Yeah, but what I say is, if you want to decide that they go to the fancy camp, you're getting child support, you pay for it. That's not...that's not...

JUDGE NOAKES: Yes, that's what I mean. At...on these joint custody cases where they're 50/50, maybe if we just somehow base it on the income but whoever has final say, they would get from the other parent more money,...

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SENATOR ASHFORD: A final say fee of some kind? (Laugh)

JUDGE NOAKES: Well, yeah, because, okay, so here's how much you're going to have for all their extra stuff per year. You decide how you want to use it. Anything over that, then you pay for it.

SENATOR ASHFORD: Why couldn't...why...

ANGELA DUNNE: Yeah, well, that's why we do...we just say, pay your full support, and we have. We're crazy. We...

JUDGE NOAKES: Uh-huh. It would be similar to that, only if she could...

ANGELA DUNNE: We've calculated it out and we know that I know in good faith that's a good deal for my...

MONTY SHULTZ: There was an article in Psychology Today just recently about some of these same issues that we're talking about, and it's a misconception that in these high-conflict divorces that coparenting can't work. And I think their research is beginning to shift towards showing that coparenting can be of benefit when there's not either an economic advantage or an advantage in time and child custody as well. So...

ANGELA DUNNE: Like parallel parenting, is that...?

MONTY SHULTZ: Right, and that's the shift, even with the high-conflict cases.

SENATOR ASHFORD: That's why I think if you give the judges...if the Legislature...beyond this issue, if the Legislature at some point next year or whenever they do it, if they have this as a tool and they can give to the judges from a positive perspective how that...maybe use the word parallel parenting instead of...the word

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"custody" is toxic and because it's got this...it's decades and years and years of history behind it. But if you use another word,...and...

JUDGE NOAKES: It denotes power. It makes...

SENATOR ASHFORD: Yeah, it creates power.

JUDGE NOAKES: You know, and people are uncomfortable with I have custody, I have power.

SENATOR ASHFORD: Yeah.

JUDGE NOAKES: That's not...

AMY WILLIAMS: (Inaudible)...have to change that. Fifty-fifty time or whatever is in the best interest (inaudible)...change...

WILLIAM MACKENZIE: I'd like to see if Dr. Venohr, her studies, and although she's done other states, can identify any other states where they've been able to unhitch the custody and the economic issues.

SENATOR ASHFORD: Yeah.

ANGELA DUNNE: That's what we crafted was, yeah, the presumption, but you still at the best interest. And then we expanded those (inaudible)...

SENATOR ASHFORD: Illinois is the one that I'm more...the most familiar...

ANGELA DUNNE: So it was like no parent should have less than (inaudible) percent time, but then you have to look at...

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WILLIAM MACKENZIE: Well, I have to maybe ask her to look at Illinois specifically. I'm not familiar with that state but...

_____ : If she could, just as an exercise.

COREY STEEL: I want to go...it may be a...

ANGELA DUNNE: ...because we didn't...the original idea was you just have a (inaudible)...

COREY STEEL: I don't know if it's a question, comment, or additional feedback. But why would if two parents that are getting divorced have high conflict, as you said, affect the raising of their children? Does that...and maybe that's more of a comment.

MONTY SHULTZ: That...there's a lot of different variables.

JUDGE NOAKES: There are.

_____ : I can understand if two adults don't get along.

_____ : Yeah.

_____ : Right.

JUDGE NOAKES: That's why creating something for that, you really have to see these parties and know...

_____ : Right, right, I get that, and every case is different. It just struck me that...

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_____: Well, (inaudible)...

_____: ...two individuals don't get along does not mean they're not fit parents or they're not raising their kids to the best of their ability.

JUDGE NOAKES: Well, if it...

SENATOR ASHFORD: And, Corey, what I...

JUDGE NOAKES: Right.

SENATOR ASHFORD: Corey, what really...and you weren't there. You were doing transforming juvenile justice, so it's not fair. But the...it...when we...when that...what really, and it's not about me, but was really frustrating for the committee, at least the Judiciary Committee, was this study that was done by the Supreme Court on...and how does mediation work? Well, we know mediation doesn't work as long...I mean, it does not work. Those data points were absolutely useless because what in reality is what we're talking about here today is you can award joint custody or not award joint custody or equal parenting or not award equal parenting. Having those kinds of data points doesn't get at what we're talking about here, and what we're talking about here is much more case by case by case. And that was the frustration about that study is, yeah, you know, there's more equal parenting now in Douglas County than there is in the 3rd District, okay? (Laugh) So what do you do with that?

_____: Or the 7th or the 9th or...

SENATOR ASHFORD: Yeah, or...yeah, what...I mean, what do you do

_____: I won't way the 8th because we have a representative here.

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SENATOR ASHFORD: But what do you do with that?

JUDGE NOAKES: Careful.

SENATOR ASHFORD: I mean, we have an opportunity here to really do something important I think.

_____ : I thought that was more of a comment probably than a question.

JENNIFER PIATT: So, if I may summarize the issues you'd like me to pose to Dr. Venohr so I have it right, I just want to make sure I get it right. So day care, issue of day care; the issue that Adam Astley brought up, the split/joint, and to get...all his comments are in that public documents thing that you all have access to; second jobs for noncustodial parents or the issue of 40 hours a week...

ERIC THOMPSON: Well, I don't think it's fair to say...

JENNIFER PIATT: Is that...

ERIC THOMPSON: ...for noncustodial parents; just second jobs and the issue of 40 hours a week, yeah.

JENNIFER PIATT: Okay, second jobs, okay, and the issue of...

JUDGE NOAKES: And I would like household income.

SENATOR ASHFORD: Yeah.

JUDGE NOAKES: And not only that, but other assets, I mean, you...if I were not

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divorced and my husband and I fell on terrible economic times and I needed money, I would sell my land, I would sell my house. I mean, I don't know how that can come into play.

ANGELA DUNNE: Well,...

JUDGE NOAKES: But it only considers income.

_____: Well, (inaudible)...

JUDGE NOAKES: And it doesn't...

_____: I could tell you...

ANGELA DUNNE: But the presumption is, under your decree, you're going to have had an equitable distribution of...so presumably each parent is sitting at about the same...you know what I mean?

JUDGE NOAKES: (Inaudible), yeah.

ANGELA DUNNE: I think that's covered because if the decree is the way it should be, you've allocated, not divided everything in half, but overall people are walking away pretty evenly situated, and I...

JUDGE NOAKES: Initially, but maybe two or three years later it's...

ANGELA DUNNE: Yeah, right, might be a modification issue.

MONTY SHULTZ: Well, and I think if you look at the testimony...

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JUDGE NOAKES: If you look at household income, I don't know. I just...

MONTY SHULTZ: The testimony from the gal from Legal Aid, and to maybe explain from a noncustodial parent's perspective, is that, you know, you may have land, you may have assets, but after you've lost your kids you're pretty broken. And so then how do you rebound from that? And you try to hang onto whatever you can because you've already lost the most important thing, and that's your kids.

WILLIAM MACKENZIE: One thing that...

JUDGE NOAKES: You've lost your kids, but I don't see it as you have lost your kids unless you don't have any parenting time, you know, (inaudible)...

MONTY SHULTZ: Well, when you have four days a month...

JUDGE NOAKES: I mean, you lose time with your kids, yes, but you're...still your best...the thing you want most is for your children to thrive and be healthy and to be provided for.

MONTY SHULTZ: More than four days a month.

JUDGE NOAKES: Every day, I would assume that's what you hope.

MONTY SHULTZ: But when you're only given four days a month, how much influence do you really have?

TROY REINERS: When the noncustodial parents isn't even able to see them thrive, they know they are because they know the other parent is providing...

_____: Um-hum.

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TROY REINERS: ...but they're not really participating in it. I mean, they've...

SENATOR ASHFORD: They system is screwed up.

TROY REINERS: They've sacrificed.

_____ : Sure.

SENATOR ASHFORD: They system is really screwed up and it's not reflecting 21st century reality.

JUDGE NOAKES: Right.

SENATOR ASHFORD: So what else do you have, Jenn? Because I've got to go.

JENNIFER PIATT: Just so I've got everything then, when a spouse marries another spouse, that's...we wanted to ask? Or somebody mentioned that. Is that...

JUDGE NOAKES: Well, I would like to know in other states if household income is ever considered.

SENATOR ASHFORD: Right.

_____ : Um-hum.

JENNIFER PIATT: Okay, yeah, that's further on the list, sorry.

JUDGE NOAKES: Okay.

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JENNIFER PIATT: Then the cost of additional clothing, I think somebody over here mentioned it. Okay.

ANGELA DUNNE: I think it's the expense sharing, yeah.

TROY REINERS: Yeah, even on a minimal four days they still provide that.

JENNIFER PIATT: It's...okay. So even on...in minimal cases...then somebody mentioned economic disparity.

ANGELA DUNNE: It's the high-income cases.

JENNIFER PIATT: Okay.

ANGELA DUNNE: That would...people will go crazy when we start talking about that.

JUDGE NOAKES: Um-hum.

ANGELA DUNNE: But it's real.

JENNIFER PIATT: And then I have can you identify states who unhitched the custody issues from the parenting time issue; and then I have household income and the consideration of other assets. Does that sound like a comprehensive list? Okay.

ANGELA DUNNE: Yep.

JUDGE NOAKES: I've got to go. Anything else?

SENATOR ASHFORD: Monty, would you and Jenn get together over there?

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JENNIFER PIATT: Yeah, actually, I was going to...and anybody else who would like to discuss that comment, I'd be happy to.

_____: No, just Monty.

JENNIFER PIATT: Okay. Do you have a few moments?

_____: I need to run to the rest room if you don't mind.