

1 STATE OF NEW YORK
2 APPELLATE DIVISION - THIRD DEPARTMENT

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4 In the Matter of a Public Hearing:
5 NEW YORK STATE UNIFIED COURT SYSTEM
6 COMMISSION ON PARENTAL LEGAL REPRESENTATION

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8 **HELD AT:** Supreme Court of the State of New York
9 Appellate Division - Third Department
10 Justice Building
11 5th Floor
12 Empire State Plaza
13 Albany, New York 12223
14 October 10, 2018

13 **PRESIDING PANEL:**

14 HONORABLE KAREN K. PETERS, Chair

15 HONORABLE THERESA WHELAN,
16 Supervising Judge
17 Suffolk County Family Court

18 HONORABLE MARGARET T. WALSH,
19 Judge of the Albany
20 County Family Court and
Acting Supreme Court Justice

21 PROFESSOR SARAH ROGERSON,
22 Director of the Immigration
23 Law Clinic, Albany Law School

24 MICHAEL HEIN,
25 Ulster County Executive

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1 PUBLIC FORUM - 9:33 A.M.

2 PROCEEDINGS

3 HONORABLE PETERS: Good morning.
4 Welcome to the Appellate Division, Third
5 Department. I'm Karen Peters, chair of the
6 Commission on Parental Representation. It's a
7 joy that I sat here for many years.

8 With me today on the bench are members
9 of our Commission, the Honorable Theresa
10 Whelan, to my right, Supervising Judge of the
11 County of Suffolk.

12 The Honorable Margaret T. Walsh, to my
13 left, Judge of the Family Court of the County
14 of Albany, and Acting Supreme Court Justice.

15 To my far right, the Honorable Michael
16 Hein, County Executive, of the County of
17 Ulster.

18 And to my far left, Professor Sarah
19 Rogerson, from Albany Law School, who has
20 gotten lots of press lately -- good press.

21 PROFESSOR ROGERSON: Thank you, Judge.

22 HONORABLE PETERS: Joining us here in
23 the courtroom are some people I'd like to
24 mention, some members of our Commission, who
25 work very hard to make sure that the

1 recommendations we make to the Chief Judge are⁴
2 valuable and practical. Commissioner Mike
3 Williams, Commissioner of Jurors in Suffolk
4 County; Judge Edwina Mendelson is with us
5 today; and our consultant Betsy Ruslander.

6 I also want to make sure to mention
7 the extraordinary contributions of our
8 counsel, Janet Fink, who has provided us with
9 great guidance.

10 Established by Chief Judge Di Fiore,
11 we are tasked with examining the current state
12 of mandated representation and issuing a
13 report by the end of this year recommending
14 structural, administrative and legislative
15 reforms to ensure a high-quality
16 cost-effective parental representation system
17 for our state.

18 This hearing is the third of four we
19 are holding across the State of New York. We
20 have already heard testimony in Rochester, and
21 the Appellate Division, First Department.

22 The information we acquire through
23 these hearings will assist us in getting
24 relevant information from both government
25 officials, institutional providers, as signed

1 counsel programs, attorneys and other
2 stakeholders in this system of justice in
3 Family Court.

4 Our ultimate objective is to provide a
5 blueprint for how our state can strengthen the
6 quality and efficiency of family court
7 representation to ensure fairness and
8 effectiveness for the entire Family Court
9 Justice System.

10 In addition to Ms. Fink, who serves as
11 counsel to the Commission, our Special
12 Adviser, Ms. Angela Burton, is with us today,
13 who has provided invaluable assistance and
14 compiling information and surveys conducted
15 across the state of both attorneys and clients
16 who use our family court system.

17 Thank you, Ms. Burton.

18 I'm especially grateful to presiding
19 Justice Elizabeth Garry, for allowing us to
20 hold this hearing here today; and Bob
21 Mayberger, the Chief Clerk of the Court, for
22 making sure that everything we need is
23 available to us.

24 As we begin this hearing, I would like
25 to remind each witness that there are time

1 limits that have been provided to you. Our
2 Court Reporter is simultaneously taking down
3 your testimony; and we do have time
4 constraints since the Appellate Division is
5 sitting this afternoon. So, if you could
6 summarize your testimony, rather than reading
7 it, it will allow us time to be able to
8 communicate with you and have a dialogue
9 concerning the issues you raise with us today.

10 I also would like to thank you all for
11 coming. It is sometimes a challenge to choose
12 to testify before any commission; and we so
13 appreciate the valuable information you are
14 providing to us.

15 Our first witness is Ms. Susan Bryant,
16 Acting Director of the New York State
17 Defenders.

18 Ms. Bryant.

19 MS. BRYANT: Good morning, Justice
20 Peters, Judge Whelan, Judge Walsh, Professor
21 Rogerson, and County Executive Mike Hein.

22 My name is Susan Bryant. I am
23 actually now the Deputy Director of the New
24 York State Defenders Association.

25 HONORABLE PETERS: Congratulations.

1 MS. BRYANT: Our Executive Director is ⁷
2 back.

3 Thank you for the opportunity to
4 testify today. This is a critically important
5 issue. The New York State Defenders
6 Association is a nonprofit organization that
7 was funded -- it's been funded by New York
8 State for more than 35 years to provide a
9 public defense Backup Center across the state.
10 So, we provide support services in both
11 criminal and family court in public defense.

12 We provide research assistance. We
13 provide training and other publications, and
14 we offer a case management system to public
15 defender and legal aid offices that provide
16 criminal and family court representation.

17 In this role, we have learned quite a
18 lot over the past decades about family court,
19 and we hope to share that information -- we
20 have shared it in our written testimony -- and
21 there's so much more that NYSDA can do as part
22 of the family court system to provide quality
23 representation and to improve quality, and I
24 will be talking about that a little later on.

25 I wanted to express appreciation for

1 including family defenders on the Commission.

2 It's critically important that defenders be
3 part of any discussion about these issues.

4 They have insight that no one else has,
5 judiciary, legislative, county executives and
6 so forth. And they need to be part of any
7 kind of conversation, and a wide variety of
8 them. They need to be different regions,
9 different types of representations,
10 institutional and assigned counsel.

11 We are also pleased that there is a
12 former public defense client on the
13 Commission. The client-centered
14 representation is critical, in both criminal
15 and family court representation, and we are
16 grateful that they testified at the New York
17 City hearing, as well as the client survey
18 that's currently being conducted.

19 Concrete recommendations on systemic
20 reform are difficult without better data. We
21 encourage the Commission to conduct a
22 comprehensive study on family court
23 representation, along the lines of the study
24 that was done by the Kaye Commission, back in
25 2006, and it would include all family

1 defense -- not just Article 10, which has been
2 the primary focus, I believe, of a lot of the
3 testimony, at least orally that you have
4 heard, but also Articles 4, 5, 6, 8. It's
5 worth the same amount of time and investment
6 that the court -- the judiciary gave public
7 defense criminal representation.

8 It was also not included in the
9 Hurrell-Harring litigation. It's not part of
10 the settlement, it's not part of the expansion
11 of the settlement to the rest of the state;
12 and it's causing, actually, significant
13 disconnects within Public Defender Offices
14 that do both criminal and family court
15 representation; because suddenly there's an
16 influx of money and reduced caseloads for
17 criminal defenders, and increased salaries,
18 and all sorts of things, investigators being
19 available, and all of that is not available at
20 all to family defenders. And the relationship
21 between the two is something that I think the
22 Commission needs to look at; that if any
23 recommendations are made, that you are careful
24 as to not separating family and criminal
25 defense from each other without making sure

1 that that's the right thing for systemic
2 reform.

3 There's a lot of benefits to having
4 them together. And, in fact, some of the
5 offices in New York City that have been
6 providing Article 10 representation, have now
7 been expanding, like Center for Family
8 Representation, Brooklyn Defenders -- they
9 provide both criminal and family court to
10 their clients. So, there are positives, and I
11 recommend that that be part of any
12 consideration of reform.

13 Key elements of the reform that we
14 emphasize in our testimony; independence.
15 Independence is critical to public defense
16 representation. It's the number one principle
17 of the ABA's Ten Principles on Public Defense.
18 NYSDA has standards as well on public defense;
19 and independence is the number one factor, as
20 well as the New York State Bar Association.

21 We see, in many counties with assigned
22 counsel lawyers, who are assigned either by a
23 panel administrator or by a Judge, that there
24 are implicit or, sometimes, unfortunately,
25 explicit pressures to not do certain things to

1 keep costs down. To not file motions for
2 722-(c), experts. And if you do too much of
3 that, you may not get another assignment, or
4 you may get less assignments; and that is
5 something that, with independence, we wouldn't
6 see.

7 It's also a problem in institutional
8 providers as well because county defenders, we
9 hear from over time, they risk losing their
10 jobs because they may do too much, or they
11 refuse to hire based on patronage; rather than
12 merit. So, all of these things are related to
13 independence, and clients need to know that
14 defenders are representing their clients,
15 they're not representing the county, the
16 government, the judiciary, or any other body.
17 They may be getting their financing from them,
18 but they need to be independent of them.

19 Another issue, resource needs, which
20 has been emphasized over and over again.
21 There needs to be more and more resources for
22 family defense. Caseloads are extraordinary
23 in all of these counties. There isn't one
24 place, I think, that has reasonable caseloads
25 which, in order to set reasonable caseloads,

1 you need more data as to how many cases there¹²
2 are, what types of cases, how long they last,
3 and so forth, which gets back to our
4 recommendation for a study.

5 And the other issue that is key is
6 timely appointment of counsel. You have heard
7 that at both of the other hearings. It is
8 critical that defenders get to their clients
9 as soon as possible. So many big decisions
10 get made at the beginning of cases that can't
11 really -- you can't turn back the clock. So,
12 we recommend that the Commission provide
13 recommendations to the Legislature, Executive,
14 and Judiciary, as to reforms to insure timely
15 access to counsel.

16 There are some things that we
17 certainly can recommend that you don't need to
18 study -- that we already know. The ILS,
19 Indigent Legal Services Office, Eligibility
20 Standards are currently only applicable to
21 criminal defense representation. We recommend
22 expanding them to family court. The
23 definition under County Law 722 for
24 eligibility of counsel is no different for
25 criminal and family court -- its inability to

1 afford counsel. And right now, there's a lot
2 of clients, or potential clients, that are not
3 getting representation because different
4 standards of income and other eligibility
5 criteria are being applied to them.

6 We also encourage the Commission to
7 recommend to the Indigent Legal Services
8 Office that they expand their current
9 standards for parental representation in
10 family intervention matters or state
11 intervention matters, which is Article 10, to
12 all family defense representation; including
13 anything under County Law 722, Family Court
14 Act 262, as well as 1120, which is the
15 appeals. The standards were drafted by
16 experts in family defense and the standards
17 experts, including two members of my staff,
18 and most of them are applicable to all of
19 these cases. They are not just about
20 Article 10 proceedings, and I think it would
21 make an extraordinary difference to expand
22 them. And if anything is needed to make
23 specific recommendations and standards for
24 other types of cases, we stand ready to help
25 ILS or anyone else with those standards.

1 Another thing you have heard quite a
2 bit, increasing assigned counsel rates.
3 NYSDA, for decades, has advocated for
4 increasing assigned counsel rates, as well as
5 to have the rates be able to increase -- have
6 a mechanism for increase without going back to
7 the legislature when we are in crisis. We
8 were in crisis the last time the rates were
9 raised -- we are getting to that crisis point
10 now. We are losing a lot of well qualified,
11 experienced panel attorneys because they can't
12 live on \$75 an hour, and the caps that exist
13 for those rates as well, because family Court
14 cases, you have heard and you know from your
15 experience, that they go on a long time; and
16 so caps wind up reducing the amount that these
17 attorneys should be getting for a case that's
18 drawn out over multiple years potentially.

19 We also recommend -- OCA has increased
20 the guidelines for non-attorney professional
21 services. That was done at the beginning of
22 this year. We are grateful for that. We
23 presented written testimony in support of
24 that. OCA also indicated that it would be
25 seeking legislative approval for increasing

1 the cap on those rates; because if you raise
2 the hourly rate guideline but don't raise the
3 cap, you are just reducing the number of hours
4 those professionals can actually work. So,
5 that's another recommendation that we have,
6 and it's in our written testimony.

7 We strongly recommend increased
8 funding, as I have already mentioned, and it
9 should be coming from the state, not the
10 counties. The counties can't afford -- and a
11 lot of the counties that are suffering most
12 with public defense, family court
13 representation, are rural counties that don't
14 have the tax base that larger counties do.

15 And it should not be reimbursed.
16 Currently, the Hurrell-Harring Extension is
17 reimbursement base; so counties have to pay
18 out the money initially, and then seek
19 reimbursement from the state. A lot of these
20 rural counties face the same problem, or even
21 larger counties. They can't afford to pay out
22 money and then wait months to get
23 reimbursement. It's just not a realistic
24 situation for many of them. So they don't
25 spend the money. And that's exactly -- we

1 don't want to discourage them from providing
2 quality representation and reducing caseloads
3 that the funding would provide.

4 Finally, I want to say, funding for
5 NYSDA, as I mentioned at the beginning of my
6 testimony, we do what we can to provide
7 training. We have increased our training
8 significantly over the past five to ten years.
9 We have a family court staff attorney that
10 responds to requests from individual attorneys
11 on all sorts of matters due to strategy,
12 research, developing training programs. We
13 have put on, now, three statewide training
14 programs since 2015, along with the Indigent
15 Legal Services Office, and supported by the
16 Child Welfare Court Improvement Project; and
17 they have been extraordinarily successful.
18 And we would like to do more of that, but our
19 funding that we receive from the state doesn't
20 allow us to expand in the way that family
21 court representation needs, with training and
22 support.

23 And there's many other issues that
24 this Commission is designed to address,
25 reading the notice and all of the different

1 topics that are on your list, is extraordinary
2 and they're all important. The role of
3 poverty and race in the family court system,
4 the importance of increased use of technology,
5 however, we are concerned about video
6 appearances. I know that was mentioned, at
7 least, at one of the hearings. We have always
8 opposed video arraignments for criminal case s;
9 and we strongly recommend being very hesitant
10 about having video appearances as a default.
11 If a parent wants that or needs that, that may
12 be okay; but you really need your attorney
13 there, and you need the Judge to see you in
14 person. You are a human being. You are
15 dealing with issues regarding your right to
16 parent your child, and to have custody, and
17 all of those different issues; and to have you
18 on a video screen, it's just not the same.
19 And we really strongly recommend that whatever
20 recommendations that you provide are not a
21 default, that we don't deal with the problems
22 of transportation by putting people on video
23 screens it.

24 We thank you for the opportunity to
25 present our testimony, and we look forward to

1 being available to the Commission and to
2 Legislature, Judiciary, Executive, and anyone
3 else who wants our input; and I remain open to
4 questions.

5 HONORABLE PETERS: Questions?

6 JUDGE WHELAN: I have a question. I
7 am very interested -- for Suffolk County, in
8 the idea of timely representation, and I don't
9 know if you have any suggestions because you
10 do speak to a lot of lawyers. Our lawyers are
11 already very overwhelmed. We have fewer
12 lawyers that are doing this work.

13 Do you think that this might push more
14 over the edge, if we now require them to be on
15 call, for going out at various times, if
16 there's a removal in the middle of the night,
17 at a hospital?

18 Have you had any feedback from the
19 lawyers?

20 MS. BRYANT: We haven't heard,
21 specifically, about that. That's certainly a
22 concern that the increase in work with people
23 that already have significant caseloads, but I
24 think that a lot of things can get resolved
25 quicker; and I think that some of those

1 attorneys would welcome it because things
2 that -- things can get out of hand and get
3 blown out of proportion, or can be dealt with
4 a lot easier right at the beginning.

5 And we wouldn't be, necessarily,
6 having these years of a case going on if an
7 attorney could get in there and figure out,
8 what supports does this client need? Is it
9 financial or mental health, or whatever the
10 case may be. Why did they end up,
11 particularly, in an Article 10 proceeding --
12 why did they end up where they are? And how
13 can we prevent that or slow down this train of
14 getting somebody's child removed from the home
15 and all of that.

16 HONORABLE PETERS: On that point, one
17 of the issues that I have raised repeatedly in
18 these hearings is the concern about
19 individuals who do not have an assigned
20 attorney early in the process -- in Article 10
21 cases, and that's what I am talking about at
22 the moment. And I am wondering whether there
23 should be a presumption of eligibility for
24 assigned counsel in Article 10 cases that can
25 then be overcome when the individual fills out

1 the requisite financial information. So that
2 people don't end up without a lawyer because
3 they can't get one until they come to Court
4 and apply for one and complete the application
5 and the Judge then assigns one. That can be a
6 very long, time-consuming process, depending
7 upon the county, and can often cause a child
8 to be in foster care until they apply.

9 Do you think it's appropriate to have
10 presumption of eligibility in Article 10
11 cases?

12 MS. BRYANT: Absolutely. I think that
13 it's clear that a client who could afford a
14 lawyer would be on the phone, hiring a lawyer.

15 HONORABLE PETERS: And saying: I
16 don't need one, I got it?

17 MS. BRYANT: Yes. So, that would
18 certainly be a welcome recommendation.

19 HONORABLE PETERS: And on the issue of
20 video appearances, I am guilty for raising
21 that issue; and I'll tell you why I raised it.
22 When we held a Public Hearing in Rochester, I
23 believe two witnesses talked about the
24 challenges that are faced by individuals who
25 attempt to come to Court to get involved in

1 Article 10 cases and appear, and end up in
2 trouble because they didn't get here because
3 they had no transportation because the
4 transportation system in the rural area of our
5 counties is incredibly challenging for
6 individuals.

7 So, one of the questions I asked was
8 whether it might be helpful to have the
9 opportunity for people to go to, either the
10 Town Justice Court or the public library to be
11 able to have a video feed set up so that they
12 could appear. I did not mean that hearings
13 would be held that way. My intent was that
14 sometimes cases are adjourned for an update
15 on: Is mom going to parenting classes? Is
16 everything working out okay? Those kinds of
17 things might be appropriate so that an
18 individual doesn't fail to come because they
19 can't get transportation.

20 Are you concerned about that still?

21 MS. BRYANT: Well, it certainly is a
22 concern because we have seen, in other states
23 that do video arraignments and other
24 appearances by video, the attorney is either
25 not with the client, or they're not at the

1 court.

2 HONORABLE PETERS: I understand.

3 MS. BRYANT: So, it's still a concern.

4 I understand that transportation issues -- and
5 if it's something that is potentially a matter
6 that does not require the communication
7 between client and attorney -- I can't really
8 imagine a circumstance or an appearance when
9 that's the case -- but if it's given as an
10 option for a client that may miss work or
11 otherwise, or something like that, maybe; but
12 I would recommend, strongly, that you tread
13 delicately.

14 HONORABLE PETERS: So that means you
15 want us to just suggest that the
16 transportation system in the state be
17 improved?

18 JUDGE WALSH: Because I agree with
19 you, there's absolutely no substitute for
20 being in Court with your attorney; and we
21 should not offer that as opposed to dealing
22 with the transportation issues, as you say.

23 Do you have any recommendations for
24 this Commission about how to deal with
25 transportation issues?

1 MS. BRYANT: I think for some
2 clients -- I mean, DSS often will provide
3 vouchers for clients to get to different
4 services and things like that. That may be a
5 possibility. Because it is so specific to an
6 individual county. I mean, there are places
7 that, obviously, don't have any public
8 transportation. So it is a challenging one,
9 but it's not one that I want the Commission to
10 say, it's too difficult, so we are just going
11 to do the video appearances instead.

12 It's something that is an issue for
13 criminal defense clients as well. Some
14 attorneys, actually, go and pick up their
15 clients and bring them to Court; or they have
16 their social worker, if they actually have a
17 social worker on staff. Those are all
18 possibilities. And there are things worth
19 exploring as alternatives.

20 JUDGE WALSH: Thank you.

21 HONORABLE PETERS: So, you are
22 suggesting that an 18b attorney transport
23 their client to the courthouse?

24 MS. BRYANT: It's not ideal. It does
25 happen though, to insure that their client is

1 there and gets heard.

2 HONORABLE PETERS: There's a whole
3 other insurance question too in transporting.

4 JUDGE WALSH: But in a perfect world,
5 you would say the 18b would have staff who
6 would be able to do that? In a perfect world,
7 the attorney's office would be able to insure
8 that the clients arrive to Court by providing
9 some sort of transportation?

10 MS. BRYANT: Either through staff, or
11 through -- I mean, now we got Uber and we have
12 got Lyft, and there are other options that are
13 available now.

14 HONORABLE PETERS: Thank you.
15 Appreciate your testimony.

16 Mr. Leahy.

17 Before Mr. Leahy begins, I do want to
18 recognize Betsy Ruslander in the back of the
19 room. She runs the New York State Appellate
20 Division, Third Department, Attorneys for
21 Children Program, and is also a very, very
22 valuable adviser to this Commission. Thank
23 you, Ms. Ruslander.

24 MS. RUSLANDER: Thank you.

25 MR. LEAHY: Good morning, Judge

1 Peters, and members of the Commission.

2 I quite agree with Judge Peters, in
3 suggesting in her initial remarks that we have
4 a dialogue about where we go from here, where
5 the Commission might go; so I will keep the
6 rest of my remarks, which I do have, as brief
7 as possible.

8 Preliminary to my testimony, I just
9 want to state how pleased and privileged I
10 feel to be here at a Commission Hearing, a
11 Commission established by the Chief Judge of
12 the State, who also, as you know, happens to
13 be chair of the Indigent Legal Services Board;
14 and staffed and populated by so many members
15 of the Office of the Court Administration.

16 And we go back in history, and we
17 remember that it was the Court of Appeals, in
18 1972, that established the right to counsel
19 for indigent parents, the right to assigned
20 counsel in the L & B case; and we remember
21 that it was OCA, in 1975, that crafted the
22 reforms to the Family Court Act, that spread
23 that assignment of counsel throughout the
24 parental representation system. So, it's very
25 fitting and very -- feels right to be here and

1 to have this opportunity.

2 So, I submitted my preliminary
3 statement to you in August, a one-pager I had
4 sent you, that I wanted to talk about the Tale
5 of Two Responsibilities that ILS, which is the
6 shorthand for our office, has under Executive
7 Law Section 832. I really want to amend that
8 Tale of Two Responsibilities -- it seemed
9 catchy and appropriate at the time -- but
10 having thought it through a little bit, and
11 talking with people about it, I really want to
12 say, it's a Tale of an Unacceptable Double
13 Standard. We have mandated representation
14 responsibilities at ILS, and every county has
15 the responsibility to provide effective legal
16 representation to all people who cannot afford
17 an attorney in both criminal defense and
18 parental representation cases.

19 And whether you look at state support,
20 which is now robust in reforming indigent
21 criminal defense throughout the state, whether
22 you look at caseload limits, where we did a
23 caseload study funded by the state which
24 produced nationally progressive standards
25 which we are now implementing. We are in the

1 first year of a five-year journey to implement
2 those standards with full state funding.

3 In terms of support resources, or as
4 we call it, under the implementation of the
5 Hurrell-Harring settlement, quality
6 improvement initiatives -- it simply means
7 access to investigative social workers, expert
8 assistance, and having funds within your
9 office, public defense office, or your
10 assigned counsel program, so that you can make
11 an independent professional judgment about
12 whether your client is in need of those
13 services, and those services will be funded,
14 again, by the state -- at least reimbursed by
15 the state. Or whether you talk about early
16 representation, which has already been the
17 subject this morning; where we are well on our
18 way to finally, finally fulfilling Judge
19 Lippman's promise, in his Law Day speech in
20 2011, that every client, in every far-flung
21 town and village court, will have a lawyer at
22 his or her arraignment. We aren't quite there
23 yet, we are getting there. The centralized
24 arraignment part legislation that OCA
25 sponsored and the Legislator passed and the

1 Governor signed, is helping us get there; but
2 we will be there by the statutory deadline of
3 April 1, 2023.

4 And finally, the eligibility standards
5 that have been mentioned which there -- and
6 that's an interesting one because, again, they
7 apply on the criminal side. The impact in
8 most counties on the criminal side has not
9 been that great in the five Hurrell-Harring
10 counties, have not had a very great impact.
11 Why? Because in criminal cases, most people,
12 despite low percentages that counties were
13 said to be using, in fact, most people who
14 needed a lawyer were getting it, and so,
15 therefore, the increase in cost, again, state
16 supplemented them under the caseload
17 standards. The impact was not so big.

18 From all we know, and it's anecdotal,
19 we don't have data, from all we know about
20 family court representation, the impact of
21 similar eligibility standards, let's say a
22 250 percent presumption, let's say a
23 presumption in Article 10 cases, as Judge
24 Peters has suggested, and I would certainly
25 endorse -- that's going to have a bigger

1 impact. And let's be frank, the state must
2 step up and address that as it has addressed
3 all the needs on the criminal side.

4 So, in all five of those critical
5 areas, funding, caseloads, support resources,
6 early representation, appropriate and
7 consistent eligibility standards -- it's all
8 being addressed on the criminal side. None of
9 it is being addressed on the parental side.

10 That's the easy part -- Judge Peters eyes are
11 telling me that's the obvious part, Mr. Leahy,
12 we know that already.

13 HONORABLE PETERS: You are going to
14 solve all our problems.

15 MR. LEAHY: So, I do want to move on.
16 And the other thing I just want to say is that
17 and I think we do all agree -- I think Susan
18 mentioned this -- I, particularly, like the
19 way the State Bar Committee on Families and
20 the Law put it, there is no justifiable basis
21 for distinguishing between these two
22 categories of mandated representation. There
23 just isn't. So, again, these are the obvious
24 part.

25 Where do we go? Where does the

1 Commission go? Well, I think the one -- I
2 want to say a couple of things that are
3 somewhat specific, and one that is very
4 specific. The general point I want to make is
5 that reform has to include state oversight.
6 It can't just be state funding. We went
7 through this, of course, with the Fahy,
8 DeFrancisco bill and the Gubernatorial veto,
9 and then the Governor's proposal, later
10 enacted to reform criminal defense and spread
11 the Hurrell-Harring settlement statewide.
12 State -- as a practical matter, we are all
13 practical people here -- state funding is not
14 going to come without state oversight, and I
15 would say further, nor should it. There has
16 to be state oversight.

17 What kind of state oversight? There
18 are a world of possibilities. It can be
19 exactly the kind of oversight that ILS
20 provides, through its standards, through its
21 funding, through its negotiating contracts
22 with each and every county to improve quality.
23 We have been doing this before the
24 Hurrell-Harring settlement, and now we are
25 doing it at warp speed -- never say warp speed

1 in New York -- but as fast as we can on an
2 accelerated basis since the Hurrell-Harring
3 settlement, and especially since it's
4 extension statewide.

5 Or it can be the kind of state system
6 for parental representation, akin to what the
7 Kaye Commission recommended for criminal
8 defense back in 2006. And there are lots --
9 there's a world of possibilities in between.
10 And I don't -- I don't really, so much, want
11 to get into what I personally think is best.
12 The point is, what kind of system is, A,
13 politically feasible; that, B, provides high
14 quality and consistently high quality in every
15 corner of the state.

16 Now, the good news -- and this is
17 really good news with respect to parental
18 representation -- we have, and we have had
19 since 1961, a statewide family court system.
20 Lawyer judges, directly under the authority of
21 OCA, in a modest number of Courthouses in each
22 county, one or two or maybe three -- I don't
23 know which is the leading county for most
24 family court, but it's not 20 or 30 or 40, and
25 it's not non-lawyer judges. It is not the

1 bulcanized, fractured judicial system that the
2 Kaye Commission appropriately identified as
3 having been present then and now in the -- on
4 the criminal side. So, that's an advantage.
5 That's one leg of my three-legged stool. It's
6 a solid leg, it's a real statewide court
7 system, and it's different from the criminal
8 side.

9 The second piece is representation for
10 children. Since 1962, when Law Guardians were
11 created, now Attorneys for Children, there has
12 been a statewide structure and state funding
13 for the representation of children. There's
14 the second leg of your three-legged stool; and
15 it's in place, and it's been in place for more
16 than half a century. This is not rocket
17 science. This can be done. This should be
18 done, for parents -- the third leg of the
19 three-legged stool. That's another option. A
20 state system for parental representation with
21 an independent board, with its stature in the
22 family court community, with its participation
23 in the system. And this is not just, by the
24 way -- this is a point Angela Burton makes to
25 me all the time -- this is not just about

1 improving the representation for parents. It
2 has a tremendous positive impact on the
3 judicial system itself. And so, that is
4 certainly something that the Commission would
5 look at carefully, understanding the history
6 of the Kaye Commission recommendation, which
7 has never come to fruition, but addressing a
8 very different set of circumstances than the
9 criminal defense recommendations that the Kaye
10 Commission addressed. This can more easily be
11 done than has been possible with respect to
12 criminal public defense.

13 I said I would give you a specific
14 recommendation, and it's one that could get
15 overlooked; and so I am here to make sure you
16 don't overlook it. Just about, a couple weeks
17 ago, September 28th, our board unanimously
18 approved our planned budget request for the
19 coming fiscal year, state fiscal year, 19/20;
20 and representatives of the Department of
21 Budget were listening in on that meeting --
22 and they are here today, to watch us and
23 listen to us -- and so they have been very,
24 very good, educated, supportive listeners, who
25 are, obviously, in critical positions in the

1 Executive Branch. I say that because there is
2 a specific component of our budget request.
3 The budget request is 215 million dollars. I
4 want to address 3 million dollars of that.
5 3 million dollars, we requested, and the board
6 approved unanimously, for improvements in
7 parental representation under the existing
8 conditions. We don't know -- I don't know, I
9 don't know who can know, how long it will take
10 for this Commission's recommendations to
11 become law, and to be funded, and to make
12 change on the ground; but what I can tell you
13 is that we are ready to roll out an RFP to the
14 counties for improvements, caseload reduction,
15 and quality improvement. We have done it on
16 the criminal side.

17 My one handout I have for you is a
18 little 2016, two-sided report I gave to our
19 board, just detailing what we did with the
20 similarly small amounts of money from 2012 to
21 2014 with respect to criminal defense. With
22 that tiny amount of money, there was some
23 significant reductions in case load,
24 significant increases in staffing, the
25 beginnings of empowerment of local Public

1 Defenders in the counties; and a lot was done
2 with very little, and a lot can be done with
3 very little in the coming year. Now, we made
4 that same 3 million dollar request last year,
5 it fell on deaf ears, it didn't really go
6 anywhere.

7 What have we got that's different this
8 year? We have got you. We have the Parental
9 Representation Commission. We have got the
10 Chief Judge putting her stature behind the
11 need for reform and parental representation;
12 and you have me -- I am not speaking for the
13 Chief Judge now, I am speaking for myself --
14 we have irrefutable evidence that it is time
15 for the state to step up and begin reform in
16 this area, and improvement in this area; make
17 an indefensible system more defensible.

18 So, while we can't know the timing of
19 fundamental structural statewide reform, we
20 know the timing of this budget request. We
21 either have that on April 1st, or we don't.
22 So, I hope the Commission -- I will certainly
23 provide you with the detailed information on
24 that. We will be filing on the 26th, and we
25 will have a memo specifically addressed to

1 this request. I'll share that with the
2 Commission. And we would really appreciate it
3 if the Commission saw fit to make a specific
4 recommendation about that way station on the
5 way to comprehensive reform.

6 HONORABLE PETERS: Thank you.

7 Questions?

8 MR. HEIN: You don't have to convince
9 me that the system has to fundamentally
10 change. As the County Executive, we get this.
11 We are in the midst, locally, of building a
12 new Restorative Justice and Community
13 Empowerment Center, as well as a new Family
14 Court. What my concerns are, is around the
15 3 million dollars you just highlighted. It,
16 fundamentally, breaks down to -- it's less
17 than \$50,000 a County. So, I would love to
18 hear the recommendation where you believe
19 there can be substantive change and
20 improvement, and what the priorities would be
21 at that kind of funding level.

22 MR. LEAHY: Right.

23 What this would do, what we did with
24 the upstate caseload -- that's the best
25 example because we have already done it on the

1 criminal side -- some counties and offices
2 hire an additional attorney; just cut the
3 caseload. Say you have four attorneys, now
4 you have five. That caseload is going to go
5 down by 20 percent or so -- I'm not a math
6 major.

7 Social workers have made a huge impact
8 on the criminal defense side. They provide --
9 they bring out the humanity of the client, so
10 that the Court can make an informed decision
11 between the bad guy prosecution portrays and
12 the human person with deficiencies; but is a
13 bigger picture that the defense is able to
14 provide.

15 Factual investigation. This is
16 fundamental. And most offices lacked it, some
17 still lack it on the criminal side, but many
18 lacked it -- most all lack it on the family
19 court side. So, it's getting up to a level of
20 minimal competence, while the big effort --
21 and this is exactly what happened on the
22 criminal side -- we were doing reform from
23 2012 when we issued our counsel at first
24 appearance RFP. So, we had three or four RFPs
25 out on the street before Hurrell-Harring was

1 ever settled. And, frankly, if we hadn't had
2 the vote, I don't think they would have chosen
3 us to implement Hurrell-Harring. But they
4 did. Parties agreed on that. So, there's a
5 lot that can be done with the little,
6 particularly, in the upstate counties.

7 PROFESSOR ROGERSON: I want to
8 piggy-back off of that question. I really
9 appreciate your testimony because you have a
10 lot of information for us that we wouldn't be
11 able to get otherwise based on the experience
12 in the criminal context.

13 So, I have one very specific question
14 and then a general question. The more
15 specific question is: Have the social workers
16 implementation -- or activation of the social
17 workers in the cases on the criminal side --
18 has that helped at all with the transportation
19 hurdles in rural counties?

20 And then the more general question,
21 is: Are there other lessons that you think we
22 should hear from you about to make sure that
23 whatever recommendations need to be made, we
24 are building on best practices from the
25 criminal side?

1 MR. LEAHY: Right. Your specific
2 question, the answer is no. To my knowledge,
3 no. I don't have detailed knowledge, but I
4 have not heard that.

5 I do want, if I can jump from -- just
6 elaborate a little bit on that no answer -- I
7 think the two keys to the point Judge Peters
8 made about rural transportation is, number
9 one, that the parent and the parent's attorney
10 have that as an option so that it's never a
11 requirement; and number two, that it be
12 limited to a sensory, routine Court
13 appearances -- never for a hearing, a
14 substantive hearing, and I think Judge Peters
15 made both those points; but I am just
16 seconding them.

17 The third thing I just want to say is
18 that, as far as on the criminal side,
19 arraignment by video is no longer an option in
20 New York. Under the Hurrell-Harring
21 settlement, and now the statewide Executive
22 Law 832(4), appearance by counsel must be in
23 person. So there's no question about that on
24 the criminal side.

25 Your general question --

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PROFESSOR ROGERSON: In terms of even⁴⁰ successes and challenges, I guess, is a better way to say it. What are the big lessons from criminal expansion and implementation that we should be mindful of?

MR. LEAHY: Here it is. You have to get started. And you have to -- and Susan talked about the independence issue -- as you know, we're an agency that has an independent board, but we live within the Executive Branch of state government. So, independence is a great word, but you have to act as though you have it; and you have to be responsible to people who have legitimate responsibilities to insure that the state's funding is being spent in appropriate ways. So, you get started.

You don't -- the history on the criminal side, is this: You don't get paralyzed because you have neither a lot of funding, nor a lot of authority. You get started. And the third thing is, you work with local government, you don't dictate to local government -- and I think Mike and many of his colleagues understand this -- because that's how we have operated from day one,

1 that's how we are operating under statewide
2 reform. That's not how counties frequently
3 understand the state to operate but that's the
4 way we operate. So, in the process of that,
5 we encourage -- well, we do more than
6 encourage -- we require the counties to
7 consult with their public defense providers.
8 That happened all the time, historically in
9 some counties, didn't happen in others, and
10 now it's happening everywhere.

11 HONORABLE PETERS: So, you mentioned
12 you work within the Executive Branch. The
13 Attorneys for Children Program and the Mental
14 Hygiene Legal Services work within the
15 Judiciary Branch through the Appellate
16 Divisions, Court Appellate Divisions.

17 Do you have an opinion as to where, if
18 we do state oversight, it should lie? I
19 know -- it's an interesting question.

20 MR. LEAHY: It's an interesting
21 question. In Massachusetts -- for all the
22 years I was in Massachusetts, I was in the
23 Judicial Branch, and these issues aren't all
24 that different. I mean, you have to accept
25 people's money and keep the money in

1 business --

2 HONORABLE PETERS: But MHLS and
3 Attorneys for Children are state funded.
4 There's no reimbursements.

5 MR. LEAHY: Right. And there's a big
6 advantage to direct funding. There's no
7 question about it. I mean, the County
8 Executives know -- the fiscal process is
9 cumbersome, the reimbursement process. Some
10 counties do much better than others, but the
11 key is that the independent professional
12 judgment of the staff guided by the
13 independent board -- and we have that at ILS.
14 We have a wonderful board. It's got two
15 county executives, it's got a state bar
16 recommendation, it's got the Senate, it's got
17 the Assembly, it's got the Governor. It
18 really captures, pretty much, all the key
19 interest groups. And they work together
20 great. We have had one negative vote, a
21 single one, 8 to 1 vote, in seven years.

22 HONORABLE PETERS: So you think
23 Indigent Legal Services could take on this
24 additional responsibility?

25 MR. LEAHY: We could take it on. I am

1 really trying to be, number one -- your jury
2 is still hearing evidence. So, you are going
3 to hear more, you are going to do your own
4 deliberations, and I don't want to be seen as
5 a self interest. I don't look at this as self
6 interest. I look at what's the best way to
7 reform counsel for parents.

8 You don't make decisions on, you know,
9 that Bill Leahy is here and Angela Burton is
10 here. We are not going to be here 10 years
11 from now or 20 years from now; so, you try to
12 build the best structure --

13 HONORABLE PETERS: Don't say that
14 about Angola. Maybe you wouldn't --

15 MR. LEAHY: I was going to get that
16 from her later.

17 HONORABLE PETERS: That's okay. I got
18 her back.

19 MR. LEAHY: I was definitely going to
20 get that later.

21 HONORABLE PETERS: Anything further?

22 JUDGE WHELAN: I just wanted to go a
23 little bit further with that questioning
24 because when you talk about that third leg,
25 are you recommending a more robust use of

1 defender's groups or having state oversight of
2 the panel lawyers?

3 MR. LEAHY: I am really agnostic on
4 that question. In Massachusetts, for years
5 and years and years and years, I was head of
6 an entire state system, public defense, family
7 court, mental health, everything was under one
8 agency -- 90 to 95 percent of the
9 representation was provided by private
10 lawyers. New York is a different mix. It
11 doesn't matter what the predominant delivery
12 system is.

13 Right now, the City of Syracuse,
14 Onondaga County, we are seeing the
15 transformation of, primarily, assigned counsel
16 program, which is providing first rate
17 representation, changing the culture of public
18 defense in that county, energizing the private
19 bar, supported by the County Bar Association.
20 There's a lot to be said for fine
21 institutional defenders and fine assigned
22 counsel programs. Frankly, you need them
23 both, especially in parental representation
24 where, typically -- not occasionally,
25 typically, there is more than one attorney on

1 the case for parents.

2 HONORABLE PETERS: I know I said I was
3 finished. I have one more question. We have
4 heard testimony concerning judicial assessment
5 of eligibility for assigned counsel across the
6 state. Some challenges that we seem to be
7 facing are the fact that there's
8 representations to the effect that different
9 judges assess finances differently. Someone
10 might be eligible for an assigned counsel in
11 family court here and not here, where they
12 have the same exact income and the same exact
13 expenses.

14 There have been questions about
15 whether the assessment of eligibility might be
16 best made by someone other than the Judge who
17 might acquire information in accessing
18 eligibility that he or she really shouldn't be
19 hearing unless it's placed in evidence.

20 Do you have an opinion on that?

21 MR. LEAHY: Well, the pure answer to
22 your question may not be helpful, was supplied
23 by the Brennan Center at a major study they
24 did ten years ago. And that's that neither
25 judges nor defense lawyers should be involved.

1 It should be independent group. In
2 Massachusetts, it was the Probation
3 Department, but that was under the Judiciary,
4 not the Executive --

5 HONORABLE PETERS: I don't think
6 that's independent, but go ahead.

7 MR. LEAHY: No, it's not, but I can
8 say this: We heard a lot of testimony at our
9 eight eligibility hearings on the criminal
10 defense side that suggested that -- and I
11 was -- I was not agnostic. I was against
12 Public Defenders being involved with
13 eligibility. And I heard a lot of testimony
14 that made it pretty clear to me that: Yeah,
15 our county has a standard 125 or 150 percent
16 but, you know, we figure out whether a person
17 can afford counsel -- which, hello, that's
18 what the law says.

19 So, the impact that was feared to be
20 massive really hasn't been accepted in a few
21 locations. So, I am learning as I go along
22 about, that there could be an effective path.
23 And, you know, we have presumptions, just to
24 get back to your point about presumptions,
25 Judge -- 250 percent, incarcerated, or

1 detained pre-trial, receiving Public
2 Assistance, recently found eligible in another
3 case -- also, in our law 832(4) again, says:
4 No arraignment shall be delayed pending a
5 determination of eligibility. You get that
6 assigned counsel, even though you are later
7 determined not to be eligible.

8 So, Article 10s are certainly worthy
9 of the same. So, if I heard you correctly,
10 that was more than a thought, maybe a
11 suggestion, maybe even a future
12 recommendation, I am all for it.

13 HONORABLE PETERS: Thank you. Thank
14 you very much.

15 MR. LEAHY: Thank you.

16 Mr. Wallace.

17 Good morning. Thank you for coming.

18 MR. WALLACE: Thank you very much for
19 having me. Judge Peters, Judge Whelan, Judge
20 Walsh, Executive Heinz, Ulster County, and
21 Professor Rogerson.

22 Thank you very much for having an
23 interest in kinship care. I am just listening
24 to Bill Leahy, just speaking about the third
25 leg of the stool. I realize, I am here to

1 talk about the fourth leg, which makes it a
2 table. I am here to talk about kinship
3 families.

4 Kinship families are defined as
5 grandparents, other relatives, fictive kin.
6 There are a host of definitions and attempts
7 to identify them in the law in New York State,
8 as well as in family statutes. Kinship care
9 is actually a term of art used in child
10 welfare law. You will see, what we represent
11 as the KinGAP provisions, but it's also used
12 for the Kinship Navigator Demonstration
13 Project that's just been funded.

14 I run the New York State Kinship
15 Navigator. I have had that position since
16 2006. Before that I was at Hunter College for
17 five years, running the Grandparent and
18 Caregiver Law Center; we chaired the New York
19 State Kincare Coalition for over a decade; and
20 I just do kinship care 24/7. That's all I'm
21 interested in -- as everybody knows who knows
22 me.

23 I am not here to do a legal argument.
24 I am here to suggest in Article 6s, not 10s,
25 but in Article 6s, where parents get

1 representation, if they are assigned counsel,
2 and caregivers do not, that this causes great
3 concerns for me as a representative of this
4 community, and uneven and the wrong outcomes;
5 and, actually, is contributive to kinship
6 caregivers never going to Court because they
7 know they are not going to get their day in
8 Court.

9 Let me give you a typical example of a
10 kinship case. Grandma -- I was up in St.
11 Lawrence County recently. Grandma, in St.
12 Lawrence County, had the kids for ten months.
13 Mom lives a mile away. Mom is doing drugs and
14 alcohol, number of overdoses, mental health
15 issues, in and out of family court, the
16 children aren't removed. Eventually, grandma
17 convinces her daughter to give her the
18 children. The father of course is not around.

19 Grandma has these children. She has
20 issues about -- possible issues about getting
21 them into school. There's record issues,
22 access to medical care issues that are
23 emerging; and, most importantly, her concern
24 is the kids are, for the first time in their
25 life, in a stable home. They're doing well.

1 And all sorts of adverse childhood experiences
2 and the consequences of them, are starting to
3 dissipate; and grandma loves them and wants to
4 keep them in her home; and yet, her concern
5 is, she has no protections unless she goes to
6 Court.

7 She says: *I want to go to Court, but*
8 *I don't -- I cannot afford counsel.* And often
9 times, she will not go to Court. If she will
10 go, she may present herself pro se. There are
11 some judges who will provide counsel in the
12 situation. I heard, anecdotally, in Onondaga,
13 Nassau County, and Orange County, but other
14 court clerks have told me it doesn't happen in
15 their County.

16 So, the question I am presenting to
17 you, is, in Article 6, which are the great
18 number of cases for kinship caregivers -- and
19 I will give you the numbers. According to the
20 American Community Survey, we have about
21 195,000 children living with relatives,
22 130,000 or so, kinship families. How many of
23 those children are in foster care? Less than
24 3,700. That's a lot of kids out there in
25 really difficult circumstances.

1 Do they have connections to the child
2 welfare system? New York is a tale of two
3 states, downstate and upstate. And if you
4 look at New York City, you will see kinship
5 foster care rates of over 30 percent, with the
6 current Commissioner's goal to get it to
7 50 percent. If you look upstate, and I have
8 provided you with tables from Child Trends,
9 OCFS data, on these, Table 3. Table 3 has
10 relative placements in the past year. You
11 will see that there are about, I think, 500 to
12 600 kinship foster care placements last year
13 upstate. The number is really
14 disproportionately low.

15 This is well-known, and my position as
16 the director of the Kinship Navigator, I have
17 yet to meet with the OCFS Commissioner, who
18 recently sent out a directive to the counties,
19 indicating to them that they must improve
20 their use of kin as foster parents, and
21 setting criteria for them to announce in their
22 yearly plan, goals to reach that; but the fact
23 remains, kin come into the care of -- children
24 come into the care of their relatives and do
25 not become foster parents.

1 Some of the ways that happens, which
2 is really an aside to this case here, but is
3 really irrelevant because we hear it all the
4 time, is: *CPS called me up and said, Come get*
5 *the kids. They removed them from mom's home.*
6 *I went down there, have them now. I don't*
7 *know what to do.* And I will put the emphasis
8 on that. *Child Protective Services gave me my*
9 *grandchild eight years ago. This is the first*
10 *time I found there is help* -- that's a quote.

11 So, that's called an alternative
12 living arrangement. It's in the regulations,
13 it's called a safety plan. Nobody knows how
14 many of them are done. We think they are
15 diminishing, but the number out there of child
16 welfare engagement and going to kin are known.

17 If there is a removal, there are a
18 number of ways the children are put into the
19 arms of their relatives, and the relatives
20 don't become foster parents. There's direct
21 custody, Article 6 custody, and foster care
22 placement. The direct custody numbers are in
23 that same Table 3, and they show also, in New
24 York City, there was like 250 of them last
25 year -- excuse me, I can't quote the exact

1 number -- and upstate, it's about 2000.

2 Direct custody is used upstate as a way moving
3 children into the arms of relatives. They
4 don't get the foster care benefits, and
5 eventually they're cut free, and have to go
6 for an Article 6.

7 Sum and substance, there are other
8 ways in which children are diverted but what I
9 am pointing towards here, and I will ask you
10 to look please -- here, I will do another
11 editorial comment on my program. Kinship
12 Navigator serves all 62 counties. It has been
13 around for 13 years. We provide leadership to
14 the kinship community. And we had a federal
15 demonstration project grant from 2012 to 2015.
16 In it, we hired the Center for Human Services
17 Research, and they did survey work in studies
18 on a cohort in five upstate counties, Tioga,
19 Broome, Orange, Ulster and Dutchess; and in
20 those five counties, in that cohort of 455
21 children, looking at their CPS records,
22 79 percent of them had CPS records -- none of
23 them were in foster care. They were placed
24 with their relatives outside the foster care
25 system. This is not to castigate the child

1 welfare system, it's to say that the children
2 in kinship care are really faced with special
3 challenges. They have suffered abuse, mostly
4 neglect, more likely that they won't be
5 removed, but they have suffered the loss of
6 their parents, they have trauma, adverse
7 childhood experiences. Grandma is taking
8 these kids in. Grandma, average age is 56.
9 The poverty levels in that study were
10 40 percent in those five upstate counties, the
11 national numbers are 21 percent in the census
12 data but we think they're low, obviously, and
13 these are the children in kinship care.

14 Now, so I am suggesting that when you
15 look at that fourth leg of the table, that you
16 please consider this community is big in
17 numbers. It is disadvantaged across the
18 board, and in family court, where the best
19 outcome could be that the child has the
20 stability, for the first time in their life,
21 of living with a relative who is dedicated to
22 taking care of them -- it may not happen
23 because there's no representation available to
24 that family.

25 I'm making two recommendations; one,

1 to consider petitioning caregivers as having a
2 right to counsel in -- obviously, in part A(5)
3 of 262, parents have a right to counsel, and
4 justifiably so, not debating that at all --
5 then in Part 3 of 262 Respondents -- I'm
6 sorry, Part 3 -- Article 6, Part 3, 262(A)(3)
7 says that the respondents get counsel. That's
8 a custody proceeding. There are also
9 guardianship proceedings which are Part 4 of
10 Article 6, not covered in that section of the
11 262.

12 We alluded earlier to KinGAPs.

13 KinGAPs are happening more. They're in Table
14 4, incidentally, in the materials handed out
15 to you -- and you can see it by county, you
16 can see the compilation statewide. You can
17 break out Rest of State versus New York City,
18 with just a little bit of arithmetic. KinGAPs
19 are happening more and more.

20 One of my fact patterns that I'm
21 getting to is that a caregiver got kinship
22 guardianship. There's an award of \$2,000 to
23 help her get the guardianship petition done.
24 Later on, one of the parents challenges her.
25 There is no assignment of counsel in that

1 instance because she is a Respondent, which
2 would be under Part 3, and there's no counsel
3 available to her.

4 I would submit that petitioning
5 caregivers should be assigned counsel in not
6 only Article 6, Part 3, but Part 4,
7 guardianships, because they are seeing more
8 and more instances of judges realizing they
9 should be doing guardianships in family court
10 for relatives because of some of the powers
11 associated with guardianships that the legal
12 community is waking up to realize are not
13 associated with custody. To wit, there's a
14 memo from the Magavern, Magavern, Grimm, to
15 the Chief Administrative Judge of Erie County
16 enunciating, in detail -- I have provide to
17 you -- the article that the custodians do not
18 have the right to make medical decisions for
19 the children in their care, non-parent
20 custodians.

21 You can also see that pursuant to
22 Family Court Act 657, I think it's Part 3,
23 where in the first two parts, it talks about
24 the powers of guardians and custodians, and
25 then Part 3, which is about medical decisions,

1 all of a sudden, custodians disappear. So,
2 this is a population that's, kind of,
3 complicated to help because the law is all
4 over the place, even in identifying them.
5 It's a population that finds itself at
6 disadvantages, not only in Court but in
7 accessing services, in -- if we want them to
8 succeed, and the documentation and the studies
9 show they do succeed, but they could do
10 better, and they could help children who are
11 really at risk, if we considered adding them
12 to 262.

13 Thank you.

14 HONORABLE PETERS: Thank you.

15 Questions?

16 I have a question.

17 Am I correct that the reason why many
18 children end up in direct custody as compared
19 to foster care involves financing and
20 supervision?

21 MR. WALLACE: In matter of Germain in
22 Monroe County, many years ago, the Judge opens
23 the case saying -- I'm paraphrasing -- this is
24 a matter of money.

25 HONORABLE PETERS: Exactly. So am I

1 correct that often direct custody comes
2 because the county welfare agency doesn't have
3 to pay and doesn't have to supervise?

4 MR. WALLACE: Judge, when I am doing
5 more informal talks, my description of direct
6 custody is foster care on the cheap.

7 HONORABLE PETERS: Exactly. So,
8 that's really what it's all about?

9 MR. WALLACE: Yes.

10 HONORABLE PETERS: I'm not saying it's
11 right or wrong.

12 MR. WALLACE: Many of them won't
13 qualify.

14 HONORABLE PETERS: Correct, can't
15 qualify.

16 MR. WALLACE: And that's true. But
17 the gain is afoot when the county is talking
18 to a caregiver. And there's statutes that
19 they're supposed to give them, these written
20 documents, and actually they're changing that
21 right as we speak now because they are
22 confusing; and the judges are supposed to ask
23 whether they have been informed; but the gain
24 is afoot because the personal connection and
25 how they are told can dissuade or persuade in

1 a certain direction. And if the County has a
2 de facto policy of dissuading, you are going
3 to get low numbers.

4 JUDGE WALSH: I just have a question
5 about adoption.

6 What is your sense of the people who
7 you -- people who have guardianship of these
8 children which doesn't lead to adoption the
9 way Article 10 placement --

10 MR. WALLACE: I'm sorry, I didn't
11 understand.

12 JUDGE WALSH: Adoption. I am just
13 wondering what kinship caregivers, how they
14 feel about adoption, which doesn't flow from
15 guardianship the way Article 10 placement
16 does.

17 Is adoption a factor?

18 MR. WALLACE: Very few kin adopt.
19 Obviously, they don't have the resources to do
20 it. The general bromide for kinship families
21 is, if my daughter could take care of the
22 kids, I wish she would. And they don't have
23 the counseling, and they have, maybe false or
24 unrealistic expectations that the parents are
25 going to recover. They don't want to be

1 antagonistic to the parents, but at some point
2 along the course of this three-generational
3 interaction, they often make a decision that I
4 have to cut off my own child for the sake of
5 my grandchild.

6 Thank you very much.

7 PROFESSOR ROGERSON: I have one
8 question, if that's okay.

9 HONORABLE PETERS: Of course.

10 PROFESSOR ROGERSON: Gerry, you and I
11 have talked over the years about protecting
12 immigrant families, and in this current
13 climate, and with the issues of separation of
14 the family -- family separation, generally, I
15 am just wondering if you have seen a trend
16 towards guardianship as a result of those
17 immigration issues; or if it's not pinable to
18 that, whether, in general, you are seeing more
19 immigrant families with mixed immigration
20 status participating in kinship programs?

21 MR. WALLACE: I was down in Rockland
22 County in November of last year which is the
23 Haitian community, which is a temporary
24 protective status community, facing that, and
25 caregivers were coming up to me with a

1 situation where they had two children born
2 here, and the older one born in Haiti. They
3 have two citizen children, and they have a
4 child who is going to have to go back with
5 them -- and this is ripping them apart.

6 But the general flavor that I get in
7 talking to the community, is they are very
8 weary of going into Court. They, themselves,
9 maybe knowing that they're undocumented or
10 that their temporary protective status is
11 coming to the end, but they're looking for
12 family members or friends to take care of
13 children; and the investigations in the
14 Courts, typically for guardianships are
15 pretty, kind of, invasive. You are going to
16 be looking at families -- everyone in the
17 household, for like 25 years. And the fear
18 is -- I think an attorney should advise them
19 -- if somebody shows up in that household that
20 you are going to place the child with, what's
21 going to happen? Will they get to ICE?

22 There's a family court directive last
23 spring saying that there are very limited
24 opportunities, talks about when the family
25 court -- procedurally, would identify someone

1 who might be of interest to ICE. The popular
2 conception in the immigrant community, is, we
3 don't want to go near it. We don't want to go
4 near it.

5 So, just to say, Sarah, the -- last
6 year, Chapter 79, signed on June 24th, by the
7 Governor, allowed a -- to add a springing
8 condition for the standby guardianship statute
9 that permits someone who is subject to -- I am
10 not sure if it is detention --

11 HONORABLE PETERS: Administrative
12 removal.

13 MR. WALLACE: Yes. That they could
14 set it up so that when that happened, the
15 standby guardianship sprang into effect.

16 Chapter Law 80, signed on the same
17 day, extended the General Obligations Law,
18 parental destination law, from six months to a
19 year; and I have an article on the Government
20 Law Center's website about that, because we
21 see this law, which does not involve going to
22 Court, but allows a parent to arrange care for
23 a child, independent of going to Court, and
24 gives them most of the powers that they need.
25 Now that it's 12 months, that it's a suitable

1 way for immigrants, fearful of going into
2 Court to arrange temporary care -- it's
3 renewable, you can notarize it from afar, and
4 anyway, you can read the article.

5 PROFESSOR ROGERSON: Thank you.

6 MR. WALLACE: Thank you very much.

7 HONORABLE PETERS: Mr. Steven

8 Acquario?

9 Before I call the next witness, I want
10 to notice, in the back of the room, our
11 incredible consultant, Cynthia Feathers, who
12 joins us today. Thank you, Ms. Feathers.

13 I don't see Mr. Acquario coming up,
14 so, Amanda McHenry, are you present?

15 MS. McHENRY: I am.

16 HONORABLE PETERS: Ms. McHenry, could
17 you come up and testify?

18 We are going to hear from Ms. McHenry,
19 and then we will take a five-minute recess,
20 and then we will continue the testimony.

21 MS. McHENRY: Thank you for having me.

22 First and foremost, I want to thank all of you
23 for allowing me to testify about something
24 that I am so passionate and dedicated to.

25 The effective assistance of counsel

1 for parents in family court is critically
2 important to the just and proper functioning
3 of the family courts and the state law mandate
4 to keep families together. This is a moment
5 in history when those who have dedicated their
6 careers to upholding the integrity of New
7 York's family justice system can and should
8 use their influence to bring about adequate
9 funding and uniform standards of practice for
10 mandated parental representation throughout
11 the state.

12 The Hiscock Legal Aid Society
13 respectfully requests the Committee on
14 Parental Legal Representation to recommend a
15 statewide system that will ensure such
16 representation for every parent whose
17 fundamental rights are at stake.

18 My testimony comes largely from my
19 career thus far providing mandated
20 representation to families in Onondaga County.
21 I joined the Hiscock Legal Aid Society in
22 2015. I started off doing some child support
23 cases, and in about two months, I was thrown
24 into the Article 10 world -- and I have been
25 very, very excited and happy ever since. I am

1 now the Supervising Attorney for the family
2 court program.

3 In regards to funding and caseload, we
4 are asking the Commission to strongly
5 recommend adequate and uniform statewide
6 funding of programs that provide mandated
7 parental representation that would ensure
8 reasonable caseloads. The current system for
9 funding for mandated parental representation
10 in New York State is not adequate. It results
11 in significant differences in financial
12 resources and standards of practice from one
13 jurisdiction to another, sometimes from one
14 agency to another in the same jurisdiction.
15 In some jurisdictions, these vast differences
16 significantly impact the ability of
17 institutional providers and assigned counsel
18 programs to provide quality representation.

19 Inadequate funding results in
20 caseloads that either reduce the provider's
21 ability to supply the effective assistance of
22 counsel, or create hardships for the attorneys
23 who have to work grueling long hours and they
24 still want to provide that zealous
25 representation. Often times this creates

1 burnout and high turnover of attorneys who
2 actually have a true passion for this type of
3 work, leads them into different areas of
4 practice; and then the client gets a new
5 attorney. Then they have to re-explain their
6 story all over again. This isn't a benefit to
7 anybody. When a client has to retell their
8 story over and over again and regain the trust
9 in another person who they have to count on to
10 fight for their children, for their family to
11 be returned, it's not beneficial for the case
12 as a whole. In order to prevent this burnout
13 and overturn, adequate funding must be
14 provided.

15 The New York State Office of Indigent
16 Legal Services and the New York State Bar
17 Association standards call for caseloads for
18 those who are representing parents in child
19 welfare cases to be no more than 50 active
20 cases at a time. The current funding system
21 makes it impossible for most providers to
22 consistently observe these standards. In some
23 jurisdictions, and I would say most
24 jurisdictions, attorneys are faced with
25 ongoing caseloads that exceed over 100 active

1 cases at a time. Unduly burdensome caseloads
2 also interfere with the provider's ability to
3 preserve the right to appeal, to file an
4 interlocutory appeal before the issue becomes
5 moot in a timely fashion. Effective caseloads
6 also prevent the effective -- excuse me --
7 also prevent motions from being filed, and
8 these are all mechanisms that are required and
9 needed in order to prevent irreparable harm to
10 families, where a family court case can make
11 it's way slowing through the system.

12 Attorneys who provide mandated
13 representation of parents are not adequately
14 compensated. The hourly rates for 18-B
15 attorneys have not been raised in over 15
16 years, and in some jurisdictions, staff
17 attorneys employed by institutional providers
18 are typically paid thousands, if not tens of
19 thousands, less than their counterparts. As a
20 result, providers struggle to recruit, retain,
21 train, supervise, and adequately compensate
22 attorneys willing to do this extremely
23 difficult and essential work.

24 In regards to timely access to
25 counsel, we ask the Commission to recommend

1 legislative change to insure that parents
2 throughout the state will be assigned an
3 attorney at the earliest possible stage of
4 family court. The timely assignment of
5 counsel is needed to provide irreparable harm
6 to the family. Court dispositions that
7 strengthen and maintain parent and child
8 relationships are more likely when attorneys
9 are assigned as early as possible. The
10 assignment of counsel as soon as the
11 application is made for the removal of a child
12 is needed to provide parents with effective
13 assistance of counsel in the most critical
14 stage of the proceeding.

15 In many jurisdictions, parents face
16 imminent risk hearings and loss of custody of
17 their child without an attorney. Section 262
18 of the Family Court Act and Article 10 of the
19 Family Court Act currently only require
20 appointment of parental counsel upon the first
21 appearance in which the parent appears in
22 court, while mandating the assignment of the
23 Attorney for the Child immediately upon the
24 application for removal.

25 Legislative change is needed to ensure

1 effective parental representation during
2 preliminary imminent risk hearings. Clients
3 have so many questions that go unanswered
4 during this time. They don't know how to
5 obtain legal counsel. They don't know even if
6 they have a right to legal counsel.

7 They don't know if they have to talk
8 to the case worker; do they have to let the
9 case worker in the home.

10 Should the case worker be going to
11 school to speak with their child?

12 What is an imminent risk hearing?

13 What are my choices?

14 Should I consent to removal or should
15 I not?

16 They are not aware of the fact that at
17 this hearing, that they can call witnesses or
18 that they can ask for an adjournment to try
19 and obtain legal counsel, that they can
20 present evidence of their own, or even
21 negotiate with the County. These parents need
22 legal representation during this integral
23 stages, as it truly sets the tone of the case
24 moving forward.

25 We ask the Commission to recommend

1 adequate funding and oversight that will
2 insure the use of an interdisciplinary
3 approach to parental representation that
4 employs attorneys who are skilled in various
5 interrelated practice areas, as well as social
6 workers, investigators and parent advocates.
7 This approach is most successful in securing
8 the services that are needed to preserve or
9 reunite families. In the absence of such
10 reasonable efforts, families are unnecessarily
11 disrupted or kept apart for a long period of
12 time when there either wasn't imminent risk or
13 there wasn't a safety concern to begin with.
14 Strong factual investigation, expert
15 assessments and highly skilled
16 multi-disciplinary team advocacy provides the
17 best defense for not just our clients but for
18 the family as a whole. Clients are better
19 able to follow through and engage in social
20 and legal services when they need -- excuse
21 me -- when they need them, when barriers to
22 accessing these services are eliminated or
23 reduced.

24 Their case worker is supposed to be
25 providing them reasonable efforts for

1 unification but so often times this does not
2 happen. We need social workers and parent
3 advocates who are actually on our client's
4 side, looking at the positives, truly trying
5 to reunify families; someone they can trust
6 and not asking them to try and trust the same
7 person who just had their children removed
8 from them to help also reunify their families .
9 Legal and social service providers who work
10 together and are on the same team are better
11 to able and more effectively coordinate
12 services and provide better outcomes for our
13 clients.

14 We ask the Commission to recommend
15 adequate funding to support uniform financial
16 eligibility standards to ensure the assignment
17 of counsel for parents who cannot afford an
18 attorney. The assignment of counsel, whose
19 fundamental rights are at stake in family
20 court, is of critical importance to the
21 entirety of New York's family justice system.
22 Substantial differences between jurisdictions
23 or even between providers in the same county
24 need to be addressed. Objective criteria for
25 determining eligibility that also allows for

1 discretion in the interest of justice should
2 be established. Changes in eligibility could
3 result in increased caseloads and will require
4 increased overall funding to maintain high
5 quality representation.

6 We ask the Commission to recommend the
7 implementation of a family justice system that
8 provides adequate statewide funding,
9 standards, monitoring, training to ensure
10 quality parental representation in every
11 jurisdiction.

12 We ask the Commission to help bring
13 about the same kind of reform to New York's
14 family justice system that the statewide
15 implementation of the Hurrell-Harring reforms
16 has brought to elevate mandated criminal
17 practice. Adequate funding and oversight will
18 help reduce caseloads, insure quality
19 training, and use investigatory and social
20 worker resources that are so needed. The
21 fundamental rights of parents in family court
22 are no less important than those clients who
23 have criminal charges.

24 We ask the Commission to recommend
25 adequate independent funding in oversight and

1 support the high quality parental
2 representation so that the New York State's
3 family justice system can function properly.

4 Statewide funding, standards of
5 practice and oversight that will promote the
6 fair application of New York State Law that
7 recognizes it is in the best interests of the
8 children to be cared for by their parents.

9 Without funding and oversight independent of
10 local government, these standards are
11 endangered. Adequate independent funding and
12 oversight of those who provide parental
13 representation will help ensure that the
14 family is preserved as mandated by state law.

15 I feel it's also integral at this
16 point in time to discuss the families and the
17 parents who have to live through what they
18 often describe as a nightmare. The parents
19 need to be supported, uplifted and empowered.
20 So often times, they don't. Our clients can
21 feel like the case worker is out to destroy
22 their family, they feel like the Judge doesn't
23 believe that they love their children or that
24 they should have them back. They feel like
25 their child's attorney may be working against

1 them, or they think that the child should stay
2 in foster care. And the parent's attorney is
3 really the only person in that room that has a
4 voice for our clients. We need to have
5 zealous advocacy for every single client,
6 every single appearance. We need to be
7 looking at what needs to happen for
8 reunification. Our clients deserve to have a
9 choice, and not just an adequate but a
10 powerful impact, a voice that's actually heard
11 and considered. This is their family, their
12 children, and their case.

13 I personally had a case, where my
14 client went an entire eight months before she
15 was vindicated of allegations of severe abuse
16 against her infant daughter. She missed so
17 many milestones in her daughter's life when
18 she was in foster care, and my client did
19 absolutely nothing wrong. We did have an
20 imminent risk hearing. I was allowed to talk
21 to her for, maybe 15 minutes, after asking for
22 an adjournment. She signed a consent at the
23 hospital for removal, not knowing what it was.
24 She didn't know that she had to or that she
25 didn't have to speak with a case worker. She

1 wasn't sure if she could provide text messages
2 or if she could provide any sort of evidence
3 in her defense.

4 In that case, there was an
5 investigation for days leading up to, and a
6 determination that there was going to be a
7 request for a removal. Instead, it happened,
8 she had about an hour to get to Court and to
9 have legal counsel appear with her.

10 My client was ordered supervised
11 contact for all of those eight months. It was
12 a living nightmare for her. I believe if we
13 would have had an opportunity to meet, even
14 for just a few hours and prepare, things could
15 have been different. These parents deserve
16 better, these families deserve better. We
17 need to do better.

18 I thank all of you for giving me this
19 opportunity to present this testimony. Thank
20 you.

21 HONORABLE PETERS: Thank you very
22 much.

23 Questions?

24 JUDGE WALSH: Just one. So, your
25 story suggests the need for counsel before a

1 petition is filed, before an application is
2 made. Is there a mechanism, for example, in
3 your county, with your office, how would that
4 work?

5 MS. McHENRY: Yes.

6 So, currently what we do -- we call it
7 removal watch, essentially. So, we have -- on
8 e-courts, we have a legal assistant who runs a
9 calendar. And if there is a first appearance
10 on an N-docket or NA-docket at 2 o'clock, we
11 know it's typically going to be a removal or
12 imminent risk hearing. So, that's how we are
13 dealing with it now.

14 We are also, obviously, trying to get
15 out there and let people know that they can
16 come into our office if there is an
17 investigation because so often, it does lead
18 into a request for a removal, but that's how
19 we are dealing with it currently.

20 Also, the Court will, sometimes, reach
21 out to us directly because they know that we
22 always try and send an attorney over if we
23 can, and say: *Hey, we have this application*
24 *for removal on, could you please send someone*
25 *over.*

1 JUDGE WALSH: Sure. Before there's
2 any court intervention, when CPS knocks on the
3 door and goes to the hospital, can you see any
4 real way for your office to become involved?

5 MS. McHENRY: I could see the
6 possibility of the case worker, the
7 investigator, letting the County Attorney
8 know, or their representing agency, that this
9 is likely going to happen; and we represent so
10 many clients who could reach out to us, and
11 say: *Hey, here are the facts.* We, often
12 times, have to fight to see, either the
13 petition before I go in to represent
14 somebody -- I don't even know what the
15 allegations are until I am sitting there; but
16 that would be one way I could see us getting
17 involved.

18 HONORABLE PETERS: Thank you.
19 Anything further?

20 Thank you. We are going to take a
21 short recess, and then I think Mr. Acquario
22 arrived and we will go over your testimony in
23 just a few minutes.

24 Thank you.

25 (10:55 - 11:06 A.M. - BRIEF RECESS

1 TAKEN.)

2 HONORABLE PETERS: Be seated, please.
3 Mr. Acquario, New York State
4 Association of Counties.

5 MR. ACQUARIO: Thank you, Justice
6 Peters.

7 With your permission, we found some
8 typos and corrections in the testimony. We
9 would like to hand it out.

10 HONORABLE PETERS: We will permit
11 that.

12 MR. ACQUARIO: Thank you.

13 Good morning. My name is Stephen
14 Acquario. I am the Director of the State
15 Association of Counties. We are the only
16 statewide, municipal association representing
17 county-elected officials, county executives,
18 county legislatures, county supervisors;
19 Public Defenders, Conflict Defenders,
20 Sheriffs, District Attorneys -- it's the only
21 umbrella group that represents the whole
22 jurisdiction of county government.

23 Appreciate Chief Judge Di Fiore for
24 convening this panel, appreciate Justice
25 Peters for chairing this important panel and

1 the hard work that you are tasked with and
2 going through all the organizations and the
3 lists of people that I see that you spoke to.
4 You are determined to get the most accurate
5 data and facts and help pave the best path
6 forward in the future of Family Court
7 representation.

8 I'd like to thank, and appreciate the
9 role of the Ulster County Executive, Michael
10 Hein, who sits firsthand watching this,
11 funding this, and his departments of Public
12 Defenders, 18-B panels, Conflict Defenders and
13 administering this program at the local level;
14 and the judges of the family court in Suffolk,
15 and Albany County -- very important role in
16 county government.

17 And so, in my testimony today, on page
18 1, I will encourage the state to follow the
19 model, as you have heard in the prior
20 testimony from Hurrell-Harring, to strengthen
21 its constitutionally-mandated parental
22 representation system. The improvements we
23 have seen in the criminal court system should
24 and can occur in the family court.

25 We are doing the best we can with the

1 resources we have at the county level. We are
2 here today, as the statewide association
3 representing the local governments, the
4 counties, to pledge our support to your task
5 force and to the process that the Office of
6 Court Administration and others had put forth
7 to bring about reform.

8 In the history of the New York Family
9 Court Parental Representation Program, New
10 York has always been a national leader in
11 understanding the need for family court and
12 providing assistance by which all interested
13 parties, and most importantly, the children
14 are protected.

15 On page 2, in the second paragraph.
16 In recognition of this fact, in 1975, the
17 Legislature enacted Legislation drafted by the
18 Office of the Court Administration codifying
19 broad parental rights to counsel, and
20 emphasizing potential infringements of
21 parent's fundamental interests and rights,
22 including the loss of a child's society and
23 the possibility of criminal charges. The
24 Legislature recognized counsel's indispensable
25 role in the practical realization of due

1 process of law and in assisting the court in
2 making reasoned determinations of fact and
3 proper orders of disposition.

4 The most important comment I can
5 deliver today, is this: New York State should
6 insure the fair meaning and execution of
7 Section 261 of the Family Court Act, and
8 adequately fund and properly provide counsel
9 to address the complex issues between family,
10 parents and children.

11 When compared to other states, New
12 York is unique in that it has set up a system
13 where it tasked county governments with
14 providing the majority of the state's
15 constitutionally-required services. As I
16 mentioned before, counties provide the people
17 of New York with everything from criminal
18 justice needs -- the Sheriff, the District
19 Attorney, the Public Defender to Social
20 Services needs, the Department of Social
21 Services to health care needs, public health,
22 mental health and Medicaid, child welfare
23 protection services. These services also
24 include counties providing counsel in family
25 court to family members who cannot afford

1 counsel; and most recently, in implementing
2 raise the age provisions.

3 Unfortunately the state too often
4 requires the counties to pay for these
5 mandated services themselves, and this is what
6 is meant by the term, *unfunded state mandates*.
7 The state has granted counties two main
8 sources of revenue, a portion of sales tax and
9 property tax. Over the past decade, our sales
10 tax has been flat. In upstate and over that
11 same period, county service costs, health care
12 and personnel costs continue to rise.

13 As for property taxes, the state is
14 now operating under a property tax cap. Under
15 this tax cap, on page 3, counties can only
16 raise property taxes to improve or take on a
17 new service. While this is a good public
18 policy, considering New York was and still is
19 among the highest property tax states in the
20 nation, New York had failed to enact
21 accompanying legislation requiring the state
22 to pay for any increased or new mandated
23 services.

24 Due to the localizing financing
25 structure, New York has placed itself in a

1 dangerous position of being regressive against
2 those most financially-strapped areas of the
3 state whose tax base is the least affluent and
4 in the most need of providing indigent legal
5 services to the poor in our communities.
6 Surely, this is not what the State intended
7 when they passed the property tax cap.

8 If there's one take-away from this
9 testimony, please, counties cannot afford to
10 take on any new or increased function, no
11 matter how important, without the state
12 meeting the accompanying fiscal costs.
13 Counties do not have revenue streams, nor the
14 reserves to add any additional service costs.

15 High caseloads, insufficient
16 resources, lack of professional and
17 administrative support services are all
18 attributable to the lack of dedicated
19 resources to institutional providers, Public
20 Defenders, Conflict Defenders, the offices of
21 County Attorneys, and the 18-B panels, those
22 being the institutional providers. Similar to
23 the criminal court, county governments are not
24 in a position to insure the effective
25 assistance of counsel is consistently provided

1 in the family court system.

2 Article 18-B of the County Law
3 requires each county and the City to maintain
4 a plan for the provision of assigned counsel
5 to indigent. What is commonly referred to as
6 18-B counsel from counties are predominantly
7 private sector attorneys that are paid through
8 the county government funds to represent those
9 that cannot afford counsel for themselves. To
10 control costs, many counties have come up with
11 proactive and innovative plans to provide this
12 service, while being fiscally responsible to
13 the taxpayers. Some County plans include a
14 layered system by which a parent or guardian
15 representation only reaches private 18-B
16 attorneys when one of the county operated
17 departments is conflicted out. These county
18 operated system providers include a Public
19 Defender's office, Conflict Defender's office
20 and even, in some counties, a special family
21 court counsel office. These offices provide
22 counties with a fixed cost for representation
23 because they are salaried employees.

24 The bottom of page 3, recommendations.

25 The Association believes it is good public

1 policy for the state to offer matching grants
2 and dollar for dollar savings for this type of
3 forward thinking to encourage more counties to
4 look at ways to improve their system.

5 Institutional incentives breed creativity,
6 could help improve the system to help those in
7 need.

8 On page 4. It is difficult to
9 calculate the exact annual cost for counties
10 to provide this service. We estimate that
11 county governments are spending between 125 to
12 150 million annually, presently in the family
13 court system. One recommendation to control
14 costs and lower the court's calendar burden
15 would be to increase mediation services to
16 avoid appearances in court. In addition to
17 the cost associated to the government, the
18 amount of time currently spent in Court can be
19 disruptive to families, as the parents who
20 understandably make this their top priority
21 can risk losing their job -- a job lost to
22 attend judicial hearings. This can only make
23 the situation before the Court and that of the
24 family worse. Mediation services could help
25 families avoid court time.

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The role of the judges within the family court system. In every county, it's the Family Court Judge who has the final say on eligibility standards, and who is providing the parent or guardian counsel, as well as determining 18-B representation if the bill is overly inflated in a given case. Due to the oversight power in the system, it is vital that the counties and the Judge have a continued communication system in place, functioning in the best manner possible.

On a recommendation, on the bottom of page 4, one issue that could drive up 18-B costs is our family courts are overcrowded and long waiting periods to be called for a case. While waiting to be heard, the taxpayer is being billed for that 18-B cost. It's not the court's fault or the judge's fault, however, some of those costs can be lowered if we structured a new calendar and new system and better coordinate to allow 18-B representations to go first. That way those waiting longer to be called to court will be the fixed cost attorneys -- the Public Defender and conflictor cost can be heard.

1 Additionally, more training and
2 communication regarding who is eligible for
3 counsel would help control costs. The current
4 process can lead to counsel being assigned
5 without fully understanding their fiscal
6 status. Counties are the last to know, and
7 may never find out, if one was given
8 representation that should not have been
9 eligible under the guidelines. Again, more
10 training and the communication with the county
11 can help with this process.

12 Finally, as you know, there's a total
13 fee, cost cap, for these matters that is set
14 at \$4400, however, the Court itself can and
15 does often allow for counsel to exceed this
16 cap when fighting extraordinary circumstance s.
17 And considering how common it is for counsel
18 to exceed these costs, aren't they simply
19 costs that are ordinary and not extraordinary?
20 What is the judicial definition of
21 extraordinary?

22 Seeing the time is moving on here, I
23 want to skip to page 6. Unfortunately, when
24 the state recently formed the criminal
25 indigent defense program, it did not enact the

1 provisions that were contained in the
2 Legislation sponsored by Assemblywoman Fahy
3 and Senator DeFrancisco. That bill would have
4 covered all current county criminal defense
5 costs, and the reason we are here today, that
6 bill recognized and paid for the family court
7 counsel, which the outcome of that reform did
8 not; but it should not take a Hurrell-Harring
9 versus a State of New York type of lawsuit to
10 insure counsel is provided at critical stages
11 in the Family Court proceedings, and that is
12 why you are convened as a panel, and we
13 appreciate the role.

14 The fair and responsible execution of
15 Section 261 of the Family Court Act provides
16 the necessary path to follow. We have already
17 seen the county-provided criminal indigent
18 defense system improve as the state has
19 stepped up to provide more funding and
20 required greater professional structure of
21 that system. The next frontier is the
22 financing of the current mandated parental
23 representation. The state provides very
24 little support to the efforts of litigants in
25 family court; and yet it mandates that

1 counties and the City of New York provide the
2 support through increases in local taxation.
3 That hurts local taxpayers as they must
4 shoulder the burden of this system created by
5 the state, but it was unwilling to financially
6 support.

7 In conclusion, the state has a
8 constitutional obligation to insure quality
9 counsel for those in need, including parents
10 and children and the family court, not just in
11 the criminal court. Providing quality counsel
12 to those in need will give fair meaning and
13 interpretation to Section 261 of the Family
14 Court Act. This, quite simply, is the right
15 public policy for the People of New York
16 State. I contend there is no greater need for
17 counsel, no greater potential for harm and
18 loss than a parent facing the possibility of
19 losing the right to raise and directly care
20 for their child. The question before us
21 should not be, do we need to improve our
22 family court counsel system, as the answer to
23 this is, obviously, yes. The question before
24 you, is, how do we best get there?

25 Throughout the testimony that we have

1 submitted, we have provided some answers --
2 the counties, the state, the courts must work
3 together to create efficiencies in the current
4 system. We should better coordinate the Court
5 calendars to insure 18-B counsel are used more
6 effectively. We can offer more mediation
7 prior to Court. We can offer state incentives
8 and reward counties that create innovative
9 solutions or share services with other
10 governmental bodies, however, these options
11 will help but they will not fix the system.

12 Ultimately, the state needs to step up
13 and strengthen its constitutional amendment
14 and parental representation system. And
15 again, the need for family court
16 representation is no less serious than the
17 need for those faced by the accused in a
18 criminal matter. Therefore, the state needs
19 to follow the same logic used in
20 Hurrell-Harring.

21 In conclusion, I do support and
22 recommend a task force recommendation to the
23 budget division of an appropriation of 5
24 million dollars to the office of Indigent
25 Legal Services, for RFPs to the counties to

1 incentivize and submit plans for the system
2 locally.

3 I'd like to acknowledge Patrick
4 Cummings, our counsel who is here with us
5 today, who helped with these remarks. And
6 thank you.

7 HONORABLE PETERS: Thank you.

8 Questions?

9 JUDGE WALSH: I have a question about
10 your section -- I'm looking off the old
11 written testimony -- the judge's role in
12 determining counsel. And in that section, you
13 refer to a system where the Judge would
14 communicate with the county regarding the
15 charges. So, I am not sure what you mean by
16 that. Right now we sign vouchers and they go
17 to the county. We don't communicate with the
18 county regarding that, other than approving or
19 disproving.

20 MR. LEAHY: Judge, in our outreach,
21 it's very difficult for us to budget in this
22 system from year to year. It's a giant guess.
23 And there needs to be a better way of
24 informing and notifying the local government
25 of the bill, of the charges that -- from the

1 attorneys. And so, when we did outreach, that
2 was one suggestion.

3 There's a program operating in Central
4 New York, in Onondaga County, where they are
5 tracking this in real time for the county and
6 the judiciary to have the same bills being
7 submitted by attorneys. So, the
8 recommendation is to establish a system of
9 better communication between the judiciary and
10 the government. I don't know if I answered
11 the question.

12 JUDGE WALSH: Well, I will speak to
13 that because I am not sure what their system
14 is. They are communicating during the course
15 of the case -- because we don't sign anything
16 until the conclusion?

17 MR. LEAHY: When we did outreach, that
18 was one suggestion, and that was submitted by
19 the County Attorney's office, that there be a
20 better way of tracking expenditures.

21 HONORABLE PETERS: Is there vouchers;
22 is that what you are talking about?

23 MR. LEAHY: Vouchers.

24 MR. CUMMINGS: Yes, I think we did
25 hear from a few county attorneys, that often

1 times they will get bills, and they won't even
2 know -- they don't know enough about the case
3 to even question if this was an inflated bill
4 or not.

5 And the program that Steve was talking
6 about in Central New York, it's my
7 understanding that it's online, and both the
8 Court as well as the county, get the hours
9 submitted at the same time, so there's no lag.
10 They will know exactly what case is happening
11 and what bill this is for. So they can better
12 understand, is there a question mark about how
13 many hours were submitted in this case.

14 MR. LEAHY: It's used in the criminal
15 defense programs.

16 HONORABLE PETERS: It's hours, it's
17 not what you are doing?

18 MR. CUMMINGS: Yeah, it's in hours for
19 the 18-B.

20 HONORABLE PETERS: You don't have
21 access to what the attorney is doing to defend
22 their client?

23 MR. CUMMINGS: No. But they can
24 red-flag it, if it is a certain type of case
25 and it is way more hours than a normal case, a

1 case of that kind, so the county can see and
2 communicate with the Court to see, maybe we
3 should question this bill.

4 HONORABLE PETERS: So, from your
5 testimony -- and I am not going to put words
6 in your mouth -- from your testimony, I think
7 what you are concerning is that the state has
8 a stranglehold on the counties because there
9 are certain mandated representations you must
10 provide and you pay for, but they don't give
11 you the money to do it?

12 MR. LEAHY: Yes, Judge. The counties
13 want to do the right thing. They are in a
14 position to help the community. The state has
15 decentralized so much of the public services
16 onto the backs of the counties to manage all
17 these programs. They're ready, willing and
18 able but lack the resources, the professional
19 resources, the hourly rates -- which I did not
20 talk about this in the testimony -- are set by
21 the state. They just don't have the
22 resources. They want to provide more
23 effective assistance of counsel but lack the
24 ability to do it. The property tax cap, while
25 sound public policy for the State of New York,

1 justified --

2 HONORABLE PETERS: Handcuffs you,
3 literally.

4 MR. LEAHY: It hurts. It hurts to
5 provide those most in need, that being the
6 indigent, and this particular example is a
7 perfect example where we cannot provide more.

8 HONORABLE PETERS: I have one more
9 question, and if you want to say I am really
10 not ready to answer that, that's okay too, but
11 one of the issues that has come up across the
12 state -- well, not in the City, but certainly
13 in Rochester -- has to do with transportation
14 problems, and the challenges that rural
15 litigants face getting to court at all. And
16 that effects the court's ability to run
17 efficiently because cases have to be adjourned
18 because people can't get rides, people can't
19 get to court, people can't get to see their
20 children if they are in foster care in a
21 different in the county; and geographically,
22 some of our counties, as you know, are fairly
23 large.

24 Do you have any thoughts about that
25 problem; and any thoughts about ways for us to

1 suggest resolutions of those challenges?

2 MR. LEAHY: What I can say, Judge, is
3 that we will reach out and talk to the
4 counties about transportation. It is not
5 limited to the judiciary and foster care, it's
6 health care, in general. Telemedicine is
7 helping reach some areas of the state, in that
8 video conferencing might be something we could
9 do with this -- although the defense community
10 is not supportive of the use of that
11 technology; but it's a problem in public
12 services and reaching very -- New York is very
13 rural, upstate is very rural.

14 HONORABLE PETERS: Even the bus
15 system. Ulster County has a county bus
16 system, I am well aware of it, I made my son
17 take it for years. And it is still very
18 attenuated in the sense of time. I mean, if
19 you have to be in family court at a particular
20 time, you need to be able to make sure you can
21 get there, and sometimes the bus system isn't
22 going to accommodate you, just because of the
23 way they run and how many buses there are.

24 MR. LEAHY: Severity of the outcome of
25 what appears before the judges and the outcome

1 of the rights of the child and of the parents
2 balanced against loss of an occupation is a
3 very serious situation where a parent might
4 feel, I just can't do it, I can't afford to go
5 in there to these hearings; and transportation
6 further compounds that problem. And I think
7 that's something, if we did reach out to them
8 about this issue, to the counties across this
9 state, we could get some issues -- Suffolk
10 County is very rural as well. Nassau is
11 really dense, but Suffolk is very rural in its
12 geography. I will do that, Judge. I will
13 reach out on transportation and see if folks
14 have suggestions and submit that back.

15 HONORABLE PETERS: Maybe the key is to
16 get one of those grants that ILS is thinking
17 of putting out to a county to figure out ways
18 to solve transportation problems, which so
19 many litigants suffer from.

20 MR. LEAHY: It's a great idea.

21 HONORABLE PETERS: Thank you very
22 much.

23 MR. LEAHY: Thank you, all.

24 HONORABLE PETERS: We appreciate you
25 coming today.

1 Monica Kenny-Keff -- I hope I said
2 that correctly.

3 MS. KENNY-KEFF: You did it perfect,
4 your Honor.

5 Good morning. I seem to be the only
6 witness today that doesn't have some sort of
7 an executive director or other title before
8 their name. What I am, is an 18-B panel
9 member from Greene County for the past ten
10 years. I am native born from Greene County,
11 having lived there all but three years of my
12 life.

13 I am also on the Greene and Columbia
14 County Attorneys for the Children panels, and
15 I am the Greene County liason to Betsy
16 Ruslander at the Third Department, Office for
17 Attorneys for the Children.

18 You have already heard from many of
19 the administrators, many of the directors on
20 what they think we need for the 18-B panel.
21 As an 18-B panel member, what I would rather
22 do, is give you some real world examples on
23 what we are going through, just in Greene
24 County. After those examples, hopefully, I
25 can give you a couple of suggestions that my

1 panel and I have discussed, and maybe they can
2 help.

3 Since my entry into the world of the
4 18-B panel in Greene County, I have seen at
5 least 11 wonderful, amazing 18-B attorneys
6 lost to the panel, either due to retirement or
7 other career opportunities. I have only seen
8 three additions; and of those three additions,
9 two we share with Columbia County. And as I
10 said earlier, I am shared with Columbia County
11 as well.

12 We have two family court judges,
13 they're wonderful judges but they are
14 three-hat judges. It's Judge Tailleir and
15 Judge Wilhelm. They handle all family court
16 cases, except for routine support or routine
17 paternity. We are extremely lucky to have
18 these judges. They have both been law
19 guardians in the past, they have both been in
20 private practice, and they have both been
21 District Attorneys as well. They have such
22 understanding, patience and true love for the
23 Court, that we are extremely happy to have
24 them, along with our family court bar.

25 Our county -- in that family court

1 bar, we have approximately 10 attorneys that
2 do 18-B work. Two of them cannot practice
3 before one of our judges because of conflicts,
4 and another cannot do anything with respect to
5 DSS or CPS cases -- his wife happens to be the
6 DSS attorney.

7 I did some extra research this
8 morning, and I took a look at Greene County's
9 budget for 2018. I already knew that it was
10 very disproportionate when it came to DA
11 versus Public Defender. I mean no disrespect
12 to our District Attorney, he is a wonderful
13 man, it's a great office, we are very lucky to
14 have them as well; but the DA's only handle
15 the criminal courts. Public Defenders handle
16 every single court in Greene County, including
17 family court, and even in support court.

18 The revenue, the District Attorneys
19 are said to bring in \$231,000 in revenue, the
20 Public Defender is said to bring in \$262,000,
21 which means they bring in more than the
22 District Attorneys; and I believe it's mostly
23 to do with the Indigent Legal Services.
24 Unfortunately, the expenses do not go the same
25 way. The District Attorney's Office expense

1 budget is 1.24 million for us in little Greene
2 County. Public Defender's is \$922,000.

3 When it comes to personnel, the
4 District Attorney's office is allotted
5 \$930,000 for personnel. That is 8,000 more
6 than the entire Public Defender's budget.

7 Public Defender has \$488,000 for
8 personnel. In our Public Defender's office in
9 Greene County, we have, I believe, only one --
10 the actual Public Defender is absolutely
11 full-time. We have four others that are
12 either three-quarter time or part-time.

13 Our District Attorney's Office has
14 five full-time District Attorneys. The
15 support staff in the District Attorney's
16 Office is full-time. What little support
17 staff the Public Defender's Office has are
18 part-time.

19 Public Defender's Office, the reason
20 it is so important, is that it pays the 18-B
21 panel. When we have an 18-B attorney, the
22 18-B's are paid out of the Public Defender's
23 budget. We are paid, statutory, \$75 an hour.
24 And the Public Defender is paying for the
25 Family Court 18-B, as well as the criminal.

1 I have also -- I am also on the panel
2 to do special prosecutor work. We have had
3 quite a bit in the past couple of years
4 because our new District Attorney was a Public
5 Defender. So, we need a lot of special
6 prosecutors. We get paid \$150 an hour for
7 special prosecutor work -- that's twice as
8 much as 18-Bs, who are doing, in my opinion,
9 twice as much work. As a special prosecutor,
10 I can reach out to the state troopers and ask
11 them to do something for me. As a Public
12 Defender or as an 18-B, that is not happening.

13 Are we, as 18-B, overworked?

14 Absolutely.

15 Are we at a disadvantage in Greene
16 County because we are a very physically large
17 county with very little resources? Without a
18 doubt.

19 Do we love our work? Absolutely.
20 There isn't anything else I would rather do.

21 Are we effective? Yes, but we're
22 tired. We're overworked. We're tired. But I
23 can tell you that we don't stop working
24 either. We do what we need to do in order to
25 get the good representation to our clients.

1 These clients are just as important as
2 someone who is walking in with a \$15,000
3 retainer to most of my 18-B panel. My 18-B
4 panel are amazing; but we need help, and we
5 need help from the state. We don't need state
6 oversight. It just won't work in New York
7 State. We have talked about the upstate and
8 the downstate. We have talked about rural
9 versus urban.

10 Just for an example, Greene County is
11 approximately 648 square miles, I believe. We
12 have approximately 48,000 people. If you
13 have -- and this was one of my real word
14 examples -- Prattsville, it's a well-known
15 town. It was wiped out by Irene -- off of the
16 face of the map. They rebuilt it. It's also
17 approximately, on a good day, not in the
18 winter, a 45-minute drive to our county center
19 which is Catskill; it's where our Courthouse
20 is, that's where most of our 18-B panel have
21 their offices.

22 If you have a client, who is a young
23 man, it's his first child, it is an infant.
24 Mom, on the other hand, mother of the child,
25 has another child, is older, and has decided

1 that she wants to break up. And it's a very
2 bad break-up. She lives in Palenville, yet
3 another 45-minute drive from Prattsville; and
4 a good half an hour drive to the Courthouse;
5 so we are on three different areas of the
6 county.

7 Mom has decided, and the Court agrees,
8 that the young father should have supervision
9 at first with this infant, just to make sure
10 that he knows what he is doing and the infant
11 is safe. Let him get some parenting classes
12 as well. The problem being, he lives in
13 Prattsville. He has no family here. He has
14 no vehicle. He only works part-time. And the
15 mother refuses to do any supervising -- bad
16 break-up.

17 So, what do you do with this young man
18 who has a wonderful young child -- no Article
19 10, there's no issues, DSS isn't involved.
20 How do you explain to him how he is going to
21 go that 45 minutes to get a one-hour visit,
22 with a supervisor that you have to figure out
23 who that supervisor is going to be between him
24 and his now ex-girlfriend because we have one
25 paid supervisor in Greene County.

1 I did add, in a footnote, we do have a
2 second that is trying. The problem being, she
3 is married to an 18-B panel and an AFC member.
4 So, it makes it a little bit difficult to use
5 her.

6 Now, if you are in New York City or
7 even Albany, and we have heard about the
8 transportation issues, this isn't a problem.
9 You jump on the subway, jump on a public bus,
10 you go. You have all of these different
11 resources -- we don't have them. They're just
12 nonexistent. Prattsville has one public
13 transportation bus per week -- that's it.

14 Or imagine now, in an Article 10, you
15 have a mother who is accused of being
16 derivatively neglectful because her live-in
17 paramour is alleged to have used excessive
18 corporal punishment on her five-year-old while
19 she was at work. You have every reason to
20 believe that there is an alternative theory.
21 It is very coincidental that custody was filed
22 prior to this allegation, and this was the
23 third allegation made since the custody
24 petition was filed. Now we have DSS
25 involvement.

1 DSS, they don't necessarily believe
2 that this case should go very far; and, in
3 fact, they have offered an ACOD, Adjournment
4 in Contemplation of Dismissal, with maybe an
5 Anger Management class; and that's it. No
6 services necessary.

7 But now you, as the mother, or as the
8 mother's counsel, 18-B, decide you need a
9 forensic evaluation. Your two closest
10 forensic evaluators are in Albany. They run
11 about two to three months before you can even
12 get a report from them, if you can get a
13 report in that time. You should be able to
14 get an appointment within two or three months;
15 but you ask the Judge for this forensic. This
16 case has been transferred from another county,
17 standards and goals is looming over the
18 judge's head. There's no money anywhere.
19 It's denied.

20 Now, if your private client wanted
21 that evaluation, they go buy it. They go pay
22 for it; and they can find anybody, whether it
23 be in Albany, Schenectady or even New York
24 City; but we are in a situation where mom
25 doesn't have the money. And now what do we

1 do? Do we give the advice to the mother, to
2 take the ACOD, don't fight it, and then just
3 try and fight the custody. Take a neglect
4 finding. How do we tell her that, if she had
5 the money, she would be fighting it? We
6 can't. So, we have to fight it, and with
7 limited resources. But we do it. This is
8 what, at least my panel does every day of the
9 week. And we have numerous cases like these.

10 But again, we love our jobs. We
11 wouldn't do anything but this. But some of us
12 have to consider doing anything but this
13 because we're starving. We can't make a
14 living -- we have children too. We need to
15 put them through college. How are you going
16 to do that when a graduate of Albany Law,
17 which I am, with no experience, can get an
18 average \$95,000 in Albany, with no experience,
19 and we are expected, as 18-B panels, to --
20 even if we could, which you cannot do, bill
21 out 40 hours a week for 52 hours at the 18-B's
22 current rate of 75 an hour. You are looking
23 at approximately \$156,000 a year. That no
24 experience Albany Law grad. is making 95. He
25 is not paying overhead. He is not paying for

1 support staff. He is not paying -- he is
2 paying the loans too, but he is not paying any
3 of the things that we have to pay in order to
4 provide the indigent with these legal
5 services.

6 With respect to our panel, and I spoke
7 to my entire panel for our recommendations,
8 retention and recruitment is huge. Again, we
9 have lost 11, only gained three. The money
10 has to come from somewhere. And as the
11 Director for the Counties' Department just
12 said, it can't come from the counties anymore.
13 We are one of those rural counties, that we
14 don't have the money when it comes to property
15 tax, or property taxes, or just from a general
16 fund. As it is, we were the wonderful county
17 that had the jail that had to be condemned.
18 So, we are trying to figure out how we are
19 going to build a new jail. We need the money
20 to come from the state. I don't believe that
21 oversight itself from the state is going to
22 work because of the disparaging differences.
23 That's the only way I can say it, differences
24 between the City and upstate.

25 And if -- I have heard others testify

1 that we need to add some sort of an automatic
2 increase, as it goes, instead of having to go
3 through the red tape. That is absolutely,
4 absolutely true. I don't know of any person
5 that's been in a position for ten years that
6 hasn't even received a cost of living increase
7 and still stays in their job. We have but
8 we're losing way too many.

9 Another idea that we had, is, maybe
10 adding 18-B attorneys certain amount of --
11 certain hours of service to student loan
12 forgiveness eligibility. Public Defenders and
13 District Attorneys and public service areas --
14 this is what we are doing is a public
15 service -- that may be able to assist. That
16 may be one way to get more 18'Bs, by offering
17 them some student loan forgiveness.

18 We would also suggest reimbursement
19 for support staff. Obviously, at a reduced
20 rate. I don't pay support staff -- I can't.
21 If we were to be able to be reimbursed, even
22 at a lower rate, I could hire someone. I
23 could have that someone write my letters for
24 me. I could have that someone -- I was a
25 paralegal as I started. I made the motions.

1 I drafted almost everything that the attorney
2 did. Of course, the attorney approved
3 everything; but that would open us up, as
4 attorneys, to give more of the specific legal
5 advice to our clients. The more one on one,
6 face time with our clients. And we could
7 actually help our unemployment rates as well.
8 We are adding some staff. Plus, it would also
9 reduce our vouchers. At \$75 an hour, for 15
10 minutes to write a letter, versus, maybe, 25.

11 Resources for our attorneys. Lexis
12 and Westlaw -- they're very expensive. Yes,
13 we know that they're available at our law
14 library, but there are some offices from 18-B
15 in Greene County that are over an hour away
16 from the Courthouse. Maybe there's a way to
17 reach out to Lexis or Westlaw, and see if
18 there's some cooperation that would be given
19 with them, with reduced rates, or allowing us
20 limited free access. I remember, I had it at
21 Albany Law, when we were students there.
22 There has to be a way that maybe they can
23 help. The resources need to, not only come
24 from the state, but from the community as
25 well. And when you have a company that's

1 making, I'm sure, trillions of dollars, it
2 would be a great thing to have them give back
3 to their community, which is the legal
4 community.

5 Standards and goals -- these are so
6 arbitrary. You have six months to do a
7 custody case, or you have six months to do an
8 Article 10, or six months to do a family
9 offense. It doesn't work that way. Custody
10 matters could be done in two weeks, while an
11 Article 10, with hearings, et cetera, could be
12 done in two years. There needs to be able to
13 be some flexibility.

14 Like I said in my example, had there
15 been some flexibility with standards and
16 goals, that judge may not have denied the
17 forensic evaluation. He may be able to say to
18 the supervising judge: *This forensic needs to*
19 *be done, so this is on hold.*

20 There are many more ways to help, and
21 many have been discussed here, as well as down
22 in the First Department, as well as in
23 Rochester. I think we need to keep this line
24 of communication open, I think long after the
25 Commission puts in its report.

1 And I thank you all for your hard
2 work. I think there has to be a way that we
3 can keep that communication open without
4 having to have the Commission reconvened,
5 without having to have, almost an act of
6 Congress to get it done. We need to have that
7 line open so that we can keep this dialogue
8 continuing and more things can come up --
9 technology is changing everyday. We should be
10 able to change with it.

11 HONORABLE PETERS: Thank you. Thank
12 you very much; and thank you for your
13 passionate testimony.

14 MS. KENNY-KEFF: Thank you.

15 HONORABLE PETERS: Questions?

16 JUDGE WALSH: I have a question that
17 doesn't necessarily have to do with your
18 testimony, but just wondering how it works in
19 your county with respect to assignments. Do
20 you have a rotation, a primary day?

21 How do you get assigned on a 1022 or
22 1027?

23 MS. KENNY-KEFF: Believe it or not,
24 our 18-B panel is our AFC panel; so our AFC
25 list is exactly where our 18-B is taken from;

1 and is it is on a rotating basis. There have
2 been situations -- I am right in the county
3 seat, so my office is right in Catskill. If
4 the next person on that rotation is not
5 available for some reason, and it is an
6 emergency, I would get the phone call, or
7 another attorney that's in the area would get
8 the phone call.

9 Another way it's done, is if there's a
10 simple custody case coming in and the people
11 live in Tannersville or on Hunter Mountain, we
12 have one 18-B there. He may get the phone
13 call first because it's going to reduce the
14 costs, believe it or not. He is not going to
15 have to travel from Hunter to Ravena and
16 charge all that mileage. Same thing with
17 where I live. They would ask that area.

18 Sometimes, that's a double-edged sword
19 because we all have kids too. So, sometimes,
20 we are conflicted out of cases because our kid
21 goes to school with that kid or something; but
22 that's usually where it goes.

23 Our two judges are very, very active
24 in family court. Each one has a different
25 family court day, and they know where we all

1 are, and so does our family court clerk, our
2 chief clerk -- unfortunately, she is going to
3 be gone in the next year to retirement, I
4 believe, but she will know. And she also
5 knows if you are new to the panel or new to
6 the list, you are not necessarily -- you may
7 get skipped over for a very intricate or
8 difficult case until you have that experience
9 under you.

10 HONORABLE PETERS: You mention that
11 you are opposed to state oversight?

12 MS. KENNY-KEFF: Yes.

13 HONORABLE PETERS: I need to
14 understand exactly what you mean by that,
15 because you also mentioned that all your 18-B
16 attorneys are Attorneys for Children, and the
17 Attorneys for Children program provides state
18 oversight.

19 Could you explain what you mean by
20 being opposed to state oversight?

21 MS. KENNY-KEFF: As Attorneys for
22 Children, we are -- we do have the statewide
23 oversight, and I believe that for the
24 Attorneys for the Children, works very well.
25 We want to make sure, for the children, who

1 cannot necessarily come out and stand up for
2 themselves -- these are all under 18 -- they
3 have the highest standards of practice. Same
4 with the 18-B, but what I have noticed is,
5 unfortunately, with the Attorneys for the
6 Children, we -- and Betsy and I have had this
7 conversation before as well -- we watch them
8 because, again, their clients are the ones
9 that can't call up Betsy, and say: *You know,*
10 *I haven't talked to my attorney in three*
11 *months.*

12 With the 18-Bs, I have seen that -- at
13 least in my county, and I have to keep this as
14 to my county or Columbia County -- we really
15 do care. We are out there all the time. I
16 know other counties don't have that issue.

17 HONORABLE PETERS: But if you have an
18 attorney in another county who hasn't spoke to
19 his client for three months, who does the
20 client call?

21 MS. KENNY-KEFF: Again, you have an
22 adult client who can call the Ethics
23 Commission, who can call the county, the
24 Public Defender's Office, because the Public
25 Defender's Office does have, in our county, at

1 least, a little bit of leeway, as well as you
2 can call the Court. The clerks will actually
3 take these complaints, if there are any.

4 My issue, statewide, is we are really
5 two different animals. It's like trying to
6 train a cat, versus trying to train a dog.

7 HONORABLE PETERS: I understand but
8 Mental Hygiene Legal Services work statewide,
9 Attorneys for Children works statewide, and
10 there is an accommodation to the geographic
11 differences between programs in the state.

12 MS. KENNY-KEFF: If there could be
13 accommodations with respect to the
14 geographics, then I would probably reconsider
15 that; but in everything I have seen, other
16 than the Attorneys for the Children, it
17 doesn't necessarily work.

18 HONORABLE PETERS: Thank you. Thank
19 you for coming up.

20 Ms. Dvorchak. Did I say that
21 correctly?

22 MS. DVORCHAK: Yes.

23 HONORABLE PETERS: Ms. Dvorchak, you
24 came all the way from Washington DC for us?

25 MS. DVORCHAK: Yes.

1 HONORABLE PETERS: Thank you very
2 much. We appreciate you bringing a national
3 perspective to this testimony. We appreciate
4 that.

5 MS. DVORCHAK: Thank you, Justice
6 Peters; and thank you, Judge Whelan, Judge
7 Walsh, Professor Rogerson, and County
8 Executive Hein.

9 My name is Kim Dvorchak. I am the
10 Executive Director of the National Association
11 of Counsel for Children, a nonprofit
12 organization established in 1977 to insure
13 access to justice and quality representation
14 for children in the child welfare system.

15 Today, almost 42 years later, we are
16 now an expanded community of children's
17 lawyers, parent's lawyers, agency lawyers and
18 other multidisciplinary professionals working
19 together to promote excellence, build
20 community and advance justice.

21 So, I traveled to Albany today as a
22 children's legal advocate, and an ally in the
23 movement to insure high quality representation
24 for parents because even the best children's
25 lawyer will face challenges with representing

1 their client who wants to go home if that
2 client's parent has made admissions without
3 counsel.

4 The work of this Commission is an
5 important moment and opportunity for New York,
6 but it's also an important moment for the
7 country. And that's one thing I want to
8 emphasize. We need to continue the
9 advancement of the infrastructure necessary to
10 provide essential legal services to families
11 in our relatively young family law and child
12 welfare law systems.

13 This Commission has received extensive
14 information and evidence on the role of parent
15 attorneys, multidisciplinary teams, timing of
16 appointment, caseloads, and specific
17 recommendations about New York providers. My
18 role today is to emphasize the specialized
19 practice of child welfare law specifically ;
20 and the need for statewide oversight and
21 leadership, as well as answer any questions
22 you may have about my written testimony or my
23 remarks today.

24 The cornerstone of NACC's mission is
25 to elevate child welfare law as a specialty

1 field and to promote excellence in child
2 welfare practice through training and
3 certification. And I would like to present
4 the chair, on behalf of the Commission, a copy
5 of NACC's Third Edition, Child Welfare
6 Practice, Red Book.

7 HONORABLE PETERS: Thank you very
8 much. I know you referenced it in your
9 testimony. Thank you.

10 MS. DVORCHAK: I have also provided a
11 copy to Ms. Fink and Ms. Burton this morning.

12 This 1100 page guide sets forth the
13 competencies, the knowledge, the information
14 necessary for child welfare law and practice;
15 whether you are a children's attorney,
16 parent's attorney or agency lawyer. The Red
17 Book was created and published by NACC to
18 serve both as a day-to-day resource for
19 practitioners and to prepare for our Child
20 Welfare Law Specialist examination. Even in
21 soft cover, and especially in hard cover, the
22 weight of the book alone speaks volumes to the
23 amount of knowledge and information attorneys
24 need to provide competent representation in
25 these cases.

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NACC created the Child Welfare Law Specialist certification to elevate the practice of law and to insure that the attorneys who undertake this awesome responsibility are well educated, well trained and have demonstrated knowledge and experience in the field.

We have seen, in jurisdictions with uneven delivery systems, that CWLS certification can offer a thorough process of vetting and individual attorney oversight which will help set and monitor standards of competence, legal education and professional conduct. And even in the more mature child welfare law offices, we are seeing CWLS certification being used as a basis for promotion or leadership positions.

Last year, the Children's Bureau of the Federal Government recommended, strongly recommended, that every attorney practicing child welfare law become a Child Welfare Law Specialist. And they have provided scholarships over the years through various federal initiatives and Court improvement programs.

1 NACC encourages states to promote
2 specialization and high quality representation
3 by considering the CWLS credential in attorney
4 appointments, contracting, hiring, and in
5 rates of pay. This is but one strategy to
6 embed standards of practice, continuing legal
7 education and professional conduct into the
8 delivery of legal services.

9 With this Commission, New York has the
10 opportunity, and I say the responsibility to
11 establish the infrastructure necessary to
12 support high quality parent representation
13 across the state, as it currently provides
14 lawyers to children. State administration,
15 funding and oversight need not be a
16 one-size-fits-all proposition. It can allow
17 for innovations that support dedicated
18 offices, panel attorneys, pilot programs, and
19 multidisciplinary services.

20 It is not simply a matter of
21 management and funding. The essential
22 ingredients, I would submit, are leadership
23 and independence. The leadership to manage
24 the oversight, training and technical support
25 of the program; the leadership to build a

1 community of attorneys, to foster comradery
2 and dedication to excellent representation;
3 and the leadership to bring important policy
4 matters affecting parents, family and children
5 to the highest levels of state government.

6 In NACC's home state of Colorado, we
7 have seen this development take place from the
8 statewide assessment, to stakeholder working
9 groups, such as yourself, to now the
10 implementation of a statewide agency for
11 parent representation.

12 In this past year, the Colorado Office
13 of Respondent Parent Counsel offered 40
14 separate trainings, developed an appellate
15 support program, provided case law updates to
16 attorneys across the state, a motions bank, a
17 Listserv and access to Westlaw for free to
18 every contract attorney. These consolidated
19 resources stretch, and effectively use state
20 dollars equitably to support all parent
21 attorneys in Colorado.

22 For more information on the Colorado
23 program, in addition to the links in NACC's
24 written testimony, I have provided an
25 additional link to the Office of Respondent

1 Parent's Counsel, 2018-2019 budget request,
2 which I think you might interesting as it
3 details the history of the organization, their
4 services and the emerging trends that they are
5 able to determine and assess through
6 centralized billing and data collection. This
7 agency presents its own budget to the Joint
8 Budget Committee of the State Legislature in
9 the same way that the Office of the Public
10 Defender, and the office of a child
11 representative does.

12 I appreciate that New York is a much
13 bigger state and that while these concerns and
14 problems are national, we have the confidence
15 that you will create the local solutions that
16 are best for New York. So, I very much
17 appreciate the opportunity to be here, and I
18 am happy to answer any questions you have, and
19 please accept our sincere thanks and
20 recognition for the work you are doing here on
21 this Commission.

22 HONORABLE PETERS: Thank you. Thank
23 you for the book.

24 Questions?

25 I have a question concerning your

1 written testimony. You talked about the need
2 to have reasonable caseloads for child welfare
3 attorneys, and we seem to be getting testimony
4 that 50 open cases is what the standard should
5 be.

6 Do you have an opinion on that?

7 MS. DVORCHAK: Well, I would say that
8 I have heard 50 or 60, the different levels.
9 There's the Family Justice Initiative, I have
10 also referred to in our written testimony, and
11 their recommendation is 60 cases per attorney.
12 50 also sounds reasonable. I know there's a
13 model law office for children in Florida that
14 is limited to 40 cases per attorney in that
15 instance. So, NACC has previously endorsed a
16 100 caseload limit, but that was a long time
17 ago, and we would not rely on that today.

18 HONORABLE PETERS: So, you don't have
19 a present limit that you recommend?

20 MS. DVORCHAK: We do not. We do not.

21 HONORABLE PETERS: Thank you.

22 Thank you very much for coming in. We
23 appreciate it.

24 MS. DVORCHAK: Thank you.

25 HONORABLE PETERS: Ms. McMillan.

1 Good morning. It's just morning, it's
2 11:59.

3 MS. McMILLAN: Good morning, each of
4 you. Thank you for allowing me to be here
5 today.

6 HONORABLE PETERS: Of course.

7 MS. McMILLAN: I am kind of happy to
8 have the last spot today at the podium because
9 it's indicative of what happens in Family
10 Court proceedings. Parents are always thought
11 of last.

12 So, my name is Joyce McMillan. I am a
13 family court native at Sinergia. At Sinergia,
14 we provide information, training and one on
15 one support to families who have children with
16 disabilities, ages zero to 26.

17 HONORABLE PETERS: Can you speak just
18 a little louder for us?

19 MS. McMILLAN: Sure.

20 HONORABLE PETERS: I just want to make
21 sure I hear you.

22 MS. McMILLAN: I want to begin by
23 stating, it is my belief that the child
24 welfare system operates and flourishes under
25 the guise of protecting children. The child

1 welfare system is actually failing children --
2 disproportionately children of color. It is
3 doing exactly what it was designed to do. But
4 the child welfare system is racism on full
5 throttle.

6 Investments are made for profitable
7 returns. When I look at how Title IV-E waiver
8 money is distributed, it is clear, investments
9 are being made to keep families of color
10 separated.

11 Lack of well-established counsel and
12 accountability keeps the charade going. The
13 deception leaves families vulnerable to a
14 child welfare system that abuses its power and
15 thrives off the separation of families, while
16 creating trauma, fear, anxiety, situational
17 mental health concerns, that can make it
18 difficult for a family to defend themselves.

19 The child welfare system claims to
20 protect children, but has a proven track
21 record of complete failure -- all while we sit
22 around as officials trying to continue the
23 conversation that has been happening for
24 decades -- how do we fix the outcome for
25 children and families that is so horrible?

1 If we are really interested in
2 protecting children, the conversation has to
3 shift from the misdirected ideas of removing
4 children for protection and from the outcomes
5 of children who enter the foster care system,
6 to keeping children safe at home with proper
7 individualized support -- not the cookie
8 cutter stuff we do.

9 Overzealous case managers pursue
10 families based on anonymous calls with no
11 representation for the family from the moment
12 ACS knocks. ACS case managers, who knock on
13 doors are often not parents themselves.
14 They're lacking life experiences, and a few of
15 them still live at home with their own
16 mommies.

17 Case managers often lack knowledge of
18 the development of a child's brain, family
19 dynamics, financial stress and adult life
20 stresses, in general. This is important
21 because it's the same case manager who lacked
22 these abilities that follows for the removal
23 of a child based on what, when you know
24 nothing?

25 My assigned counsel was an 18-B

1 attorney who cared absolutely nothing about
2 me, nor my daughter, who happens to be here
3 with me today. My attorney did not represent
4 me. If there was a reason, whatever the
5 reason might have been that I was unable to be
6 in Court, I wasn't represented that day. My
7 attorney had no time for conversation, no time
8 for explanations, no time for anything.

9 The Family Court system is a sham.
10 Everything is stacked against a family --
11 under the guise of protecting children -- and
12 we're making lots of money for them.

13 One of my attorneys told me I made it
14 difficult for him to protect me because I
15 often spoke in Court when I was told not to
16 say a word; but it was very interesting that
17 the child belonged to me, and no one else had
18 a real vested interest in the child, yet no
19 one wanted to hear from me. I was also told
20 that I was making it difficult for him to
21 represent me because the case manager kept
22 saying, at some point during conversations
23 with her, I had disrespected her. What this
24 had to do with the ability for me to care for
25 my child, I wasn't sure; but somehow it

1 influenced the case deeply.

2 I have been investigated,
3 interrogated, separated and alienated. I
4 attended family team conferences, child safety
5 conferences and watched in Court as they had
6 conversations about me, without me, right in
7 front me. Yes, I was angry. And you know
8 what? I am still angry, and if it had been
9 your children, you would be angry too.

10 I have a right to be angry. Family
11 Court unnecessarily made every effort to
12 destroy my family and to insure the failure of
13 my children. It was a very traumatizing
14 experience. I still live with that trauma
15 today, although I have learned to cope with
16 it.

17 Their treatment of me and my daughters
18 created the anger that I felt, but yet,
19 everyone was just upset that I was angry. My
20 attorney was clear. Me advocating for my
21 family was harmful to my case; but if I didn't
22 advocate, who was going to advocate.

23 Attorneys support the
24 Peter-Pay-for-Paul ideology to justify their
25 poor representation, the same way child

1 welfare officials justify the unnecessary
2 removals. My attorney said: *Ms. McMillan, I*
3 *don't know if you understand, these*
4 *accusations are serious. A child died last*
5 *year in New York. So everyone is going to err*
6 *on the side of caution here.* What that has to
7 do with my case and how we err on the side of
8 caution, I am not really sure, but that's what
9 we do to justify unnecessarily removals in
10 Family Court.

11 All attorneys working with a
12 vulnerable population should have a complete
13 anti-racist training for people of color
14 because white people cannot understand or tell
15 my story of being black in America. This
16 training should be extended to attorneys of
17 color, as well, as some people of color have
18 been conditioned to think like the demographic
19 of people who most often benefit from the
20 oppression of people of color and poor people.

21 At some point, I was lucky enough to
22 experience rap-around services from a defender
23 service. That was different. It was a
24 complete different experience. Because we are
25 represented by a defender service should not

1 be the luck of a draw. Every parent should
2 receive fair representation. Defender
3 services provide advocates, as well as social
4 workers, therapists -- whatever is, pretty
5 much, a family may need to support them --
6 that's what defender services have. So, it
7 made a difference once I lucked up and got a
8 defender service.

9 ACS knocks. There is nothing more
10 important than for a parent to effect -- than
11 for a parent to protect the rights of their
12 family remaining intact -- to not live a life
13 shaped by trauma caused by the separation of a
14 family -- wishing you had never come into
15 contact, wishing you had not made that one
16 little decision that will shape your life for
17 the rest of your life; because my life is not
18 defined in a moment's choice or decision that
19 someone chooses to pick up a phone and report
20 anonymously.

21 A child has a right to be at home with
22 their family, as well as a parent has the
23 right to have their children at home with
24 them. Imagine growing up, not knowing your
25 relatives, your medical history, or even who

1 you look like; and the trauma that you will
2 continue to live with, just thinking about
3 those simple things that everyone else in this
4 room takes for granted.

5 It is much less likely for a family to
6 remain intact when parents are only
7 represented after child welfare officials file
8 an Article 10. Because what the child welfare
9 system does by not providing attorneys from
10 the moment a welfare official or agents knock,
11 is, they allow families to be questioned and,
12 basically, indict themselves because
13 everything a family says is taken out of
14 context -- I know things that I said to a
15 child welfare agent prior to understanding how
16 this was going to turn out and what the system
17 was really made of -- was twisted and turned
18 and taken out of context. And there's no
19 check and balance.

20 No one ever came back to me, and said:
21 *Ms. McMillan, is this what you mean by the*
22 *statement? What she is claiming in court*
23 *today, is that what you meant?* No one asked
24 me that. It was taken for granted that this
25 person, who was prosecuting my family, had all

1 the answers and knew everything about me, and¹³³
2 created negative stories to further the agenda
3 of having a separation and maintaining that
4 separation.

5 So, one of the things I ask for is
6 oversight, oversight, oversight. Especially
7 for the attorneys of the children. Because
8 they often say the child is better off with
9 someone else, someone who is more financially
10 stable, but money doesn't raise children.

11 I have also noticed that a few of
12 these children attorneys and other people
13 within the jurisdiction of child welfare have
14 adopted little black children thinking that
15 they're giving them a better home. Somehow or
16 another, I question the ethics of so many
17 people who work within the family court
18 proceeding having the little black kids, like
19 the new pocketbook in America. It is really
20 disgusting to me. It makes me very upset when
21 I see white people walking around with little
22 black children that were taken from foster
23 care, knowing that their parents, their
24 families, and their loved ones miss them, and
25 want them back home and can take care of them,

1 especially with supports.

2 We spend all of this money to keep
3 children safe. What does that mean? That
4 means keeping children separated from their
5 families. That's what it means. So, it is
6 disgusting to me.

7 Preserve families, preserve
8 unnecessarily -- prevent unnecessary
9 separations of families. Support fair legal
10 representation for parents at the moment child
11 welfare knocks. Miranda Rights in child
12 welfare. To learn more about the advocacy I
13 do, follow me at *JMc for Families on*
14 *Instagram.*

15 HONORABLE PETERS: Thank you.
16 Questions?

17 JUDGE WALSH: I have a question. So
18 we have talked about having attorneys have
19 social workers on their staffs; and I wonder
20 if you think that might be helpful -- for a
21 couple of reasons; one, social workers are
22 trained differently than attorneys and social
23 workers know -- for example, a social worker
24 on an attorney's staff, would know what the
25 social worker on the agency's staff is

1 supposed to do. For example, evaluate risk
2 versus safety. You know, there might be some
3 risk to a child. Can we address that risk
4 while the child is at home because there are
5 safety concerns? So, you have a different
6 kind of advocate but an advocate who could run
7 interference between -- it seems to me --
8 between your attorney, really, and the other
9 attorney, and have these two social workers
10 getting to the bottom of what services are
11 needed specifically for your family.

12 Is that something you think would
13 help?

14 MS. McMILLAN: I think it will
15 absolutely help because one of the things that
16 child welfare officials do not do is assess
17 families. They interrogate families. There's
18 no assessments. And assessments are there to
19 help pull out what the families need as
20 supports, to insure the safety and well-being
21 of the entire family because children are not
22 separate and apart from families. They're a
23 part of the families. And if you want
24 children to thrive, and if that is the real
25 idea of child welfare, then we would utilize

1 social workers to assess and provide the
2 proper supports after the assessment.

3 JUDGE WHELAN: I want to thank you,
4 first of all, for your testimony because,
5 although you may be offended that you went
6 last, I think, actually going last, had more
7 of an impact on everybody here. Because you
8 are actually why we are here, and your
9 testimony really just brings it, at least for
10 me, why we're doing this. And so I appreciate
11 that.

12 I'm sure it's not easy for you to
13 stand up here, although you are a parent
14 organizer. But my question, really, for you,
15 is, in my county at least, we don't have
16 parent advocates. It's something that we have
17 been thinking about doing.

18 Do you have a network of people,
19 through your organization, that you think
20 would be useful to parents that are new to the
21 family court system?

22 MS. McMILLAN: Absolutely. So, I am
23 the former director of Child Welfare
24 Organizing Project, and Child Welfare
25 Organizing Project was a parent-led

1 organization. So, what we did was advocacy.
2 And we worked with a lot of the defender
3 services and other people within child welfare
4 to interact with the family in a way that
5 families won't open up to others. We were
6 able to provide support based on our
7 experiences.

8 We were also able to level the playing
9 field in mediating conversations between
10 attorneys and parents because, sometimes even
11 a parent's own attorney doesn't like to speak
12 to them because the parent is full and they're
13 going on and on, and so it may appear to be
14 rambling. And because attorneys have very
15 short amounts of time to speak with families,
16 they don't want to deal with that. So, we are
17 able to, kind of, sum up what the family wants
18 to say, or guide them in a better way of
19 presenting the information because attorneys
20 don't want to dissect what's useful and what's
21 not. We want to help parents to only present
22 what's useful to their attorney.

23 PROFESSOR ROGERSON: I just want to
24 lift up and amplify an important term that you
25 use, that I want to make sure stays in the

1 transcript in a number of places, and that's
2 anti-racism and anti-racist training. As you
3 know, that's a term of art and social justice
4 lawyering. It means that we are not just
5 identifying bias, but that we're actively
6 fighting it from the inside. It is a systemic
7 shifting change. And if you have suggestions
8 about resources, as we look at parent
9 representation, to insure that there are
10 appropriate trainings for whatever program is
11 developed, I am sure that the Commission will
12 benefit from your prospective on that as well.

13 MS. McMILLAN: Absolutely.

14 HONORABLE PETERS: By the way,
15 speaking of anti-racist training, you
16 testified today, you believe there should be
17 anti-racist training for counsel. I am
18 concerned about whether there should be
19 anti-racist training for judges. I think many
20 judges really don't think that they have bias
21 and racist tendencies, but, actually, I think
22 they do.

23 MS. McMILLAN: May I please take a
24 moment to share one of my experiences in
25 court?

1 So, I went to court one day, and I had
2 on some khaki pants and some -- I don't know,
3 Geox or Ann Taylor loafers, and a button-down
4 cardigan and white shirt. And we were in,
5 like, a Pre-Hearing room. And they kept
6 saying: *Okay, we are going to give you five*
7 *more minutes, five more minutes;* but I didn't
8 know what we were giving it five more minutes
9 for. And after a few minutes, the child's
10 attorney said: *If Ms. McMillan is not here in*
11 *the next two minutes, we are going to go on.*

12 And I looked, and I was like: *I been*
13 *here. I was here before you.* And then she
14 had this real look of shock on her face. And
15 it's unfortunate that a lot of parents who
16 come into court, regardless of their color,
17 are people who live in poverty or on the lower
18 end of the financial spectrum; and so I
19 believe that she had anticipated that I would
20 present myself a certain way; and often times,
21 parents are judged based on what they wear to
22 court; but it's not their clothing who make
23 them. Their character is much bigger than
24 what they are wrapped in. So, that was my
25 experience. And it was very frustrating, and

1 it was very clear to me at that moment that
2 they look for a parent to look and present a
3 certain way.

4 HONORABLE PETERS: Thank you for
5 sharing that; and thank you very much for
6 coming today. We appreciate it.

7 MS. McMILLAN: Thank you.

8 HONORABLE PETERS: Ladies and
9 gentlemen, thank you for your attention.
10 Thank you for your concern. And if there's
11 any further information you want to bring to
12 our attention, you can, of course, communicate
13 with us my email or write to us at the
14 Commission.

15 Have a wonderful rest of the day.

16
17 (12:17 P.M. - WHEREUPON, THE ABOVE
18 PROCEEDINGS CONCLUDED.)
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CERTIFICATION

I, THERESA C. VINING, hereby certify and say that I am a Senior Court Reporter and Notary Public within and for the State of New York; that I acted as the reporter at the proceedings herein, and that the transcript to which this *originally-signed certification* is annexed, is a true, accurate and complete record of the minutes of the proceedings to the best of my knowledge and belief.

THERESA C. VINING

DATED: October 18, 2018